

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Commission's Own Motion,
to require **DTE Electric Company** and **DTE
Gas Company** to show cause why these
companies should not be found in violation of
the Consumer Standards and Billing Practices
For Electric and Natural Gas Service, R 460.101 *et*
seq.

Case No. **U-20084**

MOTION FOR LEAVE TO INTERVENE OUT OF TIME

Susan Lesnek (Petitioner), an electric customer of DTE Electric Company (DTE), hereby petitions for leave to intervene in the above-captioned proceeding pursuant to Rule 410 of the *Commission's Rules of Practice and Procedure*, R 792.10410(1). In support of this petition, Petitioner states:

1. On February 5, 2018, the Michigan Public Service Commission (Commission or MPSC) issued a Show Cause Order requiring Staff and DTE to file testimony regarding the extent and nature of improper billing and shutoff practices that occurred from January 2017 to the present and why DTE should not be found in violation of the Commission's Consumer Standards and Billing Practices for Electric and Natural Gas Service, Mich Admin Code R 460.101 *et seq.* The Commission found that this investigation was warranted due to "the nature of potential rule violations, combined with this pattern of inaccurate reporting and misinformation that DTE provided the Staff during its numerous discussions with DTE." See, MPSC Case No. U-20084 Order, page 3.

2. The Commission stated that it was "not confident that the problems identified so far have been resolved and remains concerned that additional shutoffs in violation of the Commission's billing rules may occur." See, Order, page 3.

3. The Commission further stated that the "Staff shall continue its investigation into potential rule violations and audit the reliability of the information provided by DTE, and is not limited to specific dates or issues in its ongoing review." See, Order, page 4.

4. The original schedule set a June 15, 2018 deadline for filing of Staff and Intervenor Testimony which was later moved to July 16, 2018 with the concurrence of all parties. A Scheduling Memo was issued May 11, 2018.

5. The very next day after the deadline for filing of direct testimony in this case, on July 17, 2018, DTE issued to me an “improper” Notice of Shut Off for disconnect of electric service on or after July 31, 2018 in clear violation of the MPSC rules. Reason for shut off was violation of R 460.137, namely, that Petitioner has “refused access at reasonable times for the purpose of inspection, meter reading, maintenance, or replacement of equipment that is installed upon the premises, or for the removal of a meter.” I received this notice in the mail on July 20, 2018.

6. On July 25, 2018, after the taking of direct testimony in this case, DTE issued to me a second “improper” Notice of Shut Off for disconnect of electric service on or after July 31, 2018. This Notice for Shut Off was issued after DTE had been placed on direct notice that the “radio off” meters offered in its Opt Out program were and are continuing to transmit microwave and radio frequency radiation and conducted emissions in violation of the MPSC’s Orders in MPSC Case No. U-17000 and U-17053, and the C5.7 Non-Transmitting Meter Tariff.

7. On July 25, 2018, Petitioner sent written correspondence to DTE requesting an informal customer hearing.

8. On August 21, 2018, Mrs. R. Jennings of DTE’s Consumer Affairs contacted Petitioner to advise that DTE had scheduled an informal customer hearing in this matter for October 9, 2018 at 1:00 p.m.

9. In scheduling this informal customer hearing and preparing for attendance at said hearing, DTE violated many of the MPSC rules as they pertain to practices relating to informal customer hearings. See, Exhibit 1, Summary of DTE Energy Company’s Violations of the Consumer Standards and Billing Practices for Electric and Natural Gas Service.

10. For example, despite two explicit requests for a copy of the resume of the hearing officer, Mr. Ronald Rogers, DTE failed to provide Petitioner with a copy of said resume.

In fact, Mrs. R. Jennings told the Petitioner that Petitioner would need to contact the MPSC to obtain a copy of his resume. R 460.155(9) specifically provides that, upon request, the utility **shall** provide the resume of the hearing officer to any party participating in a customer hearing. DTE is in violation of this MPSC rule. To date, Petitioner has never received a copy of the hearing officer's resume.

11. On October 3, 2018, the Petitioner mailed to DTE by United States Post Office Priority Express Mail the Petitioner's List of Evidence, copies of documents referenced therein, and a USB Flash Drive containing further documentation and several videos. See, Exhibit 2, Customer's List of Evidence. The records for the United States Postal Service indicate that these materials were delivered to DTE on October 4, 2018 at 11:47 a.m.

12. At the beginning of the informal customer hearing on October 9, 2018, Mrs. R. Jennings advised the Petitioner that she had not seen these documents. Mrs. R. Jennings then attempted to have this evidence excluded from the hearing record stating that these materials had not been provided to DTE by the two day business rule, R 460.157(1)(b). It wasn't until the Petitioner advised Mrs. R. Jennings that Petitioner had written confirmation from the United States Post Office regarding proof of delivery of these materials to DTE on October 4, 2018 that Mrs. R. Jennings allowed these materials to be placed in the hearing record. See, Exhibit 3, Correspondence to Mrs. Jennings dated October 10, 2018. During the entire hearing process, Mrs. R. Jennings conducted herself as if she were the hearing officer.

13. Since Mrs. R. Jennings had not previously seen these documents in a timely fashion, she was unable to provide a copy of the evidence to the hearing officer. Had I not brought an entire set of evidence with me to the hearing, Mr. Rogers would have been unable to view certain evidence that was pertinent to the questions he was raising during my hearing.

14. During the hearing, the Petitioner presented a written Customer's Statement of Position to both DTE and the hearing officer. See, Exhibit 4, Customer's Statement of Position. Mrs. R. Jennings attempted to have this document excluded from the hearing record based upon the fact that this written document had not been disclosed and provided to DTE by the two

day business rule, R 460.157(1) (b). However, DTE's reliance upon this rule is misplaced. R 460.157(7)(b) provides that if the customer has not put his or her position in writing, then the hearing officer shall provide a method for accomplishing this writing with an opportunity for proper acknowledgment by the customer. DTE's own Notice of Hearing dated August 27, 2018, indicates that Petitioner has the right to present oral and written argument at the hearing in accordance with R 460.157(1)(c). In this case, the Petitioner had put her position in writing and DTE was intentionally misinterpreting the rules in an attempt to exclude a pertinent document from the hearing record. Based upon DTE's numerous rule violations and DTE's self-serving interpretation of the MPSC rules, the informal customer hearing process is not "informal" as a customer truly needs to be represented by legal counsel in order to obtain a fair and impartial hearing. Clearly, Petitioner's due process rights were being violated during this hearing.

15. During the hearing, Mr. Rogers indicated that his authority was limited and applied only to DTE's violation of the MPSC rules. Petitioner presented substantial evidence that DTE has and continues to violate many of the MPSC rules, especially the C5.7 Non-Transmitting Meter Tariff. Mr. Rogers stated many times that this case was "above his pay grade" and that Petitioner "would be going to Lansing." Mr. Rogers was indicating to me that he had rendered his determination in favor of DTE prior to his review of any of my evidence presented at the hearing. Petitioner found the entire hearing process to be a sham. Clearly, the hearing office is biased towards DTE in violation of R 460.460.155(8)(c), especially in light of discrepancies found between two resumes from Mr. Rogers provided to two different customers participating in the informal customer hearing process. See, Exhibit 5, Correspondence to Mr. Rogers dated October 10, 2018.

16. This case involves the investigation into DTE's improper shutoffs due to AMI meter refusals and MPSC rule violations. DTE improperly expanded its scope of authority under R 460.137 when it issued Petitioner an "improper" Notice of Shut Off because of her inability to participate in DTE's Opt Out program that is currently non-compliant with the MPSC Orders in U-17000 and U-17053, and the C5.7 Non-Transmitting Meter Tariff. DTE continues to

repetitively violate the MPSC rules regarding the informal customer hearing process.

Customers, including this Petitioner, do not have a proper avenue of relief in resolving disputes with DTE through the informal customer hearing process due to its many repeated and ongoing MPSC rule violations.

17. Petitioner has first hand knowledge of 39 other DTE customers who are being threatened with “improper” Notices of Shut Off and have requested an informal customer hearing regarding AMI meter installation. Petitioner has first hand knowledge that DTE is also violating many of the MPSC rules in scheduling and handling these informal customer hearings. On two occasions, DTE attempted to unlawfully forfeit a customer’s right to an informal customer hearing but, thankfully, for the intervention of Mr. Moody from the Attorney General’s Office, these customers were able to have their rights under the MPSC rules preserved.

18. There are 1,077 additional DTE customers who have yet to be approached by DTE for AMI meter installation and who, very well, may end up facing the exact circumstances that Petitioner is currently facing.

19. Petitioner has first hand knowledge and experience regarding DTE’s current and ongoing MPSC rule violations which are germane to this proceeding and which occurred after this case was opened, after the intervenor status was granted, and after the deadline for filing of direct testimony had passed. Petitioner’s personal knowledge and direct experience relates to new information that is not being represented by other parties to this proceeding.

20. DTE’s repeated and blatant violations of the MPSC’s orders and rules run afoul of its own code of ethics as detailed in DTE Energy Way, Code of Conduct. See, Exhibit 6, DTE Energy Way, Code of Conduct, <https://www.newlook.dteenergy.com/wps/wcm/connect/5ffb7155-2b3e-4981-a3a2-d6dc0bb66197/DTE%2BEnergy%2BWay.pdf?MOD=AJPERES>

21. The Michigan Public Service Commission recognizes two types of intervention. The first type is intervention by right which requires that the party will suffer an injury-in-fact as a result of the outcome of this case, and that the party is within the zone of interest protected by statute. See for example, *Association of Data Processing Service Organization, Inc. v Camp*, 397

US 150; 90 S CT 827; 250 L Ed 184 (1970). The second type is permissive intervention where the Commission has the discretion to permit a party to intervene in the case where that party can provide useful information to the Commission or a unique perspective on the issues in the case.

22. Petitioner meets both tests.

23. Petitioner will be directly impacted by the issues raised in this proceeding because DTE's non-compliance with the C5.7 Non-Transmitting Meter Tariff affects Petitioner's ability to participate in DTE's Opt Out program as it currently is being implemented.

24. Petitioner is also within the zone of interests protected by MCL 460.1 *et seq.* These statutes generally provide opportunities for ratepayers, including Petitioner, to protect their interests in Commission proceedings.

25. For these reasons, Petitioner meets the requirements for intervention in this proceeding as of right.

26. Petitioner meets the test for permissive intervention because she will bring significant expertise and a unique perspective to these proceedings. Currently, no other party in this proceeding has personal knowledge and direct experience relative to DTE's multiple MPSC rule violations as they pertain to informal customer hearings. In addition, no other party in this proceeding represents the interests of Petitioner who has been threatened with an "improper" Notice of Shut Off for AMI meter installation due to the Petitioner's inability to participate in DTE's Opt Out program which currently violates MPSC Orders in MPSC Case Nos. U-17000 and U- 17053, and the C5.7 Non-Transmitting Meter Tariff.

27. Rule 410 of the Commission's Rules of Practice and Procedure allows for a late Petition for Leave to Intervene to be granted "upon a showing of good cause and a showing that a grant of petition will not delay the proceeding or unduly prejudice any party to the proceeding." R 792.104410(1).

28. Good cause exists for this untimely filing as Petitioner was not issued an "improper" Notice of Shut Off until after the deadline for filing Intervenor Testimony in this case.

All of DTE's improper conduct occurred from that moment in time up until the informal customer hearing held on October 9, 2018. More important, DTE continues, on an ongoing basis, to violate the MPSC rules as they apply to the other DTE customers who have been served with an "improper" Notice of Shut Off and who have already requested an informal customer hearing.

29. Furthermore, no delay in the proceeding or undue prejudice would occur to any party from Petitioner's intervention. Petitioner "shall be bound by the record and procedural schedules developed before the granting of leave to intervene." *Id.*

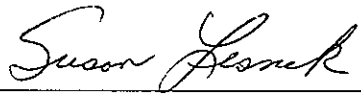
30. No other party adequately represents the interests of Petitioner.

31. Because of concerns regarding the privacy of customer information or data in this case, the Administrative Law Judge may wish to issue a protective order safeguarding the privacy of customer information and data filed in this docket. See, Opening Order in MPSC Case No. U-20084, page 4.

32. Petitioner requests that all notices and pleadings be served on:

Susan Lesnek
46151 Bloomcrest Drive
Northville, MI 48167
dbuening@sbcglobal.net

For the reasons stated above, Petitioner respectfully requests that the Commission grant this Petition to Intervene Out of Time and treat her as a party to this proceeding.

By: 

Date: October 12, 2018

Susan Lesnek
46151 Bloomcrest Drive
Northville, MI 48167
Phone: Available upon request.
Email: dbuening@sbcglobal.net

Exhibit 1

Summary of DTE Energy Co.'s MPSC Rule Violations of the Consumer Standards and Billing Practices for Electric and Natural Gas Service

DTE Customer: Susan Lesnek
46151 Bloomcrest Drive
Northville, MI 48167
Informal Customer Hearing No. 3790028

Date Requested Informal Customer Hearing:

Written Request: July 25, 2018 received by DTE on July 27, 2018
Oral Request: July 27, 2018

Rule 460.155(6)(b) provides the utility shall schedule the hearing within 10 business days of the request for hearing.

Date 10 Business Days: August 10, 2018
Date DTE scheduled hearing on: August 21, 2018

Rule 460.156(1) provides that on a day the utility schedules the hearing, the utility shall send or personally serve the customer with written notice of the time, date, and place of hearing.

Date of Letter from DTE enclosing Notice of Hearing: August 27, 2018
Date customer received Notice of Hearing: August 30, 2018

Rule 460.155(6)(c) provides that the utility shall hold the hearing within 45 business days of the request for hearing.

Date 45 Business Days: September 28, 2018
Date and time of Hearing: October 9, 2018 at 1:00 p.m.

Rule 460.155(9) provides that, upon request, utility shall provide the resume of a hearing officer to the commission or any party participating in a customer hearing.

Date customer requested name of hearing officer: August 22, 2018
Date DTE disclosed identity of hearing officer: August 22, 2018
Name of Hearing Officer: Ronald R. Rogers
Date customer requested resume of hearing officer: August 22, 2018

Mrs. Jennings stated I would need to contact the MPSC directly to obtain copy of his resume.

Letter to DTE dated September 4, 2018 making second request for resume of hearing officer.

Date customer received resume of hearing officer: As of October 9, 2013, I have not received a copy of Ronald R. Rogers' resume from DTE.

Rule 460.155(8)(c) provides that utility shall select hearing officers who are not a past or present employee of the utility, and that they are not engaged in or have been engaged in an other activities that would cause bias or lack of objectivity.

If the hearing officer is biased and not an impartial third party, please state reasons:

Ronald R. Rogers has been compensated by and/or worked for DTE Energy Co. in November of 2008 as a Fleet Vehicle Specification Specialist. Description of duties: Served as a consultant to the Director of Fleet Vehicle Operations regarding the addition of special utility bodies to trucks within the DTE fleet. Provided guidance on 2010 Vehicle Emission requirements with respect to proposed commercial vehicle purchases. See, Resume of Ronald R. Rogers, Exhibit 103.

From June to July of 2009, Ronald R. Rogers worked for Science Applications International Corporation (SAIC) as a Senior Automotive Engineer. Description of duties: Served as a consultant to the US Navy Surface Warfare Command (NSWC) on issues relating to energy usage supporting Vehicle Systems, Survivability, Lethality and Active Denial subsystems. This Project was in support of proposed advanced vehicle propulsion systems for light duty tactical vehicles. See, Resume of Ronald R. Rogers, Exhibit 104. Active Denial subsystems weaponry uses microwave radio frequencies to debilitate humans. The AMI meters deployed by DTE Energy Co. also uses microwave radio frequencies which have been known to be harmful and debilitating to humans and the environment in general.

Mr. Rogers failed to disclose this conflict of interest in his most recent version of his resume provided to a customer in September of 2018. See, Exhibit 104. This act of omission by Mr. Rogers constitutes negligence and, perhaps, intentional misrepresentation of material facts.

Rule 460.156(2) provides that the notice of hearing shall describe the hearing procedures as specified in Rule 460.157.

Rule 460.157 provides, in pertinent part:

- (1)(a) Right to represent themselves, to be represented by counsel, or to be assisted by persons of their choice.
- (1)(b) To examine a list of all witnesses who will testify and all documents, records, files, account data, and similar material that may be relevant to the issues to be raised at the hearing.

Note: DTE specifically failed to include the language in the rule that states “not less than 2 business days before the scheduled hearing.”

2 Business Days prior to hearing: October 5, 2018

Date DTE requested disclosure of Evidence: September 13, 2018 or my right to an informal customer hearing will be forfeited.

Date DTE disclosed its List of Witnesses and Evidence: As of this date, October 3, 2018, I have not received a List of Witnesses and Evidence from DTE.

- (1)(c) Right to present evidence, testimony, and oral and written arguments.
- (1)(d) Right to question witnesses who will be appearing on behalf of the other party.

Insufficiencies in Notice of Hearing

DTE failed to state with regard to Rule 460.157(2) that hearing shall be held during normal business hours “except as otherwise agreed to by all parties.”

DTE failed to state with regard to Rule 460.157(3) that, for convenience of the parties, hearing officer may conduct the hearing by telephone or other electronic media. In this case, parties shall provide any documents to be introduced to other parties at least 2 business days in advance of the hearing date.

DTE failed to state with regard to Rule 460.157(6) that the hearing shall be informal and proceedings do not have to be recorded or transcribed.

DTE failed to state with regard to Rule 460.157(7) that the hearing officer shall compile a hearing record that includes all of the following:

- (a) A concise statement, in writing, of the position of the utility.
- (b) A concise statement, in writing, of the position of the customer. If the customer has not put his or her position in writing, then the hearing process shall provide a method for accomplishing this writing with the opportunity for proper acknowledgement by the customer.
- (c) Copies of all evidence submitted by the parties.

Note: The document states the hearing officer will inform the parties that the decision will be transmitted within seven (10) business days. Rule 460.157 provides for ten business days. If the customer is not familiar with the Rules, this statement creates ambiguity as well as confusion.

Note: The document states the Complaint Determination is binding upon both parties unless appealed within seven (15) business days. Rule 460.157(9)(a) provides for 15 business days of issuance of the Complaint Determination. If the customer is not familiar with the Rules, this statement creates ambiguity as well as confusion.

DTE failed to include Rule 460.157(9) through Rule 460.157(14), more specifically:

- (9) At the conclusion of the hearing and again upon issuance of the complaint determination, the hearing officer shall advise the customer and the utility of all of the following:
 - (a) That each party has a right to appeal the decision to commission staff by mail, telephone, internet, fax, or in person, within 15 business days of issuance of the complaint determination.
 - (b) That, if appealed, the decision of the hearing officer, including a finding that service may be shut off, cannot be implemented until the commission staff completes a review.
 - (c) The address and telephone number where the customer or the utility may make an informal appeal to the commission staff.
- (10) Before issuance of a complaint determination, the hearing officer may propose a settlement to the parties. If both parties accept the settlement, it shall be put in writing and both parties shall sign the settlement agreement.

(11) Within 10 business days of the conclusion of the hearing, the hearing officer shall serve the parties with all of the following:

(a) A copy of the complaint determination.

(b) Appeal information as provided in subrule (9) of this rule.

(c) If applicable, a copy of the signed settlement agreement as provided in subrule (10) of this rule.

(12) The complaint determination and a copy of the signed settlement agreement, if any, shall be made part of the hearing record. The hearing officer shall certify the hearing record.

(13) The complaint determination is binding upon the parties, unless appealed, as provided in R 460.160 to R 460.169.

(14) A utility's hearing procedures shall be subject to investigation and review by the commission.

**Additional Requirements in Notice of Hearing
not provided for by the MPSC Rules**

The Notice of Hearing indicates that the type of dispute is "customer refused the installation of the AMI meter and would like to keep the analog meter." The Notice also states that the relief requested is "to keep analog meter."

As I have never made these statements to DTE Energy in regard to my request for an informal customer hearing, I assume that these statements are only for purposes of DTE's internal record-keeping.

The Rules do not require that I sign and return a Notice of Hearing to the utility. In addition, these Rules do not require that I provide DTE with a Customer's Statement of Position in advance of the hearing date.

In fact, Rule 460.157(1)(c) specifically provides that oral and written arguments are presented during the informal customer hearing. Rule 460.157(7)(b) directs that, in the event the customer has not put his or her position in writing, the hearing officer shall provide a method for accomplishing this writing with the opportunity for proper acknowledgment by the customer.

The Notice of Hearing expressly states that the customer must sign the Notice of Hearing and return same within 10 business days or my right to a Hearing may be waived. The Rules do not mandate that a customer sign the Notice of Hearing and return same to DTE in order to preserve the customer's right to an informal customer hearing.

The only instance wherein the Rules provide for waiver of a right for a hearing is found in Rule 460.157(2) which specifically provides that:

Failure of the customer, or the utility, to attend the hearing without a good reason, or without having requested an adjournment, constitutes a waiver of the right of that party to the hearing.

Failure to Make Payment

The Notice of Hearing states (on page 1) that the customer must pay \$100.00 (Not required) when the customer returns the signed Notice to DTE. Yet, on page 3 under the Customer Response section right above the customer signatory line, the Notice states that the customer must complete the aforementioned steps, including payment of \$100.00 within the 10 business days allowed, or their right to a Hearing may be waived.

