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January 11, 2019

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

**Re: MPSC Case No. U-20162**

Dear Ms. Kale:

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

Sincerely yours,

VARNUM

Timothy J. Lundgren

TJL/kc  
Enclosures  
c. All parties of record.

**STATE OF MICHIGAN**  
**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the matter of the application of )  
**DTE ELECTRIC COMPANY** for )  
authority to increase its rates, amend its )  
rate schedules and rules governing the )  
distribution and supply of electric energy, )  
and for miscellaneous accounting authority )  
\_\_\_\_\_ )

Case No. U-20162

**INITIAL BRIEF**  
**OF**  
**ENERGY MICHIGAN, INC.**

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**Contents**

**I. INTRODUCTION.....1**

**II. ARGUMENT.....1**

**A. DTE's Calculation of Capacity Cost is Inconsistent with Prior Commission Precedent and Should be Corrected.....1**

**B. Energy Michigan's Proposed Changes to DTE's Customer Meter Data Rules in the EC2 Tariff are Necessary to Ensure That Customers and Suppliers Have Needed Access to Data.....5**

**C. Pricing Options Should Be Retained in the Tariff Under DTE's Simplified Return-To-Service Proposal.....8**

**III. CONCLUSIONS AND PRAYER FOR RELIEF.....9**

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_____	)	

INITIAL BRIEF OF ENERGY MICHIGAN, INC.

I. INTRODUCTION

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

II. ARGUMENT

A. DTE's Calculation of Capacity Cost is Inconsistent with Prior Commission Precedent and Should be Corrected

As the Commission is aware, the methodology for calculating each utility's capacity costs under Section 6w of PA 341 or 2016 was the subject of a separate proceeding for each utility, coming out of the implementation of that Act. For DTE, that proceeding took place in docket U-18248. Section 6w requires that the capacity charge be calculated as follows:

(b) For the applicable term of the capacity charge, subtract all non-capacity-related electric generation costs, including, but not limited to, costs previously set for recovery through net stranded cost recovery and securitization and the projected revenues, net of projected fuel costs, from all of the following:

(i) All energy market sales.

- (ii) Off-system energy sales.
- (iii) Ancillary service sales.
- (iv) Energy sales under unit-specific bilateral contracts.<sup>1</sup>

As Mr. Zakem notes in his Direct Testimony, the Commission ruled on the meaning of "all energy market sales" twice, once in U-18248 in its Order on November 21, 2017, and once in U-18255, in its Order on April 27, 2018.<sup>2</sup> Mr. Zakem observes that in U-18248 DTE proposed a subtraction of \$49 million for net energy market sales, which the Commission rejected and instead ordered a subtraction of \$584 million. <sup>3</sup> Again in U-18255 DTE proposed a subtraction of \$44 million for net energy market sales, which the Commission rejected and instead ordered a subtraction of \$584 million. Here, DTE is proposing a subtraction of \$40 million for net energy market sales, and the Commission should once again reject this proposal and once again order a subtraction of \$584 million, consistent with the previous determinations by the Commission.

As Mr. Zakem explains, in U-18248, DTE had proposed that "all energy market sales" be netted against purchases from the MISO grid.<sup>4</sup> In his Direct Testimony, Mr. Zakem explains that,

The Commission denied that proposal and ruled that "all energy market sales" means *all* of generation output injected into MISO, stating:

DTE Electric offered deductions of \$49 million on an annual net net (net of projected fuel costs, and net of total purchase or total losses) basis under Section 6w(3)(b). [ . . . ] However, the statute says nothing about making this determination on an annual net net basis.

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<sup>1</sup> MCL 460.6w(3)(b) (emphasis added).

<sup>2</sup> 7 Tr 3078.

<sup>3</sup> *Id.*

<sup>4</sup> 7 Tr 3079.

The statute says "subtract all non-capacity-related electric generation costs . . . net of projected fuel costs, from all of the following: (i) All energy market sales. (ii) Off-system energy sales. (iii) Ancillary service sales." MCL 460.6w(3)(b).

The plain language of the statute provides no support for DTE Electric's proposed interpretation.<sup>5</sup>

The Commission subsequently affirmed that conclusion in its April 27, 2018 Order in U-18255, DTE's following rate case, where in Attachment C, included here as Exhibit EM-3, the Commission shows a subtraction of \$584 million for "Proj 2017 Energy Sales Rev Net of Fuel Costs." As Mr. Zakem notes, the Commission has consistently used projected costs for the calculation of the capacity portion of power supply costs, as required under PA 341, which are then reconciled later.<sup>6</sup>

Neither in its Direct nor Rebuttal Testimony did DTE explain why it deviated from the precedent established in the previous Commission orders in U-18248 and U-18255 for calculating "all energy market sales." However, as Mr. Zakem explains, DTE's testimony does explain where the methodology derives from.<sup>7</sup> DTE witness Mr. Arnold explains that the methodology by which he derived the numbers for energy market sales, among other items, was adopted "at the direction of Company Witness Stanczak."<sup>8</sup> Mr. Arnold's testimony, as Mr. Zakem notes, omits "all" from "energy market sales" and defines those sales as "excess generation," which is in direct conflict with previous Commission orders.<sup>9</sup> However, as noted, he places the responsibility for choosing that method on Mr. Stanczak. Then, in the Direct

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<sup>5</sup> 7 Tr 3079, quoting November 21, 2017 Order in Case No. U-18248, p. 66, emphasis added.