If the customer is not familiar with the Rules, this statement is ambiguous and misleading.

Forfeiture of Informal Hearing

DTE's cover letter dated August 27, 2018 enclosing the Notice of Hearing, Customer's Position of Statement, and Customer's List of Witnesses and Evidence specifically states that DTE must receive the signed hearing documentation by September 13, 2018 or my right to an informal hearing "will be forfeited." The date to return documentation is well before the 2 business days as provided for in Rule 460.157(1)(b).

Again, on page 3 of the Notice of Hearing, DTE states that "I must complete the aforementioned steps, including payment of \$100.00, within the 10 business days allowed, or my right to a Hearing "may be waived."

As previously stated, the only Rule that provides for waiver of hearing is Rule 460.157(2) for failure to attend hearing without good cause or without having requested an adjournment.

DTE is acting outside the scope of the MPSC Rules and does not have the right to forfeit, waive, or deny an informal customer hearing based upon its unilateral demands for documents well in advance of the timeframe allowed by the Rules.

These are intimidating tactics on the behalf of DTE Energy.

Customer's List of Evidence

DTE Customer: Susan Lesnek
46151 Bloomcrest Drive
Northville, MI 48167
Informal Customer Hearing No. 3790028

Customer's List of Witnesses

None.

Exhibit	Date	Statement of Facts
1	12/18/17	Three DTE trucks arrived and blocked driveway and street. Declined installation of AMI meter.
2	4/29/18	AMI technician arrived at home. Declined installation of AMI meter. Technician discussed opt out program, winter protection program, and new report wherein DTE would shut off power to my meter for refusal to accept AMI meter. Warned me of future DTE visit involving 3 trucks.
	5/29/18	DTE made aware in MPSC Case Nos. U-18043 and U-18203 that "radio off" AMI meters were transmitting microwave and radio frequencies.
3	6/6/18	AMI technician arrived at home. Declined installation of AMI meter. Technician requested to read meter. I granted access to meter.
4	7/3/18	DTE letter of intent to disconnect electric power under MPSC Rule 460.137 if access is not given to replace existing meter with a smart meter. Gift card valued at \$50 is offered once installation or Opt Out enrollment is complete. Way of saying thank you for being a valued DTE Energy customer.
	7/16/18	Deadline for filing direct testimony in the DTE investigation case, MPSC Case No. U-20084.
5	7/17/18	DTE Notice of Shut Off for disconnection of electric service on or after July 31, 2018.
6	7/25/18	DTE Notice of Shut Off for disconnection of electric service on or after July 31, 2018.
7	7/25/18	Letter to DTE requesting an informal customer hearing. Rule 460.155 provides for such relief. Letter to MPSC advising of request for informal customer hearing.
8	7/27/18	Oral request to DTE for informal customer hearing. Shut Off Notice 313-235-4009.

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|----|---------|--|
| 9 | 7/27/18 | Oral request to DTE for informal customer hearing. Customer Service 800-477-4747. Leah advised me that there is no shut off notice on record, that no payment is due on account, that she has not seen past due notice, and that letter did not come from DTE. She advised me not to give out my social security number or account number as this was a scam. |
| 10 | 7/30/18 | Oral communication with MPSC advising of request for informal customer hearing. Kayla stated that she would send something over to DTE. |
| 11 | 7/30/18 | DTE's oral acknowledgment that we have received your MPSC inquiry. It will be assigned to a consultant and they will look into it and give you a call back. |
| 12 | 7/31/18 | DTE's oral acknowledgment of request for hearing. We will be contacting you very soon. |
| 13 | 7/31/18 | Notice placed on meter on July 31, 2018 advising of participation in hearing process and that power is not to be turned off. |
| 14 | 8/21/18 | Oral communication from Mrs. Jennings advising that we have you scheduled for an informal hearing on Tuesday, October 9th at 1:00 p.m. Will be sending out paperwork to reflect this. |
| 15 | 8/22/18 | Oral communication with Mrs. Jennings confirming date and time of informal hearing. She advised me that the informal hearing only prolongs the time frame. If the customer does not opt out, then DTE will shut off service until the meter is changed. Hearing officer is Mr. Rogers. I requested copy of his resume and Mrs. Jennings stated that I would need to contact the MPSC directly to obtain a copy of his qualifications. Mrs. Jennings stated that written notice of the scheduled hearing date already went out in the mail today. She indicated there are some documents that I would need to sign and return to DTE. |
| 16 | 8/27/18 | DTE's Notice of Hearing dated August 27, 2018, including Customer's Statement of Position and Customer's List of Witnesses and Evidence. Mrs. Jennings states that DTE must receive the hearing documentation by Thursday, September 13, 2018 or your right to an informal hearing will be forfeited. |
| 17 | 8/28/18 | Public Comment before MPSC with 6 attachments. |
| 18 | 9/4/18 | Written Response to DTE's Notice of Hearing confirming attendance at informal hearing on October 9, 2018 and advising DTE of several MPSC rule violations. Requested copy of Ronald R. Roger's resume. Advised of intention to audio record informal hearing and inquired about making arrangements for a court reporter to be present at informal hearing. Should DTE revoke my right for an informal hearing for any reason, I will immediately file a formal complaint with the MPSC regarding DTE's violation of the MPSC rules. |

- 19 9/10/18 Letter to DTE dated September 10, 2018 requesting DTE to provide me with its List of Witnesses and Evidence no less than 2 business days before October 9, 2018 pursuant to MPSC Rule 460.157(1).
- 20 Copy of laminated postcard provided by a DTE technician describing terms of Opt Out program. Customer can not keep analog meter.

MPSC Rule Violations

- 21 Summary of DTE Energy Co.'s Violations of the Consumer Standards and Billing Practices for Electric and Natural Gas Service.

Opt Out Program

- 22 USB Flash Drive Comments of MPSC Chairman Sally Talberg before the House Energy Policy Committee on February 28, 2017, Michigan House TV - ENER-022817.mp4 at 23:24 minutes into programming. MPSC authority is derived from the Michigan Legislature.
- 23 DTE Website. Metering Program Opt-Out.

DTE Investigation Case

- 24 MPSC Case No. U-20084 Order dated 2/5/18. Docket filing U-20084-0001.
<https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t00000001fEjLAAU>
- 25 USB Flash Drive MPSC U-20084 as of 10.2.2018 Case and Filing Print PDF-5.pdf
- 26 USB Flash Drive List of Witnesses and Evidence in MPSC Case No. U-20084
- 27 Affidavit of Jennifer L. VanDam dated May 2, 2018 regarding opt out meter which began transmitting without DTE's or customer's knowledge or consent. Opt out meter replaced two times by technician who kept re-iterating that each opt out meter was not a transmitting meter.
- 28 Affidavit of Christina Ventimiglia dated May 3, 2018 regarding technician who changed recently installed opt out meter because the meter was defective, i.e. radio had turned itself back on.
- 29 Affidavit of Rebecca Morr dated May 3, 2018 regarding DTE's refusal to honor request for analog meter as prescribed by doctor. DTE turned radio signal back "on" without any notice. Took several weeks to get DTE to turn radio signal off.
- 30 Affidavit of Sheila Pomaranski dated May 3, 2018 regarding opt out meter transmitting radio frequencies since October 31, 2017.

- 31 Affidavit of Karen Kane dated July 13, 2018 regarding electric service disconnection and resulting installation of opt out meter in May 2015. The meter's radio(s) were verified "on" as of July 10, 2018.
- 32 Affidavit of Robert W. Shalla dated July 13, 2018 regarding opt out meter that was installed on approximately May 1, 2015. Opt out meter radio(s) were verified "on" as of February 24, 2018. In March, DTE field personnel checked the meter and advised customer that meter was not transmitting. Opt out meter radio(s) were again verified "on" as of July 6, 2018. During this time, meter was not read on a monthly basis. Customer received estimated bills.
- 33 Direct Testimony and Exhibit of Robert Watson on behalf of The Residential Customer Group dated July 16, 2018 filed in MPSC Case No. U-20084.
- 34 Direct Testimony and Exhibit of Joan and Milton Johnson on behalf of The Residential Customer Group dated July 17, 2018 filed in MPSC Case No. U-20084.
- 35 Affidavit of Milton Johnson dated August 25, 2018.
- 36 Affidavit of Milton Johnson, Participant in MPSC Case U-20084, dated October 2, 2018.

Smart Meter Education Network

- 37 Summary of Video Evidence depicting Transmitting Opt Out Meters.
- 38 USB Flash Drive USB Flash Drive containing SMEN Videos and other evidence as identified in the Customer's List of Evidence.
- 39 Affidavit of Linda Kurtz Regarding Opt Out Meters and Authenticating Videos dated September 25, 2018.
- 40 (plus Addendum) Affidavit of Linda Kurtz Regarding Opt Out Customers' Issues with Meters That Were Transmitting dated September 25, 2018.
- Addendum - Affidavit of David Sladowski dated September 25, 2018 in support of statements made by Linda Kurtz in her affidavit dated September 25, 2018.
- 41 Affidavit of Michele Okoniewski Authenticating Videos of AMI Meter Testing dated October 2, 2018.
- 42 Openway Centron Meter Specifications sheet, page 2.
- 43 MPSC Case No. U-17053, Testimony of Robert Sitkauskas on January 15, 2013, Volume 3, page 290, lines 6-9.

- 44 USB Flash Drive Michigan Oversight Committee Hearing on Microwave Meters, December 2, 2014, statements made by Robert Sitkauskas recorded at 21 minutes into programming.
- 45 OpenWay, Wireless Networking with Zigbee by Itron, 2009.
- 46 Affidavit of Christine Allen dated September 7, 2018.
- 47 Affidavit of Carol La Palm dated September 17, 2018.
- 48 (plus Addendum) Statement of Joseph Harding rendered in September of 2018.
Addendum - Affidavit of Joseph Harding dated October 3, 2018.
- 49 Statement of Christine M. Zatell-Holden rendered in September of 2018.
- 50 USB Flash Drive Comments of MPSC Chairman, Sally Talberg, before the House Energy Policy Committee on February 28, 2017, Michigan House TV - ENER-022817.mp4 at 26 minutes into programming.
- 51 USB Flash Drive Comments of the Chairman of the House Energy Policy Committee, Rep. Gary Glenn, on February 28, 2017, Michigan House TV - ENER-022817.mp4 at 1 hour and 4 minutes into programming.

C360 Software Defects Actually Metering Equipment Malfunction

- 52 DTE filings in MPSC Case Nos. U-17999 and U-18014 dated June 30, 2017, Smart-Grid Annual Report, page 2.

Power Quality Issues

- 53 USB Flash Drive Direct Testimony of William S. Bathgate filed on behalf of the Residential Customer Group in MPSC Case No. 18255 on August 29, 2017.
<https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000001UX3MAAW>
- 54 Affidavit of Angela B. Thomas dated July 24, 2018 filed in MPSC Case No. U-20084.
- 55 Affidavit of Kenneth Trepanier dated August 16, 2018 filed in MPSC Case No. U-20084.

MPSC Case No. U-17000

- 56 MPSC Order in MPSC Case No. U-17000 dated September 11, 2012.
- 57 USB Flash Drive Michigan Oversight Committee Hearing on Microwave Meters, 12.2.14-1.mp4, statements of Mike Burn from the MPSC at 1 hour and 40 minutes into programming.

58 MPSC U-17000 Staff Report on the AMI Technology and Smart Grid vision filed 6/29/12. Docket filing U-17000 - 0455.
<https://mi-psc.force.com/sfc/servlet/shepherd/version/download/068t0000000wdMdAAI>

Adverse Health Issues

59 MPSC Case No. U-17053, Direct Testimony of John Holeyton, Evidence I-JH-9 Page 2 of 9.

60 MPSC website, Smart Grid, Frequently Asked Questions, Are the radio frequency (RF) communications used by the smart meters safe?
<https://www.michigan.gov/mpsc/0,4639,7-159-56137-250041--,00.html>

61 USB Flash Drive California Council on Science and Technology (CCST) report on Smart Meters released in March 31, 2011.
<https://ccst.us/publications/2011/2011smart-final.pdf>

62 Evidence 21 CCST-Expert Comments Regarding the California Council on Science and Technology (CCST) Smart Meter report. Document prepared for The Legislature of California and the California Public Utilities Commission "[Health Impacts of Radiofrequency from Smart Meters](#)" filed in PUC Docket 2011-00262.

63 USB Flash Drive Expert Report of Andrew A. Marino dated August 8, 2016.

64 USB Flash Drive Naval Medical Research Institute, Bibliography of Reported Biological Phenomena ('Effects') and Clinical Manifestations Attributed to Microwave and Radio Frequency Radiation by Zorach R. Glasser, Ph.D, LT, MSC, USNR, Second Printing, 20 April 1972.

65 Smart Meters: Correcting the Gross Misinformation by Andre Fauteux, June 11, 2012.

<https://maisonsaine.ca/actualities/smart-meters-correcting-the-gross-misinformation.html>

66 Reply Brief of The Residential Customer Group Appendix B-1 dated August 12, 2015 filed in MPSC Case No. U-17767 containing the rebuttal testimony of Martin L. Pall, PhD, regarding the inadequacy of the Texas PUC Report and the Canadian Safety Panel 6 Report.
<https://mi-psc.force.com/sfc/servlet/shepherd/version/download/068t00000001UMtSAAW>

67 The Harmful Effects of Electromagnetic Fields Explained by Dr. Joseph Mercola, December 22, 2017.

68 Wake Up World by Dr. Joseph Marcela, January 14, 2018.

69 World Health Organization International Agency for Research on Cancer Press Release, May 31, 2011.

- 70 USB Flash Drive Report of Partial Findings from the National Toxicology Program Carcinogenesis Studies of Cell Phone Radiofrequency Radiation in Hsd: Sprague Dawley SD rats (Whole Body Exposures), Draft February 1, 2018.
<https://www.biorxiv.org/content/biorxiv/early/2018/02/01/055699.full.pdf>46
- 71 USB Flash Drive Assessment of Radiofrequency Microwave Radiation Emissions from Smart Meters by Sage Associates, January 1, 2011.
http://sagereports.com/smart-meter-rf/docs/Smart-Meter_Report.B-Tables.pdf
- 72 USB Flash Drive BiolInitiative Report 2012, A Rationale for Biologically-based Exposure Standard for Low-Intensity Electromagnetic Radiation. Editors, David Carpenter, MD and Cindy Sage, MA. First published in August 2007.
<http://bioinitiative.org/table-of-contents/>

Summary of Conclusions of BiolInitiative Report 2012 marked as Exhibit 72 and contained in List of Evidence.
- 73 Letter from Dr. De-Kun Li, MD, PhD, MPH to Ms. Martin
<https://ecfsapi.fcc.gov/file/7022311506.pdf>
- 74 Standard of Building Biology Testing Methods SBM-2008 and the supplement to this standard, the Building Biology Evaluation Guidelines for Sleeping Areas.
- 75 (plus Addendum) Excerpts of Itron 2017 annual SEC 10K filed 3/1/18, Verizon 2017 annual SEC 10K filed 2/23/18, ATT&T 2017 annual SEC 10K filed 2/20/18, DTE 2017 annual SEC 10K filed 2/16/18 and CECO 2017 annual SEC 10K filed 2/14/18.

Addendum - Silver Springs Network SEC 10Q period ending 9/30/15.
- 76 DTE website: Your Information Is Safe With Us
<https://www.newlook/dteenergy.com/wps/wcm/connect/det-web/home/service-request/common/natural-gas/rates/advanced-meters#>
- 77 Public comments of Michelle Rison filed in MPSC Case Nos. U-17000 and U-17102 on May 31, 2014.
<https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000000wdOGAAY>
<https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000000wdDyAAI>

Hazardous Fires

- 78 USB Flash Drive Testimony of Cynthia Ayers before the Michigan House of Representatives, The House Energy Policy Committee, HB4220: Provides for certain requirements and prohibitions pertaining to utilities' use of advanced meters, March 7, 2017.
<http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=ENER-030717.mp4>

- 79 Expert Testimony of Smart Meters/Grid: "Retain analog systems to the extent possible." By K.T. Weaver, SkyVision Solutions posted on March 12, 2017.
<https://smartgridawareness.org/2017/03/12/expert-testimony-retain-analog-systems/>
- 80 DTE Internal Memo issued 4/23/15, number 2015-002 stating OpenWay Meters Failure Under Investigation and depicting photograph of melted meter cover.
- 81 USB Flash Drive New Mexico Public Regulation Commission, Case No. 15-00312-UT Recommended Decision issued by Hearing Examiner Ashley Schannauer dated March 19, 2018, page 65.
<https://smartmeterharm.files.wordpress.com/2018/04/new-mexico-prc-3-19-18-15-00312-ut-recommended-decision.pdf>
- 82 How the Smart Meter 'Remote Disconnect' Can Cause Fires by K.T. Weaver, SkyVision Solutions, posted August 25, 2016.
<https://smartgridawareness.org/2016/08/25/how-the-smart-meter-remote-disconnect-can-cause-fires/>
- 83 Smart Meter Fires, Add another item to the list of worries slowing the smart grid rollout, by Bill Sweet, September 5, 2012.
<https://spectrum.ieee.org/energywise/energy/the-smarter-grid/smart-meter-fire-reports>
- 84 Direct Testimony and Exhibit of David Lonier dated July 17, 2018 filed in MPSC Case No. U-20084, Exhibit RCG-16 (DL-1), page 15 of 20, depicting list of articles discussing smart meter fires.
- 85 Fear of fire hazard causes removal of thousands of smart meters, The Canadian Press, posted on January 22, 2015.
- 86 SaskPower ordered to remove all 105,000 smart meters in province by Josh del Sol Beaulieu, July 30, 2014.
- 87 Saskpower CEO resigns following investigation into smart meter "catastrophe" by K.T. Weaver, October 31, 2014.
- 88 PGE replacing 70,000 electricity meters because of fire risk by Ted Sickinger, posted on July 24, 2014.
- 89 Overheating Concerns: Lakeland Electric to Replace 10,657 Residential Smart Meters by John Chambliss, The Ledger, posted on August 26, 2014.
- 90 Are tens of thousands of defective "smart" meters being stealthily replaced in Arizona? by Josh del Sol Beaulieu, September 5, 2014.
- 91 Epic Fail! - APS Is Replacing All Its "Smart" Meters, Information & Perspective by Warren Woodward, Sedona, AZ ~ November 22, 2015.

- 92 Livonia Home Catches Fire AS DTE Removes Old Meter, Channel 62, CBS Detroit, October 25, 2013.
- 93 Fatal fire in Nevada, smart meter suspected: “Be very aware, very vigilant” says Fire Chief by K.T. Weaver, September 16, 2014.
- 94 Stockton Smart Meters Explode After Truck Causes Power Surge by Leigh Martinez, Channel 13, CBS Sacramento, March 30, 2015.
- 95 Hundreds of smart meters simultaneously explode by Josh del Sol Beaulieu, April 1, 2015.
- 96 100 More Smart Meters Explode - in Capitola, CA This Time by Josh Hart, May 21, 2015.
- 97 When ‘Smart’ Meters Kill: The Story of Larry Nikkel - Details Emerge of Vacaville, CA Smart Meter Fire Death by Josh Hart, June 21, 2013.
- 98 Couple escapes house fire, dogs killed: smart meter blamed by K.T. Weaver, October 14, 2014.
- 99 Smart meter fire kills 74-year old man in Dallas, TX by Josh del Sol Beaulieu, February 3, 2015.
- 100 Lawsuits claim faulty PG&E Smart Meters started house fires, posted November 17, 2017.
- 101 Photograph of defective AMI meter that resulted in fire on November 23, 2013 at Theresa’s residence located in Muskegon Heights, Michigan.
- 102 Copy of Muskegon Heights Fire Department Report indicating cause of fire as electric meter.

Bias and Partiality of Hearing Officer

- 103 Resume of Ronald R. Rogers, 5 pages. Testimony Exhibit of Leonard and Anita Gayeski filed in MPSC Case No. U-20084 regarding informal customer hearing on May 4, 2018.
- 104 Resume of Ronald R. Rogers, one page, provided by DTE to a customer in September of 2018 in anticipation of a utility customer hearing. Obtained from Smart Meter Education Network.

Analog is “true” Opt Out Meter Choice

- 105 USB Flash Drive Michigan Oversight Committee Hearing on Microwave Meters, December 2, 2014, statements made by Chairman Rep. Tom McMillin recorded at 1 hour and 37 minutes into the programming.

- 106 USB Flash Drive Summary of States offering Analog Meter in Electric Opt Out Program (as of 9/14/18).
- 107 USB Flash Drive Current Legislation Regulating Opt Out Programs (as of 9/14/18).
- 108 Harvard Medical Doctor Warns Against Smart Meters by Sarah updated July 22, 2018.
<https://www.thehealthyhomeeconomist.com/harvard-medical-doctor-warns-against-smart-meters>
- 109 USB Flash Drive Ranking Electricity Meters for Risk to Health, Privacy, and Cyber Security by Ronald M. Powell, PhD, 3rd Edition, November 12, 2015.
- 110 USB Flash Drive New Mexico Public Regulation Commission, Case No. 15-00312UT Final Order dated April 11, 2018. Application for AMI for the State of New Mexico is disapproved.

Inability to participate in DTE's Opt Out Program

- 111 Michigan Public Utilities Commission, Act 419 of 1919, MCL 460.62 Declaration of Necessity, Section 12.

DTE has the Burden of Proof

- 112 USB Flash Drive Michigan House of Representatives, The House Energy Policy Committee Hearing on a discussion regarding DTE's power shut off process to residents in the State of Michigan.
<http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=ENER-011618.mp4>
- 113 USB Flash Drive Michigan House of Representatives, The House Energy Policy Committee Hearing on a discussion regarding DTE's power shut off process for Michigan residents.
<http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=ENER-013018.mp4>
- 114 USB Flash Drive Michigan House of Representatives, The House Energy Policy Committee Hearing on a discussion regarding increasing bills for Michigan energy customers.
<http://www.house.mi.gov/SharedVideo/PlayVideoArchive.html?video=ENER-021318.mp4>

Relief Requested

- 115 Lloyds EMR exclusion, A&E Insurance for Architects & Engineers, CFC Underwriting, General Insurance Exclusions: Electromagnetic Fields, page 7.
<http://emrabc.ca/wp-content/uploads/2015/03/InsuranceAEWordingCanadav17Feb2015.pdf>
- 116 Letter to Mrs. R. Jennings, Executive Consumer Affairs Center, dated October 3, 2018 regarding the submission of the Customer's List of Witnesses and Customer's List of Evidence, including a USB Flash Drive identified as Exhibit 38.

USB Flash Drive Name: Lesnek, 3790028,10/9/18.

Susan Lesnek

Dated: October 4, 2018

PRIORITY EXPRESS MAIL

Susan Lesnek
46151 Bloomcrest Drive
Northville, MI 48167

October 10, 2018

Mrs. R. Jennings
Consumer Affairs
DTE Energy Company 1740 WCB
One Energy Plaza
Detroit, MI 48226

RE: Informal Customer Hearing Number 3790028
Held on October 9, 2018 at 1:00 p.m.
Hearing Officer: Mr. Ronald R. Rogers

Dear Mrs. R. Jennings,

Enclosed please find a copy of the documentation confirming statements made by me under oath during our informal customer hearing that my package containing Customer's List of Evidence and copies of the identified documents, including a USB Flash Drive, were in fact delivered to DTE by the United States Post Office last Thursday, October 4, 2018 before noon. During the hearing, you stated that I had sent the package to the correct address and to your attention.

Cleary, DTE did receive my documents/evidence in a timely fashion pursuant to the MPSC rules. This internal mailing issue within DTE is very disturbing to me. I was somewhat alarmed when you stated, during the hearing, that you had not seen any of this evidence and documentation. DTE's Notice of Hearing states that I must submit a (one) copy of my evidence and documentation to DTE. The Notice did not state that I must send DTE another copy to be utilized by the hearing officer.

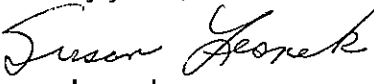
Since you had not "seen" these documents, as they may be with DTE's security team, you were unable to make a copy of my evidence and documents to submit to the hearing officer. Consequently, you failed to provide the hearing officer with timely filed evidence, documents and a USB Flash Drive containing digital evidence. Had I not brought my copy of the submitted evidence with me, Mr. Rogers would not have been able to review pertinent evidence regarding various questions that he had during the hearing. Immediately after the hearing, Mr. Kitzmann provided you with another USB Flash Drive in the DTE Lobby.

Pursuant to your request, I am providing you with two copies of my evidence and documentation for review. One copy is to be provided to the hearing officer, Mr. Rogers. His package also contains a USB Flash Drive. The document sets and USB Flash Drive are exact duplicates of what was originally sent to you and received by DTE on October 4, 2018. As of this mailing, I will now have provided you with 3 copies of documents and 3 USB Flash Drives.

As promised, I am sending these materials via United States Post Office Priority Express Mail with guaranteed overnight delivery utilizing the exact same address as in the first mailing.

I noticed that the television located in the conference room was turned on during our entire informal customer hearing. Kindly provide me with a copy of any audio or visual recording(s) that you took of our informal customer hearing held on October 9, 2018.

Sincerely yours,


Susan Lesnek

Customer's Statement of Position

Exhibit 4

DTE Customer: Susan Lesnek
46151 Bloomcrest Drive
Northville, MI 48167
Informal Customer Hearing No. 3790028

Statement of Facts

I refer the hearing officer to the List of Evidence, more specifically Exhibits 1 through 20, for the purpose of enumerating the facts in this case which pertain to DTE Energy Co.'s Notices of Shut Off for electrical power on or after July 31, 2018.

MPSC Rule Violations

The rules in the Department of Licensing and Regulatory Affairs Public Service Commission Consumer Standards and Billing Practices for Electric and Natural Gas Service, Mich. Admin. Code, R 460.101 through 460.169 (hereinafter "Rules"), were amended effective December 11, 2017. These rules govern, among other things, Notices of Shut Off and utility customer hearings.

To date, DTE Energy Co. (hereinafter "DTE") has violated numerous rules as documented in the Summary of DTE Energy Co.'s Violations of the Consumer Standards and Billing Practices for Electric and Natural Gas Service. See, Exhibit 21.

DTE's consistent and repetitive violations of these procedural rules, demonstrate an overall business practice that lacks integrity, morality and ethics. DTE made a concerted effort to provide me with misinformation, sometimes intentional, so that I would be unable to participate in the utility customer process in a competent and reasonable manner. More important, DTE intentionally mislead me into believing that, if I failed to perform pursuant to their interpretation of the Rules, I would risk forfeiture of the utility customer hearing. Throughout this entire process, DTE has instilled fear in me for the sole purpose to coerce me to enter into a new contract agreement regarding its AMI meter. To my understanding, these bullying and intimidating tactics have been applied to not only myself but to all DTE customers who, as DTE states, refuse installation of the AMI meter.

It is no wonder that most, if not all, of DTE's customers lack confidence and trust in its business practices regarding the deployment of this new metering technology which is shrouded with independent scientific research documenting adverse health effects, customer privacy concerns, safety issues, data protection and cyber security issues, meter accuracy and cost implications that are merely passed through to ratepayers.

What is most disturbing about this proceeding is the false illusion given to the customer that a fair and impartial utility customer hearing can be received. Not only was I made aware of the assigned hearing officer, Ronald R. Rogers, bias and partiality toward DTE prior to the utility customer hearing but I was also advised as to the outcome of my utility customer hearing by Mrs. Jennings of the Executive Office on August 22, 2018 nearly 7 weeks before the scheduled hearing date. See, Exhibits 15 and 17.

Clearly, the Rules, as interpreted and applied by DTE, are only provided to give the appearance of impartiality and fairness. Unless the MPSC sanctions DTE for its blatant rule violations,

these Rules will continue to leave utility customers with no proper avenue of legal redress. DTE's conduct will remain unchecked and the safety and health of all Michigan residents will be forever compromised.

Notice of Shut Off

DTE's Notice of Shut Off states, in pertinent part:

"We have made several attempts to contact you to gain access to our metering equipment in order to upgrade our electric meter. We have not received a response to the previous correspondence we sent you. Therefore, we will proceed with exercising our right to **disconnect your electric service.**

Please be advised that the electric service is **scheduled for disconnection on or after July 31, 2018.**

* * *

If you would like to enroll in our Opt-Out Program, then please make us aware of that decision when you contact us. This program allows for a **non-transmitting, (radio off)** advanced meter to be installed and the following fees will be assessed to your account.

- \$67.20 AMI Opt-Out Initial Fee
- \$9.80 AMI Opt-Out Monthly Charge (Note: DTE fails to indicate that this amount will be taxed, so the monthly charge is actually larger than the amount stated here.)

* * *

REASON FOR SHUT OFF: Michigan Public Service Commission Rule 460.137. The customer has refused to arrange access at reasonable times for the purpose of inspection, meter reading, maintenance, or replacement of equipment that is installed upon the premises, or for the removal of a meter."

[Citing Rule 460.137(1)(d).]

If you look at the intent of this specific Rule within the context of all the Rules, then this Rule permits shut offs for delinquent utility payments, failure to provide deposit, unauthorized access and use of electrical power, and interference with reading and maintenance of an existing meter. DTE is purposefully expanding the scope of this Rule by stating it has a right to shut off electric power under the circumstances where the customer refuses "replacement of equipment" or "the removal of a meter" **and the installation of an upgraded electric meter.**

The bold language is nowhere to be found in the applicable Rule. This Rule does not expressly provide DTE with such authority nor can this authority be implied when interpreting this section within the context of the other Rules contained in the Consumer Standards and "Billing Practices." Thus, the Michigan Public Service Commission (hereinafter "MPSC") has not expressly authorized DTE to shut off electric power for a customer's refusal to accept upgraded and untested metering technologies.

This Rule has been traditionally used to allow DTE to replace defective equipment that is installed upon the premises which is unable to record accurate electric usage. The malfunctioning equipment is then replaced with an identical meter, not an upgraded electric meter employing new and untested technologies which is capable of doing more than merely

recording electric usage. AMI metering technology is extremely different than the metering technology employed in an electromechanical meter that is not capable of and never will be capable of transmitting microwave and radio frequency radiation.

It is unconscionable to think that the MPSC would allow a utility to expand the scope of this Rule without its express approval. DTE is blatantly abusing its authority under this Rule by employing the shut off process to intimidate and coerce its customers to accept an extremely controversial and questionable new technology surrounded by data protection and cyber security issues, fires, meter failures, inaccurate readings, billing errors and health issues. This technology is so new and untested that current FCC and regulatory guidelines are not applicable. In essence, DTE is deploying, on a mass scale, technology that is unregulated with equipment that is not certified by industry standards. The procedure for notices of shut off was never intended to be utilized to strong arm utility customers to accept new technology adopted by an investor-based utility's managerial prerogative based solely on profit margins and which fails to consider all identifiable risks associated with this new technology.

In fact, there is no rule that allows DTE to replace a fully functioning meter (either analog or AMI meter). The Rules only specify and allow for meter replacement due to a meter that has proven inaccurate usage reporting.

Rule 460.3409 provides for the protection of utility-owned equipment on customer's premises. This rule states, in pertinent part, that:

(1) The customer shall use reasonable diligence to protect utility-owned equipment on the customer's premises and to prevent tampering or interference with the equipment. The utility may shut off service in accordance with applicable rules of the commission if the metering or wiring on the customer's premise is unsafe, or has been tampered with or altered in any manner that allows unmetered or improperly metered energy to be used.

I have, at all times, maintained and protected the electric meter existing on my premises. There has been no determination that the metering or wiring on my premises is unsafe or has been tampered with or altered in any manner. In fact, a review of my monthly billing statements indicates that my electric usage has been manually read on a monthly basis by a qualified meter reader for many, many years. The existing meter is functioning properly on a consistent basis.

I have, at all times, provided access for the maintenance of the existing meter and the manual reading of the electric usage recorded by the existing meter. The current meter reader has stated on a number of occasions how grateful he is that I always clear the snow away to create a path for him to walk directly to the meter. In addition, on June 6, 2018, I provided access to the existing meter at the specific request of an AMI technician. See, Exhibit 3.

I have always paid my billing statements on time. I am never delinquent in the payment of billing statements. There has never been a past due notice on this account. And there has never been a previous notice of shut off on this account. See, Exhibit 9. In fact, I always maintain a \$300 credit on this account. See, Exhibit 17.

As demonstrated above, my current and past actions do not inherently deny utility access, meter reading and/or recording of accurate electric usage. Consequently, DTE does not have the authority and legal right to disconnect my electric power pursuant to R 460.137(1)(d).

The MPSC Rules do not define the conditions that would allow a utility to shut off electric service where an existing and fully functioning meter is involved and the customer has paid all

billing statements in full with no arrearages on account. The Rules were simply not promulgated to be utilized in this manner and under these specific circumstances. DTE's actions constitute illegal threats and bullying tactics to force me to accept an AMI meter, whether a transmitting meter or a non-transmitting meter.

Any contract entered into wherein one party is under duress or coercion is not a valid contract. In these circumstances, there is no meeting of the minds between the parties. Since there is unequal bargaining power, one party is able to force unfavorable terms upon the other party, terms which would not have been accepted otherwise. So, my participation in the Opt Out program under these particular circumstances, i.e. threat of disconnection of electric power, would not create a legally binding contract for electric services. It could not be said that I "voluntarily" made an affirmative choice to participate in the Opt Out program. And, under general contract law, the legal defenses of duress and coercion would be utilized to estop a court from the enforcement of this contract.

Currently, I have an existing contract with DTE for the procurement of electric service utilizing an analog meter. DTE is attempting to unilateral change the terms and conditions of this contract by changing the meter type without my permission or approval. DTE's re-negotiated contract would introduce new terms regarding adverse health affects, privacy invasion, safety issues, threats of cyber security, inaccurate meter readings and meter malfunctions. None of these new terms are found in our existing contractual agreement involving the use of an analog meter. The only reason why DTE is in a position to take this action is for the sole reason that it is a monopoly and there are no other electric providers in my service area. The only choice I have is to either accept an AMI meter or forego electric power.

More important, DTE is incapable of providing a reliable "radio off" AMI meter capable of accurately recording and reporting electric usage under its Opt Out program. DTE's repeated statements that the opt out meters are not transmitting microwave and radio frequency radiation are false statements, albeit grossly negligent or intentionally misleading statements. As DTE's actions constitute fraud, a legally binding contract could never be made between DTE and myself regarding its Opt Out program.

DTE's Opt Out program which currently employs a "radio off" AMI meter as its only meter of choice is not a "true" Opt Out program as defined by the MPSC, state legislative bodies and state public service commissions. The MPSC has approved a non-transmitting meter in DTE's Opt Out program. It is, therefore, incumbent upon DTE to provide evidence that its "radio off" AMI meter is and always remains a non-transmitting meter of microwave and radio frequency radiation. Evidence, to date, indicates that DTE is unable to bear this burden of proof.

Opt Out Program

In its Order dated September 11, 2012 in MPSC Case No. U-17000, the MPSC required all investor-based utilities to offer customers the opportunity to "opt out" of the transmitting AMI meter installation program. DTE was directed to include a proposed opt out tariff in its next general rate case. DTE chose to offer only one type of meter in its Opt Out program, namely a "radio off" AMI meter.

In its Application requesting authority to implement an AMI Opt Out program in MPSC Case No. U-17053, DTE stated that its Opt Out program consists of an opportunity for residential customers to **voluntarily** (not under threat of notice of shut off) make an affirmative choice to participate in the Opt Out program, resulting in a non-transmitting AMI meter being installed at the customer's service location instead of a transmitting AMI meter. See, Application filed in MPSC Case No. U-17053, July 31, 2012.

When the MPSC approved DTE's Opt Out program in MPSC Case No. U-17053 wherein the opt out meter of DTE's choosing is a "radio off" non-transmitting AMI meter, the MPSC was, in essence, mandating AMI meters for all DTE's electric customers. The MPSC does not have this authority without express authorization from the Michigan Legislature.

See, Exhibit 22.

The only terms and conditions that DTE offers its utility customers are found on its website under the heading of "Metering Program Opt Out." The bare description of this program as outlined by DTE is as follows:

"On May 15, 2013, DTE Electric received approval from the Michigan Public Service Commission (MPSC) to implement an Opt Out program for residential electric customers who do not wish to participate in the Smart Metering Program. This approval allows residential customers of record the option of having a non-transmitting smart meter installed. The customer of record must call our Customer Service line at 800.477.4747 to request program enrollment.

Customers who enroll in the Opt Out program are required to pay the following fees for each site enrolled in the program:

- * \$67.20 initial one-time fee to install a non-transmitting smart meter
- * \$9.80 monthly charge"

Note: Website neglects to indicate that the monthly charge is taxed and, thus, higher in cost than disclosed by DTE on its website. See, Exhibit 23.

These terms and conditions reflect the same terms and conditions that I received from an AMI installation technician. See, Exhibit 20. See also, Attachment A to Customer's Statement of Position, C5.7 Non-Transmitting Meter Tariff.

Many DTE customers have requested a complete copy of the expressed terms and conditions of the Opt Out program. To date, the information disclosed by DTE contains only these same bare statements regarding its availability and attendant costs. These terms are insufficient to create a binding legal contract for electric service under the Opt Out program as there are no provisions addressing the constitutional due process available to a customer whose opt out meter is found to be transmitting microwave and radio frequency radiation or the penalties to be assessed against DTE for its non-compliance with the C5.7 Non-Transmitting Meter Tariff. Contractual provisions regarding potential actions available to each party for breach of contract are essential terms and conditions to any contract.

In MPSC Case No. U-17053, the MPSC should have only mandated that DTE provide its customers in the Opt Out program with a **non-transmitting** meter. An analog meter, being entirely mechanical in nature, by definition is a non-transmitting meter and, thus, capable of being a meter offered under DTE's Opt Out program. DTE, of its own accord, could easily make a managerial decision to offer an analog meter in its Opt Out program. DTE does not need or require the approval of the MPSC to make good business decisions based upon morals, ethics, and fair consumer practices.

What is undeniable and irrefutable is that the MPSC had ordered DTE to offer its electric customers who choose to participate in its Opt Out program an AMI meter that **does not**

transmit microwave and radio frequency radiation. DTE has made a poor meter choice in its Opt Out program in its sole selection of a “radio off” non-transmitting AMI meter.

Overwhelming evidence that has been presented in the DTE investigation case, MPSC Case No. U-20084, and evidence subsequently obtained by the Smart Meter Education Network indicates that the Opt Out meters are, in fact, transmitting microwave and radio frequency radiation. Testimony in the DTE investigation case has shown that, for a variety of reasons, these opt out meters are and have been transmitting microwave and radio frequency radiation for several years in violation of the express MPSC mandate in its Orders in MPSC Case Nos. U-17000 and U-17053, and the provisions of the C5.7 Non-Transmitting Meter Tariff.

DTE Investigation Case

On December 20, 2017, in Case No. U-18486, the MPSC, on its own motion, opened an investigation into DTE's billing and shutoff practices. **This action was necessitated by the nature of potential rule violations and the pattern of inaccurate reporting and misinformation that DTE provided the Staff during their numerous discussions.** As the MPSC was not confident that the problems identified so far had been resolved, the MPSC opened MPSC Case No. U-20084 on February 5, 2018. See, Exhibits 24 and 25. The MPSC was concerned that additional shutoffs in violation of the MPSC's billing rules may occur. Consequently, the MPSC ordered an evidentiary/show cause hearing to examine the issues of DTE's alleged billing rule violations and to obtain accurate information regarding the nature and extent of shutoff and billing errors. In this proceeding, DTE is to show cause why it should not be considered to have violated any provisions of the billing rules. **The Staff's investigation is considered to be an ongoing review and is not limited to specific dates or issues.**

It was during this ongoing investigation that evidence began to arise which clearly demonstrated that the “radio off” AMI meters employed in DTE's Opt Out program were, in fact, transmitting microwave and radio frequency radiation. See, Exhibit 26. Sometimes, a DTE technician would be required to change the opt out meter several times before being able to provide a “radio off” AMI meter to a customer. See, Exhibit 27. In other instances, a DTE technician would need to change a recently installed “radio off” AMI meter that later became defective because the transmitting radio(s) had been turned back on without any notice. See, Exhibits 28 and 29.

It appears opt out meters began transmitting microwave and radio frequency radiation due to power outages, software upgrades, meter defects, or meter malfunctions. These unwanted microwave and radio transmissions began emanating from the opt out meter with or without DTE's or the customer's knowledge or consent.

Some customers have experienced significant delays in getting a DTE technician to inspect a transmitting opt out meter and disable the transmitting radio(s) or install a new “radio off” AMI meter. See, Exhibit 29 (several weeks). During this time, the customer was experiencing resulting harm from exposure to microwave and radio frequency radiation for which that customer had paid on-going monthly fees to be free from this exposure to radiation. See, Exhibit 29 (doctor prescription for analog meter).

Opt out customers began requesting to have their opt out meters tested to ascertain whether their meter was an acceptable “radio off” non-transmitting meter under DTE's Opt Out program. Some customers discovered that their opt out meter was, in fact, transmitting microwave and radio frequency radiation. See, Exhibits 30 - 34. What was even more disturbing was for these customers to discover that DTE technicians did not have any means

to determine in the field whether or not the “radio off” AMI meter was transmitting microwave and radio frequency radiation. See, Exhibit 27.

In addition, there was evidence presented in the DTE investigation case that opt out customers were receiving estimated bills or inaccurate reporting of electric usage, did not have their opt out meters manually read for long periods of time, and/or were charged excessively high amounts on their billing statements. Yet, all of these customers had paid the initial fee to participate in the Opt Out program and were paying the ongoing monthly fees.

The MPSC formerly acknowledged DTE’s situation in the MPSC Order dated June 28, 2018 for combined MPSC Case Nos. U-18043 and U-18203, however, DTE was formally noticed prior to this order during the Gayeski utility customer hearing that took place on May 4, 2018.

After the date had passed for the filing of direct testimony in the DTE investigation case, on July 17, 2018, DTE decided to continue its unlawful practices of illegal AMI shutoffs by issuing a round of notices of shut off to customers for AMI meter installations. I, personally, received the First Notice for Shut Off on July 20, 2018. To my knowledge, there are 39 other customers who have received these notices and have made a request with DTE for a utility customer hearing.

Even though DTE had been placed on notice regarding its non-compliance with the MPSC orders and the C5.7 Non-Transmitting Meter Tariff as early as May of 2018, DTE sent this customer Notices of Shut Off two months later knowing full well that it could not stand by its meter choice in the Opt Out program.

When the date had passed for the taking of direct testimony in the DTE investigation case and after DTE had been placed on direct notice that its “radio off” non-transmitting AMI meter in its Opt Out program was, in fact, capable of and actually was transmitting microwave and radio frequency radiation, DTE issued its Second Notice of Shut Off to me and all those customers similarly situated with a disconnection of electric service on or after July 31, 2018.

How could DTE expect a reasonable customer to “voluntarily” enroll in its Opt Out program and pay additional ongoing fees to receive a “radio off” non-transmitting AMI meter when it had been made fully aware of its non-compliance with the MPSC’s mandates in MPSC Case Nos. U-17000 and U-17053, and the C5.7 Non-Transmitting Meter Tariff? DTE had full knowledge that its “radio off” AMI meter could become, in a moment’s notice, a fully functional transmitting AMI meter.

Since I had read the testimony filed in the DTE investigation case and was fully aware of DTE’s repetitive unlawful conduct, I provided public comment to the MPSC at a public meeting held on August 28, 2018. See, Exhibit 17. During this meeting, I urged the MPSC to issue an immediate moratorium on shutoffs for AMI meter installations and order DTE to cease installation of non-transmitting AMI meters in its Opt Out program until these issues are completely and properly investigated and resolved in MPSC Case No. U-20084.

I inquired of the MPSC whether DTE’s Opt Out program mandated a customer to hire an electrical engineer, purchase expensive microwave and radio frequency reading devices, and/or check the functionality of the “radio off” AMI meter on a daily basis to determine whether or not it is transmitting microwave and radio frequency radiation.

In light of the direct testimony in the DTE investigation case, DTE was and remains incapable of offering a “true” Opt Out program to its electric customers based solely on the fact that its meter of choice is a radio capable “turned off” AMI meter. There is absolutely no guarantee that DTE could reasonably provide to its customers to ensure that its “radio off” AMI meter

would remain a non-transmitting meter for the entire duration of time that a customer chooses to “voluntarily” participate in the Opt Out program.

Obviously, DTE understands the egregious nature of its non-compliance with the MPSC’s Orders in MPSC Case No. U-17000 and U-17053 and the C5.7 Non-Transmitting Meter Tariff. Some of the customers who provided direct testimony in the DTE investigation case have received unsolicited telephone calls and/or unscheduled property visits from DTE personnel who attempt to rectify these rule violations. See, Exhibit 35. While perhaps seen as noble by some, DTE’s efforts as they pertain to the participants in an ongoing active DTE investigation case undeniably constitute obstruction of justice through the tampering and/or destruction of evidence. DTE’s unsolicited efforts can also be interpreted as DTE’s admission of wrongdoing and knowledge of its non-compliance with the MPSC’s Orders in Case Nos. U-17000 and U-17053 and the C5.7 Non-Transmitting Meter Tariff. See, Exhibit 36.

In addition, DTE has now begun to automatically credit an opt out customer’s billing account with a “customer satisfaction credit” as recompense for the monies paid during the period of time that the “radio off” AMI meter was transmitting microwave and radio frequency radiation. Is this DTE’s “offer of settlement” as to future potential claims regarding detrimental and adverse health effects experienced by its customers in the Opt Out program who specifically notified DTE that exposure to microwave and radio frequency radiation caused them harm? Is DTE knowingly and silently waiving the rights of these customers to additional remedies for its non-compliance with the C5.7 Non-Transmitting Meter Tariff and its breach of contract that may be later raised and adjudicated in an administrative hearing and/or state judicial court proceeding?

As noted by the MPSC in its Order opening the DTE investigation case, DTE’s motives and conduct apparently remain suspect and self-serving.

Smart Meter Education Network

When other DTE customers became aware of the DTE investigation case, they, too, wanted to know if their “radio off” AMI meter was transmitting microwave and radio frequency radiation in violation of the MPSC’s Orders in MPSC Case Nos. U-17000 and U- 17053 and the C5.7 Non-Transmitting Meter Tariff.

Linda Kurtz and Michele Okoniewski began testing opt out meters with a Gigahertz Solution HF 38B Analyzer. These individuals discovered and documented that some “radio off” AMI meters were, in fact, transmitting microwave and radio frequency radiation. See, Exhibits 37- 41. I was physically present during several of the meter tests conducted in Ann Arbor and Rochester. We clearly observed that microwave and radio frequency radiation peak pulsed every 15 seconds from both the AMI meters and the transmitting “radio off” AMI meters. In essence, the transmitting “radio off” AMI meter was functioning exactly like a traditional AMI meter.

This situation is possible because in order to change an AMI meter into a “radio off” non-transmitting AMI meter, DTE must turn off all radio transmitters located within the AMI meter. Neither the radio transmitters nor their antennas are removed from the AMI meter. Rather, the software within the AMI meter is reconfigured via a laptop hookup to a port on the AMI meter. See, Exhibit 42. According to DTE representative Robert Sitkauskas, the AMI meters arrive from the factory with the radio transmitters turned on and, if an AMI meter is to be deployed as an opt out meter, then DTE must disable all radio transmitters located within the AMI meter. See, Exhibit 43.

There are, at least, three radio transmitters in an AMI meter. The transmitter that DTE disables for the “radio off” AMI meter is the one that connects the meter with the utility company via the Wide Area Network (WAN). This transmitter can be turned on and off remotely by DTE. See, Exhibit 44. This is also the transmitter that is suspected to be remotely activated due to power outages, software upgrades, meter defects, or meter malfunctions. These unwanted microwave and radio frequency transmissions can begin to emanate from the opt out meter at any time and under various conditions with or without DTE’s or the customer’s knowledge or consent.

There is a second transmitter for the wireless networking with Zigbee which connects the meter with other devices found in or around the dwelling such as water meter, gas meter, smart appliances, and thermostat via the Home Area Network (HAN). See, Exhibit 45. It should be noted that a wireless HAN has to penetrate walls, floors, and ceilings and the HAN system may operate continuously. When a transmitting opt out meter displays “NO LAN,” it means that the Zigbee transmitter has not been disabled and the opt out meter is transmitting microwave and radio frequency radiation every time the meter attempts to connect with the other devices on the HAN network located within the proximity of the transmitting “radio off” AMI meter.

There is a third transmitter for the wand utilized by a DTE meter reader which allows the electric usage recorded by the meter to be read at a distance away from the meter, i.e. from the street.

When a “radio off” AMI meter begins to transmit microwave and radio frequency radiation, it can be the result of the activation of any one of these radio transmitters or a combination of these radio transmitters. A customer in the Opt Out program is paying an initial fee and ongoing monthly fees to ensure that all three radio transmitters within the “radio off” AMI meter have been fully disabled.

The evidence collected by Smart Meter Education Network when testing the “radio off” AMI meters of those participants currently enrolled in the Opt Out program supports the evidence presented by customers in the DTE investigation case. Transmitting “radio off” AMI meters appear to be a common occurrence among DTE’s installed opt out meters with the red label stating “Attention: Radio Off.” And some of these transmitting “radio off” AMI meters have been pulsing microwave and radio frequency radiation every 15 seconds for several years.

Customers also began to complain to Smart Meter Education Network about other matters that were also prevalent in the DTE investigation case, namely, (1) a DTE technician’s inability to test in the field whether or not a “radio off” AMI meter is transmitting microwave and radio frequency radiation; (2) previously replaced “radio off” AMI meters still transmitting microwave and radio frequency radiation; (3) no penalty to DTE for its failure to comply with the terms of the C5.7 Non-Transmitting Meter Tariff; and (4) statements that “opt-out” does not necessarily mean a customer receives a non-transmitting AMI meter. A DTE technician advised a customer that about half the meters DTE installs as non-transmitting meters are, in fact, transmitting microwave and radio frequency radiation. See, Exhibit 46.

A customer complained of receiving no bills or estimated bills while enrolled in the Opt Out program. It took several phone calls to DTE and many months for these issues to be resolved. And had this customer not been home, a DTE technician would have replaced an opt out meter with an AMI meter even though the customer had not requested the meter change. See, Exhibit 47. A customer complained of receiving excessively high bills (200% increase) while enrolled in DTE’s Opt Out program. See, Exhibits 48 and 49.

As DTE had disconnected their electric power on Election Day 2016, a customer enrolled in DTE’s Opt Out program and had a “radio off” AMI meter installed at the dwelling. This

customer had paid the initial opt out fee and the ongoing monthly fees. During an inspection of the meter by Linda Kurtz, she found that the opt out meter was not displaying the “rf OpT OuT” message. She informed the customer that their meter was transmitting microwave and radio frequency radiation. When the customer inspected their billing history on the DTE website, he found that the monthly fees had been removed for the past 5 months. He had never requested that the “radio off” AMI meter be changed to a transmitting AMI meter. See, Exhibit 40 regarding William and Tiffany Alexander.

A customer complained that DTE attempted to convince her to accept a “cellular meter” under the Opt Out program. This meter is a transmitting meter and not the “radio off” AMI meter that the MPSC specifically approved for DTE’s Opt Out program in MPSC Case No. U-17053. See, Exhibit 40 regarding Joan Rehlin.

A customer complained that a meter reader never entered her backyard to read the “radio off” AMI meter installed in the fall of 2017. One year later, a DTE technician inspected the “radio off” AMI meter on September 5, 2018 and found that it was transmitting microwave and radio frequency radiation because the ZigBee radio transmitter had not been disabled. See, Exhibit 40 regarding Debra Wilcox.

A customer complained that the digital read outs displayed on the “radio off” AMI meter were essentially unreadable. See, Exhibit 46. A customer is, therefore, unable to monitor the electric usage recorded by the “radio off” AMI meter to determine if the meter is an accurate and reliable meter. More important, a customer is unable to monitor their electric usage to make adjustment in energy conservation which is one of the “benefits” of the AMI metering system.

A customer complained about the misleading actions of a DTE technician who was on the premises to specifically disable a transmitting “radio off” AMI meter. The DTE technician did some work to make it appear that he had disabled the radio transmitter but it was only when the wife said “Don’t worry, my husband will check it with an EMF meter” that the DTE technician returned to the AMI meter to actually disable the radio transmitter(s). See, Exhibit 40 regarding David Sladowski. “Radio off” AMI meters continue to transmit microwave and radio frequency radiation even when DTE technicians in the field insist that they are not.

No matter how many times a DTE technician visually inspects and tests a “radio off” AMI meter, DTE is unable to ensure that the “radio off” AMI meter will remain a non-transmitting AMI meter. The radio transmitters in a “radio off” AMI meter can be turned back on at any time for various reasons with or without DTE’s or the customer’s knowledge.

What is even more problematic is the situation wherein a “radio off” AMI meter is located immediately adjacent to a transmitting AMI meter. Even if it is found that the “radio off” AMI meter is working properly, the customer is still being exposed to microwave and radio frequency radiation emanating from the adjacent transmitting AMI meter. Most often these two AMI meters are located on the outside bedrooms walls of their respective dwelling unit. In this case, even with a properly functioning “radio off” AMI meter, the customer is paying for a service that DTE is not capable of providing under these specific circumstances. In order to properly comply with the C5.7 Non-Transmitting Tariff, DTE would need to request the customer residing in the adjacent dwelling to enroll in the Opt Out program at no cost.

As you can see, the issues raised in the DTE investigation case are still occurring on a regular basis. DTE has been and continues to remain non-compliant with the terms of the MPSC’s Orders in Case Nos. 17000 and 17053 and the C5.7 Non-Transmitting Tariff solely due to its improper, impractical and unfeasible meter choice. A “radio off” AMI meter is not a proper meter choice in any opt out program where a utility customer is paying additional monetary

fees to have access to an electric meter that is incapable of transmitting microwave and radio frequency radiation under all circumstances. In MPSC Case No. U-17053, the MPSC's approval of DTE's Opt Out program which offers a utility customer a "radio off" non-transmitting AMI meter is legally indefensible.

It is interesting to note that the MPSC chairman's statements to the House Energy Policy Committee on February 28, 2017 regarding the Opt Out program implied that customers could retain their analog meter. Ms. Sally Talberg testified that there is an opt out rate for those customers who "do not have a smart meter." This opt out rate is based on a number of factors, including the expense of meter testing that "has to take place with older meters." Clearly, Ms. Sally Talberg is referring to an analog meter that a customer should be allowed to retain under the terms of DTE's Opt Out program. See, Exhibit 50.

During this same meeting, the Chairman of the House Energy Policy Committee, Rep. Gary Glenn, in discussing the proposed HB 4220, found that the burden of self-reading the analog meter is the customer's own choice to "evade from having this technology" put on their home. See, Exhibit 51. Rep. Gary Glenn was indicating to the MPSC that the Legislature does not find it unreasonable to allow a customer to retain their existing analog meter in an opt out program.

Unlike other opt out programs across the nation, opt out customers in Michigan do not get to retain their analog meter under DTE's Opt Out program. DTE has repeatedly stated the NO customer will retain an analog meter. Instead, these customers pay additional monetary fees to have a "radio off" AMI meter installed at their dwelling. Under DTE's Opt Out program, all customers get a "smart meter." I find it hard to believe that this is what the MPSC had in mind when it approved DTE's Opt Out program in MPSC Case No. U-17053.

Estimated Bills

DTE is under an obligation to manually read all "radio off" AMI meters that have been installed pursuant to the MPSC Orders in Case Nos. U-17000 and U-17053.

Rule 460.113 states, in pertinent part:

- (1) Except as specified in these rules, a utility shall provide all customers with an actual meter reading each billing month.

* * *

- (2) If a utility estimates a meter reading pursuant to subrule (3)(c) or (3)(d) of this rule, the utility shall notify the customer of all of the following reasons:

- (i) The reason for the estimated reading.

Customers participating in DTE's Opt Out program report that their "radio off" AMI meters are not being manually read by a meter reader on a monthly basis. Areas under video surveillance do not show the presence of a meter reader. During the winter months, it is clear a "radio off" AMI meter has not been manually read by a meter reader due to the lack of footprints in the snow. These customers are receiving estimated bills for several months, if not years, without DTE providing them a reason for the estimated readings. See, Exhibits 33, 40, 40 regarding Melanie Fuscaldo and 47.

DTE is in violation of MPSC Rule 460.113(1) and (2)(i).

C360 Software Defects Actually Metering Equipment Malfunction

Meter defects and meter equipment malfunction of the AMI meters are so prevalent that what appeared to be billing errors generated by proposed C360 software defects which resulted in numerous improper shutoffs of electric power was, in actuality, errors attributable to faulty and/or defective AMI meters. See, MPSC Case. No. U-18343.

The AMI meters are not reliable meters despite the fact that industry standards set the life span and accounting cost/benefit window of these meters to be 20 years. DTE filings with the MPSC discloses 7,808 AMI meter failures from January 1, 2016 to March 31, 2017. See, Exhibit 52. DTE's experience in the field demonstrates that the AMI meters must be replaced every five to seven years, if not sooner. And in some cases, AMI meters need to be replaced multiple times within short periods of time. See, Exhibit 25, Direct Testimony and Exhibit of Norma Gentile on Behalf of Residential Customer Group dated July 16, 2018 filed in MPSC Case No. U-20084, page 2.

With respect to opt out meters, not only are the radio transmitters not being turned off during meter installation, but they appear to be turning back on due to firmware updates with the meters, and/or 'direction' from the C360 SAP billing system. These AMI meters are not just stand alone units but are part of a vulnerable fully digitized system of networked computers susceptible to cyber attacks, software glitches, etc.

Power Quality Issues

Any digital meter, whether smart or not, generates what is commonly known as "dirty electricity" and referred to by electrical engineers as "voltage transients," "voltage harmonics," "line noise," and "power quality issues." The specific AMI meter design basically creates electromagnetic interference ("EMI"), radio-frequency interference ("RFI"), and effects commonly called conducted emissions ("CE").

These digital meters, equipped with an unfiltered switched mode power supply ("SMPS"), add radio frequency radiation spikes at 4-60 kHz with 2V amplitude on building wiring, even with the radio transmitters switched off. This spiky, pulsed electromagnetic field generated by the AMI meter rides through building electrical wires and metal pipes, and permeates throughout building rooms. Conducted emissions are a biologically active, penetrating, electromagnetic physical agent.

The resulting electromagnetic field generated by conducted emissions has been shown to be responsible for many health problems experienced by those customers diagnosed with electromagnetic hypersensitivity ("EHS"). This field also creates an increased risk of fires, electromechanical medical equipment damage, and appliance damage. A customer with a sensitive condition could die or suffer a serious degradation in health from a critical medical device failure. See, Exhibits 53, pages 6 and 15, 54 and 55.

Thus, customers experience deleterious effects from microwave and radio frequency radiation emitted from not only the three radio transmitters being turned on in the AMI meter but also the electromagnetic field generated throughout the inside of the building from the conducted emissions. Even if an opt out customer requests to have the three radio transmitters inside the AMI meter disabled and places a shield around the meter, these customers will still be exposed to microwave and radio frequency radiation from the conducted emissions which cause an electromagnetic field inside of the building. Mitigating these conducted emissions downstream from the AMI meter, whether transmitting or not, is extremely expensive and can exceed \$7,000.

One could re-design the AMI meter or merely use an analog meter which is the only meter that does not generate conducted emissions. These costs and risks should be an additional basis for DTE to select an analog meter for its Opt Out program. The MPSC should utilize its power of review on a continuous on-going basis regarding health and safety issues relating to electric utility service. See, Exhibit 53, pages 6 and 13. There has been sufficient evidence presented to the MPSC in the DTE investigation case regarding transmitting “radio off” AMI meters that it should advise DTE that it is non-compliant with its Order in MPSC Case No. U-17053 and order DTE to provide a “true” non-transmitting meter in its voluntary Opt Out program, i.e. a meter that does not have any radio transmitting capabilities whatsoever. Evidence shows that a “radio off” AMI meter, which houses radio capabilities within the meter, is not an appropriate meter choice for DTE’s Opt Out program.

As it currently stands, DTE’s opt out customers are paying for a service that DTE is unable to provide them. Some would consider that unjust enrichment, breach of contract, a private cause of action for civil damages, and fraudulent and intentional misrepresentation subjecting DTE to a potential civil action seeking recovery for actual and punitive damages. In Maine, a class action lawsuit was filed against Central Maine Power Company on August 15, 2018 alleging these very claims. Plaintiffs allege fraudulent billing practices, overcharges, and excessive charges. They claim they have payed incorrect amounts which reflect incorrect electric usage and billing rates not permitted by state laws and regulations and/or charges for electric services that were not actually provided. It appears Central Maine Power Company had knowledge that its new billing system was inaccurate and its meters were malfunctioning, and did little to address the problems. See, Attachment B to Customer’s Statement of Position. DTE is well on its way to repeating the mistakes of Central Maine Power Company.

Increased Costs to Residential Ratepayers

With regard to the implementation of its AMI metering program, DTE advised the MPSC that there was a “benefit” to customers. Yet, data indicates that the AMI metering program could cost residential customers \$120 a year. This cost is associated with the electric energy the AMI meter uses itself to frequently pulse radio frequency signals (approximately every 15 seconds) throughout the day to its surroundings, in addition to the energy utilized to collect specific energy consumption data. The AMI meter is constantly consuming electrical power at a cost to the residential customers. It is irrelevant if this cost is allocated to the line side (system losses) or to the load side (customer). The customers pay for this electrical power either way.

These costs are never disclosed, in advance, to DTE’s customers as an outcome of an AMI meter being installed at their dwelling. And, yet, this enriches DTE’s revenue just by replacing an analog meter with an AMI meter. DTE obtains a yearly windfall in revenue without petition to the MPSC. DTE is also creating more greenhouse CO2 without notice or disclosure to the public or the Federal Energy Regulatory Commission. In contrast, an analog meter does not consume any electrical energy as it is a current measuring meter which records overall electric consumption. For cost reasons alone, customers should be allowed to retain their analog meters which are still available in large quantities. See, Exhibit 53, pages 2-6.

It is interesting to note that Brain V. Moccia, Manager of the Advanced Metering Infrastructure Engineering group in Electric Distribution Operations, testified that the MPSC stated a full cost/benefit analysis is no longer necessary. MPSC Order Case No. U- 18255, page 84. Rather, the annualized benefit analysis in a general rate case should be easily accommodated by DTE and will provide the MPSC with important evidence regarding the ongoing and long-term benefits AMI. Statements of Brain V. Moccia, MPSC Case No. U-20162, page BVM-10, lines 17-22.

By moving away from a cost/benefit analysis to a benefit analysis only, DTE is able to discount the monies spent to repair defective AMI meters, replace malfunctioning AMI meters much sooner than expected lifespan, and replace AMI meters every seven to ten years as the public cellular providers migrate technology. This is another failure indicative of a DTE business decision/management prerogative. As expected, DTE will merely pass these costs onto its ratepayers. Given the current rate of meter equipment malfunction, a cost/benefit analysis may show that the deployment of the AMI metering system is not cost beneficial to DTE's customers. But we shall never know now as this analysis has been foregone by the MPSC.

MPSC Case No. U-17000 does not constitute Legally Binding Precedent

In its January 12, 2012 Order in MPSC Case No. U-17000, the MPSC directed all regulated utilities to submit scientific information concerning the safety of smart meters. After the submission of information, the MPSC provided interested persons with an opportunity to submit comments. The Staff was requested to summarize these filings, independently review the literature regarding AMI, and identify any developments in other jurisdictions pertinent to this investigation.

As public comments were filed involving issues of possible adverse health effects, privacy concerns, data protection and cyber security issues, and cost implementations, the Staff recognized that the investments in AMI and other smart grid components should be subject to ongoing review in contested rate case proceedings. And since some customers will continue to have concerns about AMI, the Staff recommended that the utilities make available a "cost-based, opt-out option."

The Staff also determined that the health risk from the installation and operation of metering systems using radio transmitters is insignificant. The Staff relied upon federal health and safety regulations that provide assurances that AMI meters represent safe technology. See, Exhibit 56, page 3.

Customers have been denied the right to present any evidence of any resulting harm from the exposure to microwave and radio frequency radiation emitted by AMI meters based upon the MPSC's adoption of the Staff's report and findings in Case No. U-17000. However, the findings in that proceeding do not constitute legally binding precedent and can not be considered the former adjudication of the various issues raised in that proceeding. Case No. U-17000 was merely an investigation case to gather information to increase the MPSC's and public's understanding of smart meters. See, Exhibit 56, pg.3

In order for the findings in MPSC Case No. U-17000 to be binding on subsequent third parties, this case must be either a contested case proceeding or a rule making proceeding as MPSC Chair Sally Talberg relayed to the House Energy Policy Committee during her February 28, 2017 testimony. See, Exhibit 50. It was neither one of these. Mike Burn of the MPSC stated during the Michigan Oversight Committee Hearing on Microwave Meters on December 2, 2014 that MPSC Case No. U-17000 was an investigation case only. The case was not a contested case proceeding with intervenors. In fact, Mr. Burns testified that none of the MPSC Staff members are trained in medicine or have medical expertise. See, Exhibit 57. MPSC Case No. U-17000 was merely a proceeding to gather information on various issues.

Consequently, a party is not estopped from now raising these health issues before DTE and/or the MPSC as the Staff's findings in MPSC Case No. U-17000 are not legally binding precedent on subsequent third parties, especially in light of the fact that no health care professionals were on the Staff or involved with authoring the Staff Report. See, Exhibit 58.

As health, safety and privacy issues have never been addressed in an evidentiary contested case proceeding or a rule making proceeding, they can and will be now raised as a basis for a customer to demand that a reliable non-transmitting meter (i.e. electric meter incapable of transmitting microwave and radio frequency radiation, and conducted emissions) be provided by DTE in its Opt Out program. The burden of proof now lies with DTE.

Five Agencies have tried to Warn Us about the FCC Guidelines

Environmental Protection Agency (EPA), 1993: The FCC's exposure standards are **"seriously flawed."** (Official comments to the FCC on guidelines for evaluation of electromagnetic effects of radio frequency radiation, FCC docket ET 93-62, November 9, 1993.)

Environmental Protection Agency (EPA), 2002: Norbert Hankin of the EPA's Office of Air and Radiation, Center for Science and Risk Assessment, Radiation Protection Division, wrote:

"The FCC's current [radio frequency/microwave] exposure guidelines, as well as those of the Institute of Electrical and Electronics Engineers (IEEE) and the International Commission on Non-ionizing Radiation Protection, are thermally based, and do not apply to chronic, non-thermal exposure situations....The generalization by many that the guidelines protect human beings from harm by any or all mechanisms is not justified....There are reports that suggest that potentially adverse health effects, such as cancer, may occur....Federal health and safety agencies have not yet developed policies concerning possible risk from long-term, non-thermal exposures."

Food and Drug Administration (FDA), 1993: Comments of the FDA to the FCC, November 10, 1993.

"FCC rules do not address the issue of long-term, chronic exposure to RF fields."

National Institute for Occupational Safety and Health (NIOSH), 1994: The FCC's standard is inadequate because it

"is based on only one dominant mechanism - adverse health effects caused by body heating."

Amateur Radio Relay League Bio-Effects Committee, 1994: Comments of the ARRL Bio-Effects Committee to the FCC, January 7, 1994.

"The FCC's standard does not protect against non-thermal effects."

The U.S. Department of Interior, 2014:

"Study results have documented [bird] nest and site abandonment, plumage deterioration, locomotion problems, reduced survivorship, and death....The electromagnetic radiation standards used by the Federal Communications Commission (FCC) continue to be based on thermal heating, a criterion now nearly 30 years out of date and inapplicable today."

Adverse Health Issues

DTE has consistently remained confident that its AMI meters are safe. See, Exhibit 59. The MPSC, the regulatory agency responsible for overseeing the operations of DTE, parrots that exposure to RF fields does not cause adverse health effects, provided the exposure is within safety guidelines. See, Exhibit 60. Unfortunately, there are no safety guidelines that specifically address the unique properties of the microwave and radio frequency radiations emitted by AMI meters.

When AMI meters were first deployed, scientific studies documenting the adverse effects on biological tissue were scarce, if not, non-existent. Most state commissions relied upon the California Council on Science and Technology (CCST) report on Smart Meters as proof of Smart Meter safety. See, Exhibit 61.

It should be noted that the CCST is a politically-appointed panel for the state of California, representing aerospace, industry, university, government and technology interests. This panel is neither impartial nor independent. And it certainly did not conduct any research. It relied upon government agencies and the energy industry for much of its analysis, data and recommendations. The panel concluded that the FCC guidelines are protective for thermal impacts from Smart Meters.

Non-thermal effects, however, including cumulative or prolonged exposure to lower levels of RF emissions, are not well understood. Some studies suggest that non-thermal effects may include fatigue, headache, irritability, or even cancer. But these findings have not been scientifically established, and the mechanisms that might lead to non-thermal effects remain uncertain. (CCST report, pg. 9)

The CCST report has been widely criticized by experts who provide strong evidence that this report was not thoroughly done, did not answer all the pertinent questions raised, and was not an independent study. See, Exhibit 62.

FCC defines an emission level as “safe” if it does not result in adverse biological effects caused by heating or cooking of the exposed subject. The FCC has never said that AMI meters are safe with regard to physiological changes caused by physical processes other than heating or cooking. The current governmental safety regulations regarding electromagnetic energy are based on outmoded concepts that are not reasonable under these circumstances. See, Exhibit 63, pages 44 and 49.

More important, the legal structure of federal law in regards to the toxic side-effects of man-made electromagnetic energy effectively requires the federal agencies to discount the resulting health effects due to microwave and radio frequency radiation. Federal government regulatory agencies should require pre-market scientific evidence relative to the risks associated with electromagnetic energy.

However, the industries that manufacture and sold energy-emitting devices successfully argued that the health impacts of man-made electromagnetic energy should be assessed subsequent to marketing. This policy shifts the burden of proof to the party asserting injury and was subsequently adopted by all federal agencies. Each federal agency, therefore, begins with the assumption of safety and requires any aggrieved party to prove non-safety. See, Exhibit 63, page 49. And, yet, the adverse health effects resulting from exposure to microwave and radio frequency radiation, and electromagnetic energy in general has been known for years.

The non-thermal effects on health was discovered among radio and radar workers in the 1930's. Russia accepted ill health at non-thermal levels in 1958 when it set much lower safety limits than the United Kingdom. In 1972, the Naval Medical Research Institute issued a report clearly showing that microwave and radio frequencies can be detrimental and can affect people and animals whether it be thermal and/or non-thermal radiation. See, Exhibit 64. The U.S. National Academy of Sciences' Nuclear Regulatory Commission recognized non-thermal effects in 1986.

Over the past decade, independent scientific studies documenting the effects of RF emissions from AMI meters have grown in number. Microwave and radio frequencies can affect the thyroid, protein expression and the autonomic nervous system. Pathway mechanisms include, but are not limited to, calcium efflux at ion cyclotron resonance on cell membranes, reduced melatonin, generation of free radicals, increased permeability of blood brain barrier allowing potentially toxic chemicals to enter the brain, mast cell degranulation, oxidative stress damaging mitochondria, DNA effects, biogenic magnetite, alteration of electrical and metabolic activity, crypto chromes and metal implants. It has also been noted that some genetic variants are more sensitive to microwave and radio frequencies than others. Long term or high level exposure to microwave and radio frequencies is linked to cancer and neurological diseases. See, Exhibits 65 - 68.

On May 31, 2011, the World Health Organization International Agency for Research on Cancer classified radio frequency electromagnetic fields as possibly carcinogenic to humans. See, Exhibit 69.

A recent \$25 million dollar study by the United States Government National Toxicology Program shows that radio frequencies are carcinogenic and can damage DNA. See, Exhibit 70. These results clearly show that biological impacts occur at non-thermal exposures.

Contrary to claims made by utility providers that the exposure is "low," many AMI meters continuously emit microwave and radio frequencies in millisecond blasts. These short bursts of radiation can be very powerful. See, Exhibit 71.

Utility companies claim that the microwave and radio frequencies emitted by wireless AMI meters and their networks meet government FCC limits. However, 20 year old FCC limits based on 30 year old science are not protective of human health and are hundreds of thousands of times too high to protect humans and wildlife from biological effects. The BioInitiative Report shows the adverse biological effects of pulsed electromagnetic radiation on the body at emission levels far below FCC limits. See, Exhibit 72.

Dr. De-Kun Li, a Kaiser research scientist, has provided expert testimony on health concerns relating to Smart Meters and the inadequacy of the FCC guidelines. See, Exhibit 73.

Building biology standards and guidelines have been promulgated to address possible health risks due to exposure to electric and magnetic fields. The postulated goal is to "create indoor living environments that are as exposure-free and natural as practicable." See, Exhibit 74.

Shareholders are repeatedly warned of the financial risks arising from harm to customers due to exposure to microwave and radio frequency radiation. In SEC 10K filings, these risks along with the risks associated with cyber security and potential lack of insurance coverage, are disclosed to the AMI vendor shareholders of Itron, Verizon, and AT&T. See, Exhibit 75.

Itron may be subject to claims that there are adverse health affects from the radio frequencies utilized in connection with its products. If these claims prevail, then customers could suspend implementation or purchase suspension which would cause loss of sales. Itron recognizes that

their products are complex and may contain defects or experience failures due to a number of issues in design, materials, deployment and/or use. If any product contains a defect or other type of errors, significant time and resources will be required to identify and correct the issue.

Verizon's business is subject to personal injury and wrongful death lawsuits relating to alleged health effects of wireless phones or radio frequency transmitters. The monetary costs are significant to defend these lawsuits and pay any significant awards or settlements resulting therefrom.

With respect to DTE, it may not be fully covered by insurance. While it maintains a comprehensive insurance program, a combination of "other significant unforeseen events" could impact DTE's operation. Economic losses might not be fully covered or the insurers may be unable to meet contractual obligations. Unlike Itron and Verizon, the risks of potential personal injury lawsuits are not disclosed to DTE's shareholders even though it deploys Itron products which emit microwave and radio frequencies.

Silver Springs Network, who is now merged with Itron, states that adverse publicity about the smart grid could inhibit the growth of the overall market. Concerns about the safety and security of the power grid, the accuracy and protection of the collected data, meter-related fires, perceived health risks using radio frequency communications have been the focus of adverse publicity. Negative publicity and consumer opposition has caused utilities or their regulators to delay or modify smart grid initiatives mandating that utilities allow their customers to opt out of smart metering programs or calling for investigations, and/or implementing unfavorable regulations and legislation.

Doesn't this sound like what is happening here with DTE? A simple solution is to merely allow customers who have a greater chance of experiencing adverse health effects due to exposure to microwave and radio frequency radiation of a transmitting "radio off" AMI meter to retain their current non-transmitting analog meters.

Website information provided by DTE portray the AMI metering technology as safe in terms of both security and health to their customers. See, Exhibit 76. How can the AMI metering technology be safe for customers and yet be a risk to investor shareholders?

Comments have already been submitted to the MPSC in MPSC Case Nos. U-17000 and U-17102 showing that insurance industry research analyst's top 5 emerging risks include the affects of electromagnetic radiation on health. See, Exhibit 77. Given this knowledge, will DTE now voluntarily sign a document that it will be financially responsible for any and all adverse health effects experienced by its customers arising from a transmitting "radio off" AMI meter deployed in its Opt Out program? Or perhaps opt out customers should insist on entering into a contract for electric service from DTE that contains these provisions.

I have personal knowledge that the adverse health risks of which shareholders are notified in the SEC 10K reports are, in fact, very real. I am a closed head injury survivor. I have experienced adverse health effects as a result of exposure to microwave and radio frequency radiation and conducted emissions, including but not limited to headaches, dizziness, nausea, high blood pressure, heart palpitations, leg cramps, irritability, skin rashes, body aches, digestive problems, ringing in the ears, sleep disturbances and physical weakness.

The only way that I have found to mitigate these adverse health effects is to reduce my exposure to microwave and radio frequency radiation and conducted emissions. Consequently, I have no WiFi in my home and my telephone, television and computer are hard-wired. However, I will be unable to protect myself from the potential exposure to microwave and radio frequency radiation and the attendant electromagnetic field generated within my

dwelling in the event I “voluntarily” choose to participate in DTE’s Opt Out program and the “radio off” AMI meter is installed improperly with transmitting radio(s) turned on or a properly installed “radio off” AMI meter spontaneously malfunctions and begins to transmit microwave and radio frequency radiation due to power outages, software upgrades, meter defects, or meter malfunctions with or without DTE’s or my knowledge. I simply can not afford to be exposed to unwanted and unnecessary microwave and radio frequency radiation. The only way that I can control my exposure to this type of radiation is for DTE to comply with the direct mandate of the MPSC in MPSC Case Nos. U-17000 and U-17053 and the C5.7 Non-Transmitting Meter Tariff. DTE must provide me a “true”, i.e. reliable, accurate and safe, non-transmitting meter in its Opt Out program.

Hazardous Fires

DTE has consistently remained confident that its AMI meters are safe. Yet, AMI meters have been found to be unsafe due to unexpected spontaneous hazardous fires.

Surprisingly, unlike traditional meters, AMI meters are not UL, CSA, CE or ETL certified even though UL has developed a standardized set of safety requirements for smart meters. Type certification focuses on a meter’s ability to maintain accurate measurements under a variety of internal and external influences. This accuracy is the basis for customer confidence in their utilities, i.e. customers must believe they receive an accurate accounting of their electricity consumption. The fact that DTE is installing an uncertified, untested and unapproved device as an opt out meter is unfathomable and should raise massive safety concerns to all of its opt out customers.

What is even more alarming is that DTE did not file any accuracy reports for the last 7 years because of the temporary waivers granted ex parte by the MPSC in MPSC Case No. U-16287. The waivers expired on June 30, 2017. Had this meter testing been undertaken and completed, DTE may have not made its poor meter choice, in exercising its management prerogative, of selecting a “radio off” AMI meter for its Opt Out program.

On March 7, 2017, Cynthia Ayers presented testimony before the Michigan House Committee on Energy Policy. She noted that a physical aspect of smart meters was raised by Fire Chief Duane Roddy during a hearing on February 21, 2017. In a discussion involving electrical arcing and a fire that occurred only 36 hours after the installation of a smart meter in his own home, the Fire Chief stated that there is no surge protection associated with the new meters. The older analog meters do have surge protection.

Ms. Ayers also noted that massive surges (with much greater effects than weather related or other types of flow interruptions) are associated with severe space weather (geomagnetic storms caused by coronal mass ejections from the sun) and electromagnetic pulse (EMP) associated with high-altitude nuclear explosions - both of which have been known to cause arcing fires. Her recommendation, using an ‘all-hazards’ approach for grid mitigation, is to **retain analog systems to the extent possible**. See, Exhibits 78 and 79.

The most dangerous feature of an AMI meter is the remote disconnect option. There is no question that the remote disconnect option poses a cyber threat to the electric grid. However, the remote disconnect option also increases the risk of catastrophic meter failures and resulting building fires. During the activation of this remote disconnect switch, a burst of power can cause an arcing in the AMI meter resulting in fire. Even with a UL Standard 2735 certification, this arcing in AMI meters still cause fires. Analog meters which do not contain a remote disconnect switch pose no such risk of fires.

DTE is aware of electric meter fires, also called “hot sockets”, with its Openway electric meter which results in the AMI meter failing, hard cover melting, and cover being blown off. See, Exhibit 80. There are, at least, four major sources of arcing in AMI meters which cause extreme heat which can lead to spontaneous fires. As of April 23, 2014, DTE has been investigating this phenomenon.

It is often difficult to investigate fires caused by AMI meters because the meters that caused the issue are, sometimes, removed by the utility company before a proper investigation can be conducted. See, Exhibit 81.

Here is an excerpt from the forensics report for the destructive inspection of a failed smart meter:

“All observed damage to the electrical panel and the meter itself is consistent with a fire triggered by extreme heat at the defective switch contacts inside the meter.

* * *

The previous ‘not smart’ meters (analog meters) cannot and do not cause these types of fires because they are not equipped with the switching contacts that allow the utility companies to turn power ‘on’ and ‘off’ to their customers at will without the nuisance of having to actually go to the site. The switching contacts are not required to make a meter ‘smart’...the smart designation comes from the ability of the meters to track power usage continuously and transmit the data back to the utility company. The switching contacts are a feature provided purely and solely for the convenience of the utility companies.

This convenience comes at a price of exposing innocent and unsuspecting customers to fire hazards originating in a section of their electrical panel to which they have no access.

See, Exhibit 82.

AMI meter fires was an item that began to slow down the smart grid rollout in 2012. See, Exhibit 83. The fear of fire hazard began to cause the removal of thousands of smart meters.

October 2012	PECO replacing 186,000 smart meters.
July 30, 2014	Saskatchewan replacing 105,000 smart meters.
October 31, 2014	CEO resigns the following year after investigation.
July 24, 2014	PGE replacing 70,000 smart meters.
August 26, 2014	Lakeland Electric replacing 10,657 smart meters.
September 5, 2014	Arizona replacing tens of thousands of smart meters.
February 10, 2017	Ontario pulls 36,000 smart meters.
August 1, 2017	Saskatchewan - 40% of smart meters require repair.

Smart meters began to explode, causing fires.

April 2011	Meter explodes and causes fire in Santa Rosa Mall.
September 2012	Oak Park, IL - Three House fires.
October 25, 2013	Livonia, MI - Home catches fire as DTE changes meter.
September 16, 2014	Reno, NV - Fatal fire, smart meter suspected.
March 30, 2015	Stockton, CA - Hundreds of smart meters simultaneously explode.
May 21, 2015	Capitola, CA - Another 100 smart meters simultaneously explode.

August 2016	Kansas City, MO - Smart meter fire situation continues to escalate sparking investigation.
October 2, 2017	Saskatchewan - \$150,000 fire.

People and animals began to die in the fires caused by smart meters.

July 21, 2013	CA - Man dies in smart meter fire.
October 14, 2014	Detroit, MI - Couple escapes house fire, but dogs killed.
February 3, 2015	Dallas, TX - Fire kills 74-year old man.
March 17, 2017	Detroit, MI - Power surge ignites home killing 95-year old woman.
November 8, 2017	Memphis, TN - 10 die (7 children) in house fire. Councilman blames smart meter.

And lawsuits were filed.

November 17, 2017	At least 5 lawsuits claim faulty PG&E smart meters started house fires.
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See, Exhibits 84 - 100.

A Consumers Energy customer experienced a fire at her residence on November 23, 2013 which resulted in \$25,000 in damages to the dwelling. The Muskegon Heights Fire Department Report indicates that the cause of the fire was an electric meter. Itron is also the AMI vendor for Consumers Energy. See, Exhibits 101 and 102.

What is interesting to note is that, in Case No. U-17990, Consumers Energy requested recovery of costs to refurbish approximately 0.3 percent of all residential meter bases to prevent fires. These costs/modifications were incurred without the permission of its customers who own the meter boxes. In essence, Consumers Energy was tampering with the property of its customers who have the responsibility to maintain the meter boxes and then sought to pass these costs through to its residential ratepayers in the amount of approximately \$5.4 million dollars.

Fire is a valid and costly safety hazard surrounding the deployment of AMI meters. Fire risks pertain to the dwelling and anything contained therein. AMI meters have caused fires resulting in damages ranging from thousands of dollars to the complete destruction of a building. In some cases, these fires have resulted in the death of the occupants and/or their beloved pets.

Customers should have the legal right to refuse the installation of a potentially hazardous, untested, and unreliable AMI meter, whether transmitting or not, for reasons of fire safety alone.

Privacy

The surveillance capabilities of AMI meters are clearly documented in the February 3, 2012 "Smart Meter Data: Privacy and Cybersecurity Report published by the Congressional Research Service." See, CRS Report dated 2/3/12 located on USB Flash Drive.

Consumer privacy is compromised due to the amount of data collected from the AMI meter which not only shows how much electricity is being used within the home but also at what time. As the frequency of the data collection increases, more sensitive private information is gleaned about the customers activities.

The dramatic increase in the granularity of data available and frequency of collection means that the smallest detail of home life can be revealed from AMI meter data, even in aggregate

form. For example, you could infer details of daily patterns, routines and habits, such as when a person sleeps, eats, goes to work, entertains company, wakes up in the middle of the night, has an illness or change in lifestyle. One could learn whether a person leaves late for work, often leaves appliances on while at work, rarely washes her clothes, or exercises infrequently.

With energy disaggregation, AMI meter data can be used to not only compile lists of household appliances and determine how often each appliance is used but also determine whether specific appliances are in good condition. This information could then reveal household income. See, Attachments C and D to Customer's Statement of Position, namely, Energy Disaggregation, Carrie Armel, Precourt Energy Efficiency Center, Stanford, December 2011 and Deducing Energy Consumer Behavior from Smart Meter Data by Emad Ebeid, Rune Heick and Rune Hylsberg Jacobsen, July 6, 2017.

The Fourth Amendment of the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." See also, Michigan Constitution, 1963, Article 1, Section 11, effective January 1, 1964. The United States Court of Appeals for the Seventh Circuit found that the collection of smart meter data at fifteen-minute intervals constitutes a search under both the Federal Amendment and the Illinois Constitution.

However, the Court found that this search was reasonable because it is far less invasive than the typical search under the Fourth Amendment and the benefits to the utilities are significant, i.e. reduce costs, provide cheaper power to customers, encourage energy efficiency, and increase grid stability. This search is only reasonable where it is unrelated to law enforcement, is minimally invasive and presents little risk of corollary criminal consequences.

The Court cautioned that its holding depends on the particular circumstances in this case. If a utility were to collect the data at shorter intervals, our conclusion could change. Likewise, the Court's conclusion might change if the data was more easily accessible to law enforcement or other city officials outside the utility.

In rendering this decision, the Court noted that Naperville's amended "Smart Grid Customer Bill of Rights" clarifies that the utility will not provide customer data to third parties, including law enforcement, without a warrant or court order. See, Attachment E to Customer's Statement of Position, Decision of the United States Court of Appeals for the Seventh Circuit in Naperville Smart Meter Awareness vs. City of Naperville, No. 16-3766, decided on August 16, 2018.

SMEN meter testing data indicates that AMI meters and transmitting "radio off" AMI meters peak pulsed every 15 seconds. This is a much shorter time in data collection than the 15 minute interval considered by the Seventh Circuit Court in the Naperville case. I have not seen any written assurances from DTE that the collected AMI meter data is not being shared with third parties. Absent this guarantee, my Fourth Amendment Rights could be violated. Under these circumstances, a court could find that DTE's collection and dissemination of aggregate AMI meter data is an unreasonable search under the Fourth Amendment and the Michigan State Constitution.

Data privacy is so important that the Staff explained:

"AMI necessitates a higher volume of data collected by utilities, therefore it is imperative that customer information be properly protected through appropriate regulations. Federal legislation protecting consumer data privacy is forthcoming; however, it is important to identify ways to protect Michigan's ratepayers in the interim."

See, Exhibit 58, page 13 (footnote omitted).

In MPSC Case No. U-17000, the MPSC found that the issues concerning data collection, privacy, and cyber security are complex and sufficiently important to warrant the creation of a future docket limited to these issues. See, Exhibit 56, page 6.

The press release for the MPSC's Order dated October 17, 2013 rendered in MPSC Case No. U-17102 cites that a customer is only entitled to "a reasonable expectation of privacy." This MPSC's finding is not legally binding on third parties because MPSC Case No. U-17102 was neither a contested case proceeding nor a rule making proceeding. More important, the MPSC, being an administrative agency, lacks the legal authority and jurisdiction to address and resolve constitutional issues. To date, the higher Michigan courts have sidestepped this issue entirely.

Cyber Security Risks

Everyone acknowledges that there is a cyber risk associated with implementation of AMI metering technology. These risks are disclosed to the shareholders of entities like Itron, Verizon, AT&T, DTE and Silver Springs Network. See, Exhibit 75.

Hackers could access the electronic functions of a customer's meter in sufficient detail to permit unauthorized access to the data contained in, or operations of, the AMI meter. If such persons were to acquire the security information, they could use this information to harm the utility company and/or its customers by (1) altering meter information to inaccurately report data; (2) updating the firmware in the meter to do malicious things, or (3) operating the remote disconnect to disconnect electric power to the dwelling. See, Exhibit 81, page 69.

Cyber attacks may cause equipment failure, i.e. turning on disabled radio transmitters in a "radio off" AMI meter. Cyber attacks may cause loss of information, including sensitive personal information of customers or employees. Cyber attacks against companies have increased in frequency, scope and potential harm in recent years. The potential costs associated with these attacks could exceed the maintained insurance coverage. See, Exhibit 75, Verizon SEC 10K.

Further, an AMI vendor Sensus stated in Seattle Washington court filings dated May 20, 2016 in relation to a breach of the remote on/off feature could "bring the distribution system to failure."

DTE collects and retains personally identifiable information of their customers, shareholders and employees. These individuals expect that DTE will protect their personal information. A significant theft, loss, or fraudulent use of this personal information by cybercrime, could adversely impact DTE's reputation, and could result in significant costs, fines, and litigation. DTE may not be fully covered by insurance. See, Exhibit 75, DTE SEC 10K.

Bias and Partiality of Hearing Officer

Rule 460.155 provides, in pertinent part:

- (8) A utility shall select hearing officers who meet all of the following requirements:
 - (a) They are on a list of hearing officers on file with the commission.
 - (b) They are notaries public who are qualified to administer oaths.
 - (c) They are not a past or present employee of the utility, and they are not engaged in or have been engaged in an other activities that would cause bias or lack of objectivity.

(d) They comply with part 10 of these rules, R 460.154 to R 460.159.

- (9) In January of each year, utilities shall provide to the commission's executive secretary the name or names of selected hearing officers and update those lists as necessary. Upon notice to the commission, a hearing officer, other than those on the list, may be used subject to the requirements specified in subrule (8) of this rule. Upon request, utilities shall provide the resume of a hearing officer to the commission or any party participating in a customer hearing.

On August 22, 2018, I was advised that the hearing officer assigned to my utility customer hearing is Ronald R. Rogers. Upon this notification, I requested DTE to provide me with a copy of his resume. I was told that I would need to contact the MPSC directly to obtain a copy of his resume. See, Exhibit 15. DTE's response to my valid request is in direct violation of Rule 460.155(9).

On September 4, 2018, in my written response to DTE's Notice of Hearing, I again requested DTE to provide me with a copy of Mr. Rogers' resume. See, Exhibit 18.

Ronald R. Rogers was the hearing officer in the utility customer hearing of Leonard and Anita Gayeski who filed direct testimony in the DTE investigation case, MPSC Case No. U-20084. The utility customer hearing was held on May 4, 2018. Leonard and Anita were provided with a copy of Mr. Rogers's five page resume. See, Exhibit 103.

This resume indicates that Mr. Rogers was employed by DTE Energy during November 2008 as a consulting Fleet Vehicle Specification Specialist. Mr. Rogers served the Director of Fleet Vehicle Operations regarding the addition of special utility bodies to trucks within the DTE Fleet. He also provided guidance on 2010 Vehicle Emissions requirements with respect to proposed commercial vehicle purchases.

From June to July of 2009, Mr. Rogers was employed by Science Applications International Corporation (SAIC) as a Senior Automotive Engineer. He served as a consultant to the US Navy Surface Warfare Command (NSWC) on issues relating to energy usage supporting Vehicle Systems, Survivability, Lethality and Active Denial Subsystems. This Project was in support of proposed advanced vehicle propulsion systems for light duty tactical vehicles.

In Leonard and Anita Gayeski's direct testimony filed in U-20084 dated July 23, 2018, they stated their objections to the hearing officer that DTE chose due for two reasons: (1) Mr. Rogers had been compensated/worked for DTE prior to the utility customer hearing and (2) his work with the military in the Active Denial Subsystems weaponry which uses microwave radio frequencies to debilitate people. The Gayeskis noted that DTE's AMI meters also use microwave radio frequencies which have already been known to be harmful and debilitating to Mrs. Gayeski as well as to other people. See, Direct Testimony filed in U-20084 dated July 23, 2018, pages 20-21.

Last month, I received a copy of Mr. Rogers' resume that was provided by DTE to a customer in anticipation of Informal Customer Hearing No. 3758884. See, Exhibit 104. While the resume provided to Leonard and Anita Gayeski identifies employment beginning from 1977, this resume discusses employment beginning from February of 2009 and lists only 3 areas of employment. It is of interest that this updated resume fails to disclose the two areas of contention raised by Leonard and Anita Gayeski in their direct testimony filed in MPSC Case No. 20084, more specifically:

Science Applications International Corporations (SAIC) June - July 2009
Senior Automotive Engineer

Since this updated resume discussed employment commencing with the year 2009, Mr. Rogers should have disclosed, at the very least, his employment with SAIC and involvement with the Active Denial Subsystems weaponry as this employment occurred during the relevant period of time covered in his resume. More important, as a hearing officer for DTE, Mr. Rogers has an ethical duty to disclose any and all past and present employment with DTE. He once disclosed this information but now, suddenly, this information is kept from customers participating in utility customer hearings. Mr. Rogers and/or DTE are intentionally failing to disclose relevant information that goes directly to Mr. Rogers' inability to be an impartial and unbiased hearing officer in direct violation of Rule 460.155(8)(c).

On October 5, 2018, I received various materials from DTE regarding our upcoming informal customer hearing. Despite my two previous requests, DTE failed to provide me with a copy of Mr. Roger's resume in direct violation of Rule 460.155(9).

Analog is "true" Opt Out Meter Choice

DTE has always acknowledged that there is no federal mandate regarding the deployment of an AMI metering system. In fact, the federal guidelines provided that customers "opt in" to this program. Unfortunately, DTE did not follow the federal guidelines but instead had to be ordered by the MPSC to offer its customers an "Opt Out" program. A reasonable person understands the term "opt out" to mean that a person has a right to choose not to participate in an offered program but to retain the current program, i.e. maintain the status quo. In some circumstances, the status quo is maintained at a monetary cost.

One would think that DTE's Opt Out program would allow a customer to retain their analog meter at a cost. But this is not the case for DTE's meter of choice in its Opt Out program is a "radio off" AMI meter. DTE failed to include the choice of an analog meter in its Opt Out program on the rationale that these meters are obsolete and are no longer being manufactured. This is simply a contrived story. Even the Chairman of the Michigan Oversight Committee, Rep. Tom McMillin, saw through this argument. During a hearing held on December 2, 2014, Rep. McMillin noted that DTE was removing analog meters from dwellings and replacing them with AMI meters. He suggested that these analog meters could be stockpiled and installed on dwellings of those customers who wanted to participate in DTE's Opt Out program. See, Exhibit 105. In the Gayeski informal customer hearing, it was brought to the attention of DTE that, in Chelsea, a customer could obtain an analog meter without any hassles.

DTE's position that analog meters are obsolete is unfounded and is purely self-serving as the shareholders of DTE are the same shareholders of the companies that manufacture AMI meters. A clear conflict of interest is present regarding DTE's deployment of an AMI metering system.

Analog meters are still a viable meter choice in delivering electric power. Twenty-two public state commissions have approved the use of analog meters in AMI opt out programs and, sometimes, at no cost. See, Exhibit 106. The states of Vermont and New Hampshire have enacted legislation to allow utility customers to retain analog meters. Eleven other states, including Michigan, have recently asked their state legislative bodies to consider proposed legislation which would allow utility customers to retain their analog meters. See, Exhibit 107.

More specifically, Michigan HB 4220 would allow customers to retain traditional usage meters, i.e. analog meters, without incurring monthly fees as long as those customers agreed to self-

report their electric usage to the utility company; otherwise, there would be a fee not to exceed \$5.00 per month. This bill is currently pending and awaiting further reconsideration during the upcoming legislative session scheduled for this fall. It should be noted that several Senators and Representatives have already testified on the **lack of value from the “smart” meter deployment and the significant risk to safety and security.**

As Cynthia Ayers stated before the Michigan House Committee on Energy Policy when addressing the provisions of HB4220, based on the testimony provided regarding cyber attacks, fires and grid networking, everyone needs to retain their analog meters so as to avoid possible catastrophic consequences in the future. See, Exhibit 79. Dr. Carpenter also maintains that an informed person should demand that they be allowed to keep their analog meter. See, Exhibit 108.

DTE has known for some time that its “radio off” AMI meters, with the red label stating “Attention Radio Off,” has in fact been found to be transmitting microwave and radio frequency radiations. On May 29, 2018, Paul Kitmann and Michelle Rison submitted public comment to the MPSC in the meter accuracy testing and cyber dockets, namely MPSC Case Nos. U-18043 and U-18203. Their public comment includes a sworn affidavit illustrating that the “radio off” AMI opt-out meters continue to broadcast microwave and radio frequency radiation. DTE was contacted in October of 2017 to remedy this situation. In its Order dated June 28, 2018 for these two cases, the MPSC acknowledged this concern and noted that this issue could be addressed in the 2018 electric rate case now in process, or in a new docket.

Much testimony on this matter has been submitted in the DTE investigation cases, namely MPSC Case No. U-20084. “Radio off” AMI meters deployed in the Out Out program have been found to be transmitting microwave and radio frequency radiation. The radio transmitter(s) are either not being turned off during the installation process, or they appear to be turning back on, possibly due to firmware updates with the meters, and/or ‘direction’ from the C360 SAP billing system since these meters are part of a system of networked computers.

It appears that “radio off” AMI meters begin transmitting microwave and radio frequency radiation due to power outages, meter defects or meter malfunctions. These unwanted microwave and radio frequency transmissions can begin to emanate from the “radio off” AMI meter with or without DTE’s or the customer’s knowledge or consent.

The field evidence collected by the Smart Meter Education Network also demonstrates that DTE’s meter choice for the Opt Out program is capable of and does transmit microwave and radio frequency radiation. The inability of the radio transmitters within the “radio off” AMI meter to remain disabled is a continuing and reoccurring problem for both DTE and its customers who are not being provided a service for which they are paying fees on an ongoing basis. The MPSC did not intend DTE’s Opt Out program to be risky, unsafe, meaningless and expensive when it ordered DTE to offer its customers a non-transmitting meter.

An analog meter is a non-transmitting meter whose benefits include the following:

<u>Analog Meter</u>	<u>AMI Meter</u>
Accurate measurement of Electric Usage.	Electric usage is calculated, not measured.
Not susceptible to weather conditions.	Temperature and humidity affect accuracy.
Does not use electricity.	Uses electricity for operations.

Zero impact on environment.	Does not reduce overall CO2.
Not known to cause fires.	Increased fire hazard.
Does not pose a cyber security threat.	Pose cyber security threat.
Not hackable.	Are hackable.
No data collection.	Creates privacy breach through collection of granular electricity usage data that third-party entities have access to.
Not subject to catastrophic failures.	Subject to catastrophic failures, such as power surges, lightning strikes.
No electromagnetic interference (EMI)	Creates EMI which places destructive burden on appliances and electronics on a circuit. Not compliant to FCC rules for “conducted” emissions (EMI/RFI) class A or B.
Outage detection by phone (still primary Method in AMI areas) and disconnects done manually. Outage detection at substations are currently effective and sufficient.	Remote disconnect and outage detection features. Remote disconnect increases fire hazards.

Ronald M. Powell, PhD, has ranked electricity meters for risk to health, privacy and cyber security and has found that the traditional analog mechanical meter with no wireless communications capability is the only meter that offers all three of the following positive characteristics:

- * No risk to health from RF radiation exposure, because it generates no RF radiation.
- * No risk to privacy, because it cannot be remotely read.
- * No risk to cyber security, because it cannot be remotely accessed so it cannot be hacked.

See, Exhibit 109.

Given all of the above, the only reasonable and viable management decision to make in order to resolve DTE’s dilemma of transmitting “radio off” AMI meters is for DTE to offer an analog meter as one, if not the only one, of the meter choices in the Opt Out program. The analog meter is the only meter that is not and never will be capable of transmitting microwave and radio frequency radiation and generating conducted emissions. The MPSC has mandated DTE to provide its opt out customers with a non-transmitting electric meter. The analog meter is the only “true” non-transmitting electric meter.

DTE is currently unable to provide a non-transmitting meter in its Opt Out program that complies with the MPSC’s Orders in MPSC Case Nos. U-17000 and U-17053, and the C5.7 Non-Transmitting Meter Tariff. As long as the non-transmitting meter is a “radio off” AMI meter that still retains its electronic transmitting radio capabilities, DTE is and will always be unable to guarantee that the “radio off” AMI meter will remain a non-transmitting meter, under all circumstances, throughout the duration of the Opt Out program. Consequently, a “radio off” AMI meter is not a proper and “true” non-transmitting meter for DTE to deploy in its Opt Out program.

DTE must amend its meter choice in the Opt Out program to include, at the very least, an analog meter.

In disapproving an application for AMI implementation for the state of New Mexico, the Public Regulation Commission stated that

“The conditions of the portion of the population who believe they are electro-magnetically sensitive deserve acknowledgement and consideration as decisions are made regarding the implementation of an AMI Project. Accommodations could include reasonable opt-out provisions and fees and perhaps the **selection of technologies that minimize the impacts on such people**. Such accommodations may be desirable to minimize health risks to customers and address the needs and preferences of [utility] customers. **These are issues that can and should be addressed in a public input process....** (Emphasis added.)

See, Exhibit 81, page 109 and Exhibit 110.

It should be noted that the New Mexico Public Regulation Commission found that there was no statutory authority for the implementation of an AMI metering program. The proposed program was not needed to provide adequate electric service to customers or to comply with the Commission’s rules or other regulatory requirements. It did not offer the proposed benefits of advanced metering. Instead, the utility company’s primary focus was upon automation and achieving cost savings through job losses. In addition, the utility’s approach to infrastructure was not required by public convenience and necessity. See, Exhibit 81, pages 43 and 71.

Inability to participate in DTE’s Opt Out Program

The Michigan Public Utilities Commission’s Declaration of Necessity states “This act is hereby declared immediately necessary for the **preservation of the public peace, health and safety.**” See, Exhibit 111, emphasis added. I have an inherent right to defend my person and my property against a known harm. I have a right to privacy under the Fourth Amendment and the Michigan Constitution. And I also have a right to a secure and safe source of electrical power at my dwelling.

I should also have the right to prohibit DTE from installing, at my dwelling, an electrical device that injures my health, takes my property by making it uninhabitable (due to EMS), exposes me to hazardous fire and cyber security risks, invades my privacy, and monitors my activities by acting as a surveillance device.

For whatever reason, the MPSC has determined that I have a right to a “radio off” AMI meter in DTE’s Opt Out program. DTE has repeatedly demonstrated that it is incapable of installing and/or maintaining a reliable non-transmitting “radio off” AMI meter in its Opt Out program. DTE is clearly in violation of (1) various MPSC Rules as they apply to utility customer hearings; (2) the MPSC’s Orders in Case Nos. U-17000 and U-17053; and (3) the C5.7 Non-Transmitting Meter Tariff as demonstrated in several active on-going proceedings before the MPSC and evidence collected by the Smart Meter Education Network.

I have been threatened with a Notice of Shut Off for disconnect of electric power for my inability to participate in DTE’s Opt Out program which does not currently comply with the terms mandated by the MPSC, i.e. non-transmitting meter. It should be noted that by approving the existing Opt Out program as devised by DTE, the MPSC enabled DTE to mandate AMI meters for all customers. The MPSC does not have the authority to take this action without an express statutory mandate from the Michigan Legislature.

Bare allegations made by DTE that this problem of transmitting “radio off” AMI meters has been fixed does not make it so. DTE has been aware of this problem for the past several years. If it has not been able to correct the situation during this period of time, then I contend that it will never be able to do so.

For me to be able to participate in DTE’s Opt Out program in good faith and in good conscience, I would be forced to hire an electrical engineer, purchase an expensive RF reading device and/or check the transmitting capability of the “radio off” AMI meter on, at least, a daily basis to ensure that it is not emitting microwave and radio frequency radiation.

Why would I “voluntarily” choose to enter into a contractual agreement with DTE regarding the Opt Out program when I have never seen any written terms that address my constitutional rights to due process in the event DTE breaches the terms of that contract, especially when evidence already exists that DTE is in breach of the MPSC Rules, MPSC’s Orders in MPSC Case Nos. U-17000 and U-17053, and the C5.7 Non-Transmitting Meter Tariff?

Why would I “voluntarily” choose to enter into a contractual agreement with DTE regarding the Opt Out program when I will be paying an initial fee and ongoing monthly fees to have a meter that has been shown to catch on fire, to report inaccurate electric usage, to not be manually read, to have its transmitting radio(s) turned on at a moment’s notice, to cause injurious harm to my physical body, to avail me to cyber security risks, and to monitor my personal activities within my dwelling?

How am I able to “voluntarily” accept a known faulty, unreliable, unsafe and uncertified “radio off” AMI meter in DTE’s Opt Out program?

What is most disturbing is that, whatever costs DTE has or will incur regarding its continual monitoring, replacing and/or fixing of its “radio off” AMI meters, they will merely be passed on through to its ratepayers. Basically, because DTE has made a poor meter choice with respect to its Opt Out program, the costs for electrical services will rise. Or will these costs be passed on through to only those customers participating in the Opt Out program who are already paying opt out fees and fees for grid modernization?

In light of all the evidence which DTE is unable to refute, my participation in DTE’s Opt Out program, as it currently stands, is unreasonable, futile, meaningless, unfeasible, impractical and unwarranted.

DTE has the Burden of Proof

In utility customer hearings, DTE has the burden of proof by a preponderance of the evidence. See, Rule 460.157(4). Mr. Rogers stated in his complaint determination in the Gayeski matter that “informal hearings are convened to address customer complaints, but are bounded by the utility companies’ compliance to operate within MPSC regulations”. See, Complaint Determination in Case No. 2278516 dated May 16, 2018, pages 5 - 6.

DTE has the right to install a meter as defined under the law. For the MPSC to approve DTE’s AMI deployment program, the MPSC directed DTE to submit information regarding: (1) the “benefits” to be received by the deployment of AMI; (2) scientific information concerning the safety of AMI meters; (3) steps DTE will take to safeguard privacy of customer information and (4) the terms of a proposed opt out program. See, Exhibit 56, page 1. The MPSC agreed that DTE, Staff and other interested parties will continue to refine the costs and benefits of AMI on a

case-by-case basis subject to ongoing review in contested case proceedings. See, Exhibit 56, pages 3 - 4.

As MPSC Case No. U-17000 was neither a contested case proceeding nor a rule making process, the findings in that case are not legally binding precedent for third parties not involved in that proceeding. This is especially true where the record in MPSC Case No. U-17000 is completely devoid of any professional medical and/or scientific testimony regarding the peace, health and safety of the AMI metering technology. Remember, MPSC Case No. U-17000 was merely In an investigatory proceeding.

In MPSC Case No. U-17053, the MPSC ordered DTE to provide its customers with a non-transmitting meter in its Opt Out program. DTE, based solely on a managerial decision, chose to offer a “radio off” AMI meter. When the MPSC approved DTE’s selection of meter choice, it was enabling DTE to mandate AMI meters for ALL customers.

The traditional definition of an opt out meter does not encompass the kind of meter DTE is now deploying in its Opt Out program. An opt out meter is a meter that is not capable of transmitting harmful microwave and radio frequency radiation. It is for this very reason that opt out customers are willing to pay the additional fees to avoid the fire, safety, security, privacy and health risks associated with the AMI metering technology. In addition, any meter offered by DTE in its Opt Out program must be safe, reliable, cost effective, free of defects, long lasting, and incapable of transmitting microwave and radio frequency radiations.

DTE is unable to sustain its burden of proof in this informal customer hearing that it is able to offer a safe, reliable, accurate, non-transmitting “radio off” AMI meter in its Opt Out program. In fact, evidence presented in the DTE investigation case and subsequently gathered by the Smart Meter Education Network proves otherwise. The radio transmitter(s) of opt out meters are being remotely “turned on” for various reasons outside the current control of DTE. DTE is unable to present any evidence whatsoever that its meter choice in the Opt Out program is guaranteed to remain a non-transmitting “radio off” AMI meter throughout the period of time that a customer “voluntarily” chooses to participate in the Opt Out program at a cost.

The deployment of “radio off” AMI meters in the Opt Out program is not cost effective and there is absolutely no benefit to the opt out customer. In fact, these customers complain of the adverse and harmful effects to their person through the unwanted exposure to microwave and radio frequency radiation. They complain of estimated bills, excessively high bills, duplicate monthly charges for opt out fees, paying for a service that they did not receive, and paying for electricity that they did not use.

Many customers have reported that it requires multiple attempts on the behalf of DTE to initially install a proper functioning “radio off” AMI meter at their dwelling. Once the properly installed “radio off” AMI meter has been “turned on” and begins to transmit microwave and radio frequency radiation, customers have complained that this event occurred without their knowledge or consent resulting in adverse health affects to their person. When the customers ultimately become aware that the “radio off” AMI meter is transmitting microwave and radio frequency radiation, they complain about the number of times they have had to contact DTE and the length of time it took DTE to resolve these complaints.

Evidence shows that DTE is unable to properly install a “radio off” AMI meter at its initial visit once a customer requests to participate in the Opt Out program. DTE is unable to determine in the field whether or not a “radio off” AMI meter is transmitting microwave and radio frequency radiation. DTE is unable to guarantee that all three radio transmitters in the “radio off” AMI meter will be disabled. DTE is unable to guarantee that, upon replacement of a defective “radio off” AMI meter, a properly functional “radio off” AMI meter will be installed. Often, it

takes DTE multiple attempts to achieve this desired result. DTE is unable to guarantee that a properly installed “radio off” AMI meter will not be subsequently replaced with an AMI meter, even though a customer has not requested this meter change. DTE is unable to guarantee that a properly installed “radio off” AMI meter will not suddenly, and without notice to either DTE or its customer, begin transmitting microwave and radio frequency radiation which has been scientifically proven to be harmful to people, animals and plants.

Customers also complain that, while they are paying additional fees to participate in the Opt Out program, they continue to receive no billing statements, billing statements reporting inaccurate electric usage, estimated billing statements, and/or actual billing statements when the customers are aware that no meter reader has been present at their dwelling. These are just a few examples of the many MPSC rule violations committed by DTE and reported by its opt out customers. In addition, there are numerous MPSC rule violations committed by DTE once a customer requests a utility customer hearing after having received a Notice of Shut Off. See, my personal experience documented in Exhibit 21.

Although DTE remains confident in the safety provided by its opt out meter, DTE is unable to provide any evidence to support the truth of this statement. Existing evidence indicates that “radio off” AMI meters are more susceptible to fire hazards due to the disabling of the radio transmitter(s). If not all of the radio transmitters are disabled, then the “radio off” AMI meters remain vulnerable to hackers creating cyber security issues affecting safety, reliability, accuracy, resiliency, and data collection/data mining issues.

DTE’s own documentation filed in other MPSC proceedings indicate that the new AMI meters are already outdated and are failing. See, MPSC Case No. U-18014. More important, DTE has not filed any accuracy reports with the MPSC regarding these AMI meters. See, MPSC Case No. U-16287.

DTE is unable to present any evidence that the “radio off” AMI meter will provide me with any benefits. Overwhelming evidence indicates that an unsecured and unsafe “radio off” AMI meter will be installed at my dwelling which may be incapable of accurately reporting my actual electric usage on a regular basis. In contrast, the analog meter currently located at my dwelling has been proven over time to be reliable, accurate, and safe.

DTE has failed to provide me with the complete written terms and conditions of its Opt Out program. All the information that has been provided to me, thus far, consists of a bare description of the Opt Out program, stating its availability, how to enroll, and attendant costs. See, Exhibits 5, 6, 20 and 23.

This contractual offer is vague and fails to disclose specific terms and conditions which would address the constitutional due process and remedies available to me should the transmitting radio(s) of the installed “radio off” AMI meter be “turned on” resulting in unnecessary exposure to harmful microwave and radio frequency radiation causing harm to me, potential hazardous fires, cyber security and privacy breaches, meter accuracy issues, and attendant MPSC rule violations. These terms are deemed absolutely necessary in light of DTE’s numerous rule violations and poor meter choice in its Opt Out program.

I am being forced to enter into this contractual agreement regarding DTE’s Opt Out program under threat of disconnection of electric power. I have been told that I accept the AMI meter, enroll in the Opt Out Program or have my electric service discontinued. These are my options as presented by a large utility company that has a monopoly in this geographical area for electric service. I am unable to accept the AMI meter which emits microwave and radio frequency radiations. I am unable to accept the “radio off” AMI meter because there is compelling evidence that this meter will also be emitting microwave and radio frequency

radiation, and conducted emissions. And I am unable to live without electric service. Since I am being coerced and am under duress, I am not able to “voluntarily” enter into a valid contractual agreement with DTE regarding its Opt Out program.

Under these specific circumstances, there is no meeting of the minds between the parties. Since there is unequal bargaining power, I am being forced to accept an unreliable, unsafe, uncertified and untested “radio off” AMI meter that has been shown to be capable of transmitting microwave and radio frequency radiation. This is not an opt out meter that I would “voluntarily” choose to accept in an opt out program. Under general contract law, the legal defenses of duress and coercion would be utilized to estop a court from the enforcement of this contractual agreement.

Note: Whether or not a signed application for service is made by a customer and accepted by DTE, the rendering of electric service by DTE, at the request of the customer, shall be deemed a contract between the parties and subject to all provisions of the rate applicable to the service.

The MPSC Rules clearly state that the decision in a utility customer hearing must be **based solely on the evidence provided at the hearing and rendered by an unbiased and impartial hearing officer**. See, MPSC Rule 460.157(8)(b) and Rule 460.155(8)(c). Based upon the previous discussion regarding Mr. Rogers bias and partiality towards DTE, I fear that any decision rendered by him upon review of the evidence presented during this informal customer hearing will be unfair, biased and not supported by the evidence.

DTE must be held accountable for its many rule violations regarding utility customer hearings related to AMI meter installations, its improper utilization of the Notice of Shut Off to coerce customers to accept unsafe, faulty, unreliable and uncertified metering equipment, its failure to provide a “radio off” AMI meter in the Opt Out program in violation of the MPSC’s Orders in MPSC Case Nos. U-17000 and U-17053, and its failure to comply with the C5.7 Non-Transmitting Meter Tariff.

The transition to this new AMI metering technology has left me very distrustful of DTE. As noted by many of the customers in testimony before the House Energy Policy Committee earlier this year, something is awry with this new technology system, the AMI meters and network itself, and/or the billing software platform. See Exhibits 112 - 114.

DTE’s List of Witnesses and Evidence

On October 5, 2018, I received DTE’s List of Witnesses and Evidence, along with DTE’s Statement of Position. Upon review of the materials provided, DTE has failed to provide any evidence that the “radio off” AMI meter is compliant with the MPSC’s Orders in MPSC Case No. U-17000 and U-17053 and the C5.7 Non-Transmitting Meter Tariff. Once again, despite DTE’s actual knowledge that it is non-compliant with the C5.7 Non-Transmitting Tariff based upon testimony and public comment in the DTE investigation case, DTE is insisting that my only relief is to participate in the Opt Out program that currently violates the MPSC’s Orders. Under what legal standard is this allowable?

DTE claims that, because I have tampered with or denied access to my analog meter, these alleged actions constitute grounds for shut-off of electricity. DTE fails to provide any evidence that I have tampered with my analog meter or any other DTE equipment. DTE fails to provide any evidence that I have denied it access to my analog meter. On June 6, 2018, I granted an AMI technician access to my analog meter. See, Exhibit 3. I have granted all meter reading technicians access to my analog meter. With respect to this issue, please see discussion

under caption “Notice of Shut Off” commencing on page 2 of the Customer’s Statement of Position.

DTE claims that I have committed a felony under the Michigan Penal Code, more specifically under MCL 750.383a, and may face imprisonment for not more than 5 years or a fine of not more than \$5,000, or both. DTE fails to provide any evidence that I have willfully cut, broke, obstructed, injured, destroyed, tampered with or manipulated, defaced or stolen any of its equipment. This penal code provision does not apply to me. Could this be another one of DTE’s tactics of intimidation to coerce me into accepting its AMI meter technology which is known to be hazardous, unsafe, unreliable and risky? Perhaps, threatening me with disconnection of electric power was not enough. DTE now has to threaten me with imprisonment and a hefty fine. I am innocent until proven guilty and DTE has the burden of proof with respect to any alleged violation of the Michigan Penal Code. DTE also has the burden of proof in this informal customer hearing.

Note: DTE’s Customer’s Statement of Position repeatedly refers to pages in Attachment 1 that are non-existent. Range of pages to Attachment 1 is from 1 to 10. However, Attachment 1 is merely a one page document depicting an excerpt from the Michigan Penal Code, Section 750.383a.

DTE states that AMI meters do not violate the Fourth Amendment because there is no illegal search and DTE is not the government. The Seventh Circuit Court of Appeals has found that the data collected by AMI meters does constitute a search under the Fourth Amendment. However, the court determined that, under the specific facts of that case, i.e. collecting data every 15 minutes, the search was reasonable in light of the benefits to be gained by the AMI program. Please see discussion under caption “Privacy” commencing on page 21 of Customer’s Statement of Position.

Attachment 3 is a 2 page excerpt from an MPSC Order rendered in MPSC Case No. U-18014 and includes a cover page and page 129. DTE is offering this as evidence to preclude any argument “that the installation of an AMI meter infringes upon a customer’s privacy, health and safety, and constitutional rights.” The MPSC found that these arguments have been “fully reviewed” (not litigated in a contested case or rule making process) and addressed in previous cases. The MPSC found that the Residential Consumers Group provided no “new evidence or analysis” to persuade the MPSC to revisit these issues. DTE then refers to the Michigan Court of Appeals Decision affirming this Order and marked as Attachment 4.

The issues of privacy, health, safety, and constitutional rights have never been properly adjudicated in an administrative proceeding before the MPSC. Everyone relies upon the MPSC’s adoption of the Staff’s statement that the health risks of AMI meters are insignificant. In MPSC Case No. U-17000, the Staff merely reviewed the scientific literature available at the time of the hearing in 2012. As the AMI metering program was just beginning to be “rolled out” across the Nation, there was very little, if any, evidence regarding the non-thermal effects of microwave and radio frequency radiation on biological tissues. And current FCC guidelines failed to adequately address this public concern.

As previously stated, MPSC Case No. U-17000, was neither a contested case nor a rule making process. There were no intervenors in that case. There were no medical professionals that gave testimony in that proceeding. There were no medical or scientific professionals on the Staff that could adequately address health concerns. There were no medical or scientific professionals who counseled the Staff when rendering its statement that the safety and health risks were “insignificant.” Consequently, the bare assertion that these issues have been addressed and resolved by appropriate authorities in proper proceedings constitutes a false and misleading statement. The truth of the matter is that these issues have never been

fully and properly addressed by either the MPSC or the Michigan courts. Please see discussion under caption “MPSC Case No. U-17000 does not constitute Legally Binding Precedent” on page 13 of Customer’s Statement of Position.

Since 2012, there has been a number of independent scientific studies published which thoroughly address the risks associated with smart meters and microwave radio frequency radiation. Many of these recently published studies have been marked as Exhibits in this informal customer hearing. There is a considerable amount of “new evidence or analysis” to persuade the MPSC to revisit these issues. More important, should the Staff review the scientific and medical literature now available regarding the effects of microwave and radio frequency radiation on people and animals, they may have an entirely different recommendation regarding the safety and health risks of AMI meters.

Even the Michigan Court of Appeals discusses MPSC Case No. U-17000 as if it were a legally binding administrative decision (thus limiting the court’s review) on 3rd parties, but it is not. See, Attachment 4 to DTE’s Customer’s Statement of Position.

What is noteworthy is the Court’s reference to the Staff’s comment regarding other viable options in the opt out program, including a **“smart meter that does not have communicating radio.”** The Staff did not say a **“smart meter with the radio transmitters disabled.”** The Staff goes on to say, once again, a **“smart meter without a communicating radio”** allows the utility to maintain one type of meter. The ALJ also discusses DTE providing **“non-transmitting meters”** to opt out customers. See, Attachment 4, pages 3-4.

Even the C5.7 Non-Transmitting Meter Tariff utilizes the specific language of **“non-transmitting meter(s)”** being installed at a customer’s premise. This tariff neglects to mention any reference to DTE’s meter choice of a “radio off” non-transmitting AMI meter in its Opt Out program. See, Attachment A.

Evidence has clearly proven that a “radio off” AMI meter **is capable of transmitting** microwave and radio frequency radiation. A “radio off” AMI meter is not a proper meter choice for DTE’s Opt Out program. If such a meter choice was not proper, then why do the other state public commissions and state legislatures allow customers to retain analog meters in their respective opt out programs? Why is DTE unable to follow the lead of other utility companies when it comes to offering a reasonable, safe and true opt out program?

A utility’s maintenance of two meters is not an undue hardship under these circumstances where there is much controversy surrounding the new AMI meter technology, especially in light of all the identifiable safety, security and health risks. Many states legislatures and state public commissions allow a utility to maintain two meter types. See, Exhibits 106 and 107. DTE’s potential liability with regard to health issues and harm resulting from “radio off” AMI meters is considerable given the probability that these monetary losses will not be covered by its insurance providers.

The Court of Appeals noted that the MPSC has no statutory authority to enable DTE to require all customers to accept an AMI meter. See, Attachment 4, page 5. However, when the MPSC approved DTE’s meter choice of a “radio off” AMI meter in its Opt Out program, that is exactly what the MPSC did. It allowed DTE to install an AMI meter at every customer dwelling. A “radio off” AMI meter is still an AMI meter. It is not an AMI meter with all radio transmitters removed. Evidence has shown that a transmitting “radio off” AMI meter functions exactly the same as a traditional AMI meter.

This customer is not questioning the MPSC's approval of the AMI metering program. This customer is stating that evidence clearly shows that DTE is in violation of the MPSC's Orders in Case No. U-17000 and No. U-17053, and C5.7 Non-Transmitting Meter Tariff with regard to its Opt Out program. DTE has violated various Rules and Orders of the MPSC. Its Opt Out program is non-compliant. How can DTE force this customer to participate in an Opt Out program that violates the many directives of the MPSC?

Many states and public service commissions provide for an opt out program because the customers do not want AMI technology on their premises. And these customers are willing to pay a fee for be "free" from the many hazardous risks of AMI technology. In Michigan, DTE is able to charge customers ongoing opt out fees to have AMI technology installed on the premises. How can this be?

The Court of Appeals stated that the MPSC could not order DTE to offer customers an analog meter in place of a non-transmitting AMI meter. See, Attachment 4, page 8. While this is a true statement, the MPSC could find that DTE's current meter choice does not enable it to comply with the MPSC's Orders and C5.7 Non-Transmitting Meter Tariff and, as such, order DTE to select a different meter choice. The MPSC could order DTE to select a meter that does not transmit any microwave and radio frequency radiation, and conducted emissions. This type of meter would be a "true" non-transmitting electric meter.

Once again, I have been advised as to the outcome of this informal customer hearing before the hearing has even taken place. See, Exhibit 15. DTE's Service Order History shows that DTE has, on its own motion, scheduled and confirmed an appointment to install an AMI meter at my dwelling on November 29, 2018. See, Service Order History, page 6, attached to DTE's Customer's Statement of Position.

Finding of Facts

Based solely on the evidence provided at this utility customer hearing, the hearing officer must find that:

- (1) DTE's Notices of Shut Off regarding AMI installation were improperly issued in violation of MPSC Rule 460.137(1)(d) and the MPSC's Orders in MPSC Case Nos. U-17000 and U-17053 and the C5.7 Non-Transmitting Meter Tariff. DTE issued these Notices of Shut Off at a time when it had direct knowledge that it was in violation of the MPSC's Orders in MPSC Case Nos. U-17000 and U-17053, and the C5.7 Non-Transmitting Meter Tariff.
- (2) DTE's improper utilization of the Notices of Shut Off has caused the customer to experience duress which has estopped her from "voluntarily" entering into a legally binding contractual agreement with DTE regarding its Opt Out program.
- (3) DTE has failed to provide the customer with a detailed written document containing all of the terms and conditions of the Opt Out program, including but not limited to terms which address the constitutional due process and the remedies available, including economic damages for resulting harm to person, for DTE's non-compliance with the C5.7 Non-Transmitting Meter Tariff.
- (4) That since the customer requested an informal customer hearing, DTE has violated, on numerous occasions, the MPSC Rules contained in the Department of Licensing and Regulatory Affairs Public Service Commission Standards and

Billing Practices for Electric and Natural Gas Service, Rule 460.101 through Rule 460.169, as more fully documented in customer's Exhibit 21.

- (5) The "radio off" AMI meters have been shown (for years) to be capable of and are transmitting microwave and radio frequency radiation.
- (6) "Radio off" meters are not being manually read on an ongoing monthly basis.
- (7) Opt out customers are receiving either no billing statements and/or estimated billing statements in violation of MPSC Rule 460.113(1) and (2)(i).
- (8) The "radio off" AMI meters are unsecured, unsafe and susceptible to fire hazards, and cyber security and privacy breaches.
- (9) Opt out customers have been or may be exposed to unwanted microwave and radio frequency radiation and conducted emissions in violation of the C5.7 Non-Transmitting Meter Tariff.
- (10) The AMI wireless network requires continuous 24/7 monitoring, especially with respect to "radio off" AMI meters, to ensure DTE's compliance with the C5.7 Non-Transmitting Meter Tariff.
- (11) As DTE will always be updating its metering and billing software, DTE is unable to provide any assurances or guarantees that "radio off" AMI meters will not be remotely turned "on" and begin to transmit microwave and radio frequency radiation, and conducted emissions in violation of the C5.7 Non-Transmitting Meter Tariff.
- (12) Opt out customers whose "radio off" AMI meters have been found to be transmitting microwave and radio frequency radiation, and conducted emissions have not received a benefit under the Opt Out program.
- (13) Opt out customers who have not had their "radio off" AMI meters manually read, have received estimated billing statements, have received no billing statements and/or have received excessively high billing statements, have not received a benefit under the Opt Out program.
- (14) The MPSC has ordered DTE to provide customers participating in its Opt Out program with a non-transmitting meter.
- (15) DTE is in violation of the MPSC's Orders in MPSC Case Nos. U-17000 and U-17053, and the C5.7 Non-Transmitting Meter Tariff for failing to provide a non-transmitting "radio off" AMI meter to customers participating in the Opt Out program.
- (16) DTE must provide a true meter choice in its Opt Out program, namely, a reliable, safe, and accurate non-transmitting meter, pursuant to the MPSC's direct mandate in Case Nos. U-17000 and U-17053, and the C5.7 Non-Transmitting Meter Tariff.
- (17) DTE is unable to provide any guarantees regarding the future suitability of a "radio off" AMI meter as an acceptable meter choice in its Opt Out program.

- (18) DTE has failed to meet its burden of proof in this case.
- (19) DTE is unable to properly install, inspect and/or maintain the “radio off” AMI meters in such a way as to provide a guarantee to those customers desiring to participate in the Opt Out program that they will, in fact, have a non-transmitting meter installed and maintained at their dwelling.
- (20) As a result of DTE’s inability to install, inspect and/or maintain a non-transmitting “radio off” AMI meter at a dwelling, DTE’s statements made to opt out customers that the “radio off” AMI meter is a non-transmitting meter are false, if not grossly negligent and intentionally misleading.
- (21) Based on DTE’s false and misleading statements regarding its ability to provide an opt out customer with a non-transmitting “radio off” AMI meter, this customer is unable to “voluntarily” and in good faith and good conscience enter into a valid contractual agreement with DTE regarding its Opt Out program.
- (22) Based upon the evidence that “radio off” AMI meters are capable of and are, in fact, transmitting microwave and radio frequency radiation, and conducted emissions, this customer is unable to “voluntarily” and in good faith and good conscience enter into a valid contractual agreement with DTE regarding its Opt Out program.
- (23) As this customer has been served Notices of Shut Off for disconnection of electric service, any resulting contractual agreement between this customer and DTE would be unenforceable due to the legal defenses of coercion and duress.
- (24) Remedies may be available for this customer upon the resolution of the DTE investigation case, namely MPSC Case No. U-20084, regarding DTE rule violations and improper shutoffs. The MPSC could find that DTE’s opt out program as currently established and implemented is legally unsustainable.
- (25) Remedies may be available for this customer upon the resolution of HB 4220 which would allow this customer to retain her analog meter at no cost or at a minimal cost not to exceed \$5.00 per month.
- (26) During hearings of the House Energy Policy Committee and the Michigan Oversight Committee on Microwave Meters, the Michigan Legislature has indicated that allowing a customer to retain an existing analog meter at their dwelling is not unreasonable.
- (27) MPSC Case No. U-17000 and MPSC Case No. U-17102 (data privacy) were neither contested case proceedings nor rule making proceedings.
- (28) The findings of the MPSC Staff in MPSC Case No. U-17000 and MPSC Case No. U-17102 regarding fire, health, data privacy, safety and security are not legally binding precedent as it relates to third parties, including this customer.
- (29) Independent scientific studies document the effects of both thermal and non-thermal microwave and radio frequency radiation, and conducted emissions on living biological tissue. These studies show that cumulative and prolonged exposure to microwave and radio frequency radiation, and conducted emissions can be detrimental to people and animals.

- (30) Scientific evidence has been provided that documents health concerns resulting from a person's exposure to microwave and radio frequency radiation, and conducted emissions emanating from AMI meters.
- (31) Other state public commissions have approved the use of analog meters in opt out programs either at no cost or at a nominal cost.
- (32) Vermont and New Hampshire have enacted legislation which allow utility customers to retain their analog meters at no cost. The New Hampshire legislation established an "opt in" program.
- (33) Other state legislatures are currently considering proposed legislation which would allow utility customers to retain their analog meters at no cost or at a minimal cost.
- (34) An analog meter is a safe and reliable electric meter capable of accurately recording electric usage at a dwelling.
- (35) An analog meter poses no risk to health due to exposure to microwave and radio frequency radiation, and conducted emissions because, being entirely electromechanical in nature, it is incapable of generating such radiation.
- (36) An analog meter poses no risk to privacy because it can not be remotely read and it is not capable of recording and storing electric usage at specific time intervals.
- (37) An analog meter poses no risk to cyber security because it cannot be remotely accessed so it cannot be hacked.
- (38) It is not incumbent upon the customer to hire an electrical engineer and/or purchase an expensive RF reading meter as a condition to participating in DTE's Opt Out program. The burden is not upon the customer to prove that the opt out meter installed at the dwelling remains a non-transmitting "radio off" AMI meter.
- (39) Proper meter choice is at issue as it relates to DTE's ability to comply with the MPSC's Orders in MPSC Case Nos. U-17000 and U-17053 and the C5.7 Non-Transmitting Meter Tariff.
- (40) As long as the radio transmitters in the AMI meter can be turned on and off remotely, a "radio off" AMI meter may not be an appropriate and cost effective meter choice in the Opt Out program.
- (41) Any digital meter, whether smart or not, that is equipped with an unfiltered switched mode power supply that is capable of creating conducted emissions is not an appropriate and cost effective meter choice in an opt out program.
- (42) The analog meter, being entirely mechanical in nature, is a non-transmitting meter.
- (43) Customer currently has an analog meter at her dwelling.
- (44) An analog meter is a proper meter choice in an opt out program as evidenced by those state public commissions and state legislatures that allow utility customers to retain their analog meters in a utility's opt out program.

- (45) DTE, in exercising its management prerogative, could decide to allow this customer to “voluntarily” participate in the Opt Out program and retain the existing analog meter currently installed at the dwelling. An analog meter is a non-transmitting meter which complies with the MPSC’s direct Orders in MPSC Case Nos. U-17000 and U-17053 and the C5.7 Non-Transmitting Meter Tariff.

Relief Requested

Currently, there are approximately 9,399 customer meters that are in the Opt Out program and 1,077 hard to reach non-AMI customers remaining to be converted to AMI. See, Qualifications and Direct Testimony of Brian V. Mocca filed in MPSC Case No. U-20162, BVM-20, lines, 2-3 and 13-14. At any moment, any one of these “radio off” AMI meters can begin to emit microwave and radio frequency radiation causing harm to opt out customers in violation of the MPSC’s orders and the C5.7 Non-Transmitting Tariff. In actuality, even a “radio off” AMI meter is non-compliant with the tariff due to the conducted emissions generated by the unfiltered switched mode power supply in the meter which creates an electromagnetic field inside the building.

The resulting electromagnetic field generated by conducted emissions has been shown to be responsible for many health problems experienced by those customers diagnosed with electromagnetic hypersensitivity (“EHS”). This field also creates an increased risk of fires, electromechanical medical equipment damage, and appliance damage. A customer with a sensitive condition could die or suffer a serious degradation in health from a critical medical device failure. See, Exhibits 53, pages 6 and 15, 54 and 55.

Despite these increased risks for harm and damage, insurance contracts underwritten by Lloyd’s of London for architects and engineers contain a general exclusion for both medical expenses and electromagnetic radiation. See, Exhibit 115, pages 6 -7. Lloyd’s of London will not:

- a) make any payment on **your** behalf for any **claim**, or
- b) insure any **costs and expenses**, or
- c) reimburse you for any **loss, damage**, legal expenses, fees or costs sustained by **you**, or
- d) pay any **medical expenses**;

Under general insurance exclusions:

32. **Electromagnetic fields**
directly or indirectly arising out of, resulting from or contributed to by
electromagnetic fields, electromagnetic radiation, electromagnetism,
radio waves or noise.

Does DTE maintain an insurance policy that covers claims arising from exposure to electromagnetic fields? Probably not. If so, please provide this information to this customer.

Should any of DTE’s opt out customers institute a civil cause of action for damages or harm caused by exposure to microwave or radio frequency radiation emanating from its opt out meter, a court award for actual and punitive damages would be incurred by DTE and its shareholders (through loss of profits) as their insurance contract would not cover these costs, expenses and losses.

Furthermore, a class action suit could arise regarding these opt out customers alleging claims based on unjust enrichment, breach of contract, private cause of action for personal injury, and fraudulent and intentional misrepresentation. A court could award both actual and punitive damages in this case. This is not an improbable event as such a case currently is before the Superior Court of Maine. See, Attachment 2 to Customer's Statement of Position.

While DTE may not be made aware of when a particular "radio off" AMI meter begins to transmit microwave and radio frequency radiation, evidence shows that DTE has known for some time that its opt out AMI meters were non-compliant with the MPSC's orders in Case Nos. U-17000 and U-17053 and C5.7 Non-Transmitting Tariff. Yet, DTE did nothing to rectify the situation. Rather, it waiting until substantial evidence was presented in the DTE investigation case before it decided to institute any corrective actions. Now, customers in the DTE investigation case are claiming that DTE is making unsolicited telephone calls and unscheduled appointments to inspect, adjust or exchange the opt out meter. These actions clearly constitute tampering of evidence and obstruction of justice. But is DTE "covering up" its tracks to make it appear that it is now compliant with the C5.7 Non-Transmitting Meter Tariff?

DTE is selling a product and providing a service that is known to cause harm to people and animals from exposure to microwave and radio frequency radiation. DTE is under a moral and ethical obligation to inform its customers of the associated risks of the AMI metering technology. This case is no different than the Ford Pinto fuel tank case, or the Surgeon General's warning on a pack of cigarettes. Business common sense dictates that known risks must be disclosed to the public for purposes of liability issues. DTE certainly does not need the MPSC to tell it to do the "right" thing.

How can DTE's Opt Out program continue in this manner when DTE employees advise customers that their participation in the opt out program does not necessarily mean that a "non-transmitting" meter will be installed on the dwelling? I guess it matters not what the MPSC does or does not order. DTE wants every customer to have an AMI meter whether transmitting or not. And why is DTE so adamant about pulling all analog meters in the face of such immense liability issues? There must be another story here for another day.

Customers do not trust DTE or its employees. This mistrust is reasonable in light of the fact that even the MPSC does not trust DTE. That is why the MPSC opened the docket in MPSC Case No. U-20084, the DTE investigation case. And when DTE advises the MPSC or its customers that it has "fixed" the problem and that it will "never happen again," what evidence will be tendered by DTE to prove this statement? This problem can not be fixed with an AMI meter.

DTE must make an accommodation for those customers who desire to "voluntarily" participate in the Opt Out program. These customers are willing to pay additional fees to not have an AMI meter at their dwelling. These customers, who most likely are sensitive to microwave and radio frequency radiation and conducted emissions, comprise the class of people most likely to bring suit against DTE for resulting harm from exposure to unwanted radiation. Good reason and common sense dictates that these customers participate in a "meaningful" opt out program, i.e. one that offers an accurate, safe and reliable non-transmitting meter.

The burden of proof is upon DTE to demonstrate that its "radio off" AMI meters remain non-transmitting meters both at the time of meter installation and subsequently thereafter under all circumstances. DTE must prove that it is fully compliant with the MPSC Rules, MPSC's Orders in MPSC Case Nos. U-17000 and U-17053 and the C5.7 Non-Transmitting Meter Tariff. To date, no such proof has been forthcoming. To date, DTE has not provided any evidence in this regard.

As DTE is not able to stand behind their non-transmitting “radio off” AMI meters and offer “true” opt out meters to their customers, I should not have to pay for a product and/or service that DTE is not capable of delivering. This would constitute fraudulent and intentional misrepresentation, unjust enrichment, breach of contract and gross negligence on behalf of DTE. It would also expose DTE to potential future legal action seeking actual and punitive damages for harm caused by the unwarranted and unlawful exposure to microwave and radio frequency radiation. After all, the MPSC has ordered DTE to provide a **NON-TRANSMITTING** meter in its Opt Out program. DTE is currently in violation of the MPSC Orders in Case Nos. U-17000 and U-17053, and the C5.7 Non-Transmitting Meter Tariff.

I reiterate my statements made before the MPSC during a public meeting held on August 28, 2018. See, Exhibit 17. MPSC Rule 101a(3) states that “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.**”

DTE lacks authority under MPSC Rule 460.137(1)(d) to issue a Notice of Shut Off to any DTE customer who is currently not allowing DTE to install a “radio off” AMI meter at their dwelling. In the alternative, should DTE have such authority under these specific circumstances, I respectfully make a request to the MPSC to waive the requirements of this Rule and order DTE to cease its issuance of Notices of Shut Off to customers refusing “radio off” AMI meter installation until such time as these issues are completely and properly investigated and resolve by DTE and the MPSC.

Based upon the facts, evidence and various rule violations presented in this utility customer hearing, I am requesting that DTE exercise its management prerogative to allow me to retain my analog meter. This electromechanical meter is currently installed on my dwelling and complies with the MPSC’s orders that a non-transmitting meter be offered by DTE in its Opt Out program.

In the alternative, I am requesting DTE to allow me to retain my analog meter until such time that DTE completely and properly investigates the many issues raised herein regarding the administration of its current Opt Out program. In particular, DTE must re-visit its meter choice and select a reliable, safe and accurate non-transmitting meter to offer its customers in the Opt Out program. This meter of choice must then be approved by the MPSC, in a contested case proceeding, as a proper meter choice and established that it is, in fact, a non-transmitting meter which complies with the MPSC’s orders.

Should DTE force me to accept a “radio off” AMI meter offered in its current Opt Out program, I demand that DTE enter into a written contractual agreement with me providing that DTE and each of its directors, officers, affiliates, and employees shall be liable or responsible for any and all claims for loss or damages resulting from the disclosure of private information, cybersecurity risks, hazardous fires, the loss of electric service due to meter defects and/or meter malfunctions, the replacement of home appliances that fail due to inadequate or non-existent surge and breaker protections, the exposure to microwave and radio frequency radiation, and the exposure to conducted emissions.

My request regarding this written contractual agreement is fair and reasonable, especially in light of the fact that DTE has consistently represented to its customers and the MPSC that AMI meters are safe and meet all applicable quality standards.

I would also insist that DTE meter test the “radio off” AMI meter on a regular basis to ensure that it remains a non-transmitting opt out meter.

The burden of proof is upon DTE to demonstrate that its “radio off” AMI meters remain non-transmitting meters both at the time of meter installation and subsequently thereafter under all circumstances. DTE must prove that it is fully compliant with the MPSC Rules, MPSC’s Orders in MPSC Case Nos. U-17000 and U-17053 and the C5.7 Non-Transmitting Meter Tariff. To date, no such proof has been forthcoming.

Any outcome of this informal customer hearing, along with the potential outcomes of the 1,077 informal customer hearings that may follow, is bound to impact the DTE’s J.D. Power rating relative to Safety and Customer Satisfaction. See, Attachment F, DTE Energy Company’s SEC filing dated August 28, 2018 relative to J.D. Power 2017 Electric and Gas Utility Residential Midwest Customer Satisfaction Study.

Susan Lesnek

Dated: October 9, 2018

PRIORITY EXPRESS MAIL

Susan Lesnek
46151 Bloomcrest Drive
Northville, MI 48167

October 10, 2018

Mrs. R. Jennings
Consumer Affairs
DTE Energy Company 1740 WCB
One Energy Plaza
Detroit, MI 48226

RE: Informal Customer Hearing Number 3790028
Held on October 9, 2018 at 1:00 p.m.
Hearing Officer: Mr. Ronald R. Rogers

Dear Mr. Rogers,

During my hearing, you asked me how to express what I would like to see come out of my hearing. The words have come to me in a simple manner now. First of all, it is my sincere hope that all the MPSC Utility Customer Rules be followed in their entirety and within the context of the laws of Michigan and the United States of America. This not only is in regards to customer safety and liability, but in all manners of morals and codes of ethics.

Clearly my customer's statement of position, in its entirety, is what I want to see as the outcome and I believe the evidence and testimony that I have provided supports my case without any question. A more concise, and simple way, of expressing this can be summarized in many ways in **DTE's Way Code of Conduct**.

As I have previously stated, I believe the evidence that I have provided at my hearing supports my case and request for relief thoroughly and completely. The MPSC's rules explicitly state that your decision can only be based upon the facts, evidence, and testimony actually provided at my hearing. The evidence proves, without question, that DTE is in violation of various MPSC rules, orders and tariff(s). DTE did not provide any actual supporting evidence to what they are doing, or attempting to do to me. DTE is promoting false advertising for their supposed "opt out" program as a possible choice for me; however, with the meter issue of the "hot sockets" or meter fires, in addition to other relevant and pertinent facts and evidence that I provided you at my hearing, this is not a choice any reasonable person could make in good faith and good conscience. Specific people within DTE have known about the "radio off" AML meters still transmitting for many years and have chosen to ignore this matter.

These excerpts from just the first two pages of (A1-A2) **DTE's Way Code of Conduct** summarize the light in how Mrs. R. Jennings must conduct herself and will also provide you with all the moral support you need to render a fair and just determination based solely upon the facts, evidence and testimony provided during my hearing.

Our values

Our values define what we aspire to stand for and what we aspire to create at DTE Energy. They have a strong connection to tangible business results and shape the way we think about our company and our work on a daily basis. Values are far more than posters on a wall or things that we occasionally refer to or talk about. Our values only have real power if we routinely live them, act on them – and do so with conviction.

We put the health and safety of people first...and know this responsibility rests with each of us.

We are the lifeblood of communities and the engine of progress. That's why we do what we do each day. But we never forget that for many of our people, this is dangerous work. So in a company like ours with a long history of focusing on safety, we believe diligence is vital. That's why we embrace the principle of 200 percent accountability. "I am 100 percent responsible for my own safety and 100 percent responsible for the safety of those around me – because I care about my own family, my colleagues and their families, and the people in the communities we serve."

This includes the environment – we are dedicated to protecting our employees, neighbors and the environment around us, to make sure we minimize our impact.

Also vitally important is our focus on health. This is an increasingly important issue for us as a company – and as a country. A healthy workforce contributes to stronger – and safer – performance on the job. But it's more than that: the choices we make today – healthy or not – will dictate our quality of life well into the future. They will also determine whether we pass along a financially healthy country to our children and grandchildren.

We act with integrity and show respect...and understand this defines our company's character.

Integrity is about honesty, ethics and full transparency in the way we approach our business. We are committed to operate with integrity. We are committed to being completely forthright in everything we do.

And as for respect, we believe it's something everyone at DTE Energy deserves – no matter your position. The rule of thumb we live and work by is to show a high level of respect and consideration for our fellow employees, customers, suppliers, contractors and neighbors. To do otherwise is not the "DTE Energy Way."

We are committed to building a work environment in which we treat one another fairly and respect the company's commitment to diversity of people, experience and viewpoints.

Our values

We see our work through the eyes of those we serve...and know that our work is a powerful means to serve others.

This value brings to mind the Golden Rule: "Do unto others as you would have them do unto you." We must provide the kind of service that we'd like to receive if we were the customer. This challenges us to look at the ways we're carrying out our work and ask,

"If I could view my work through the eyes of my customers, would I be proud of the way that I'm doing it?"


It's easy to think this value applies only to employees who work directly with customers. But employees in power plants or gas operations or the corporate center should also ask: "Am I using resources, like my time, in a way that serves our customers well? Would I be proud of my actions and choices if customers were watching me?"

That doesn't mean we're not going to have challenging interactions with some of our customers. That's inevitable. But it does mean that we will do our best to put ourselves in their shoes and see the interaction through their eyes first.

Mr. Rogers, I believe that you, as my hearing officer, should rule in my, the customer's favor, based upon all the evidence. DTE may find it difficult to appeal to the MPSC any decision you render in my favor because your determination, without question, will coincide with **DTE's Way Code of Conduct**.

I hope you do not consider my communication to you in this letter inappropriate. I could not help but notice you speaking with Mrs. R. Jennings in the Lobby when we returned to the DTE building to give her an extra copy of the USB Flash Drive.

Sincerely,



Susan Lesnek

Enclosures:

DTE Energy Way, Code of Conduct

<https://www.newlook.dteenergy.com/wps/wcm/connect/5ffb7155-2b3e-4981-a3a2-d6dc0bb66197/DTE%2BEnergy%2BWay.pdf?MOD=AJPERES>

GV-5. Officer Code of Business Conduct and Ethics. This Code is intended to serve as a supplement to the DTE Energy Way and applies to all Officers of DTE Energy.

<https://www.newlook.dteenergy.com/wps/wcm/connect/34bc44be-8eff-46c0-bd29-8b1c98e5375d/Code-of-conduct-business-conduct-ethics.pdf?MOD=AJPERES>

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Commission's Own Motion,
to require **DTE Electric Company** and **DTE
Gas Company** to show cause why these
companies should not be found in violation of
the Consumer Standards and Billing Practices
For Electric and Natural Gas Service, R 460.101 *et*
seq.

Case No. **U-20084**

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

On **October 12, 2018**, an electronic copy of Petitioner's MOTION FOR LEAVE TO INTERVENE
OUT OF TIME was served on the following:

Administrative Law Judge
Hon. Kandra Robbins
robbinsk1@michigan.gov

Attorney General
Michael Moody
moodym2@michigan.gov
AG-ENRA-Spec-Lit@michigan.gov

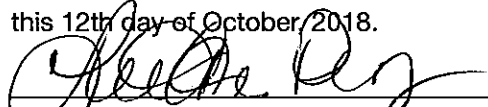
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MPSC Staff
Daniel Sonneveldt
sonneveldtd@michigan.gov

The statements above are true to the best of my knowledge, information and belief.

Subscribed and sworn before me
this 12th day of October, 2018.


Notary Public



Susan Lesnek
46151 Bloomcrest Drive
Northville, MI 48167
Phone: Available upon request.
dbuening@sbcglobal.net

My Commission Expires: 2/25/2019

LEEANN PEREZ
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Feb 25, 2019
ACTING IN COUNTY OF ~~OKLAHOMA~~
Wayne