<sup>6</sup> 7 Tr 3082.

<sup>7</sup> See discussion on 7 Tr 3082-3085.

<sup>8</sup> 7 Tr 3084, citing Direct Testimony of Derek M. Arnold, pp. 6-7.

<sup>9</sup> 7 Tr 3084.

Testimony of DTE witness Mr. Thomas M. Lacey, Mr. Lacey is asked about the difference in the calculation of energy sales in this case from that adopted in U-18255 (and therefore in U-18248). His response is, "I used the calculation of energy sales net of fuel supported by Company Witness Mr. Arnold on his Exhibit A-29, Schedule S3. The Commission reflected a \$584 million reduction for energy sales net of fuel in case U-18255, based on a calculation originally adopted in Case No. U-18248."<sup>10</sup>

DTE has therefore offered no basis for changing the calculation that the Commission has determined twice now to be correct, but has simply gone ahead and made the calculation incorrectly a third time on the direction, apparently, of Mr. Stanczak. Since the utility has failed to provide any support on the evidentiary record for its attempt to change the methodology for making its capacity calculation, the Commission should reject this attempt to unilaterally reinterpret the statutory formula already explicated twice by the Commission in precedential orders. The Commission should require DTE to adjust its Exhibit A-29, Schedule S3, line 32, column (b) number from the DTE proposed \$40,337 to the Commission twice-approved \$548,478, and to carry through the consequences of that change to all its other exhibits, in particular to the calculation of Capacity Revenue Requirement on Exhibit A-16, Schedule F1.5, where line 2 should be changed from \$40,337 to \$548,478, resulting in a Capacity Revenue Requirement on line 7 of \$1,405,890 rather than \$1,950,031.

Finally, as Mr. Zakem notes, the consequences of these changes must be carried through to the final rate design that the Commission orders in this proceeding and reflected in the final charges to separate capacity and non-capacity elements of the rates.<sup>11</sup>

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<sup>10</sup> 7 Tr 3222.

<sup>11</sup> 7 Tr 3086-3087.

**B. Energy Michigan's Proposed Changes to DTE's Customer Meter Data Rules in the EC2 Tariff are Necessary to Ensure That Customers and Suppliers Have Needed Access to Data**

In his Direct Testimony, Mr. Zakem provides specific suggestions to amend DTE's EC2 tariff to ensure that DTE's responsibilities to provide meter data to its customers and to customers' designated suppliers are expressed clearly and with specificity. The problem, as Mr. Zakem notes, is that the current tariff is "vague to the point of difficulty in reasonably determining (a) what the standards are to which DTE must perform and (b) whether DTE has reasonably met such standards."<sup>12</sup> The problem this poses for customers and their suppliers is that if data are requested from DTE and are not supplied in a manner or in a timeframe that the customer or the supplier believes to be timely or appropriate, then it is unclear at what point the utility has transgressed the tariff requirements or whether, because of lack of clarity in the requirements, any enforcement of the data request can be brought at the Commission either formally or informally.

DTE provides distribution services to its own full service customers and to AESs. However, DTE is a competitor to AESs for power supply services to customers.<sup>13</sup> Thus, without a performance standard for providing data to AESs, there is a potential for conflict. Mr. Zakem states: "The principle of equal, non-discriminatory services relating to data reporting *should be reflected in the EC2 tariff.*"<sup>14</sup> An AES should not have to rely on the good will of a competitor – with no performance standard – to get timely and accurate customer data.

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<sup>12</sup> 7 Tr 3094.

<sup>13</sup> 7 Tr 3095.

<sup>14</sup> 7 Tr 3096 (emphasis added).



In his rebuttal testimony, DTE witness Mr. Timothy A. Bloch recounts several methods by which Electric Choice customers and AESs can receive hourly load data. These sound good in theory, but in practice there is nothing to ensure that such options are actually reasonable and workable for customers and AESs in the absence of a performance standard. DTE may claim it is performing well and providing requested data on a reasonable basis, yet there is no standard by which to judge. And suppose DTE does not perform or the current technology does not do the job? Mr. Bloch notes that, “Customer access to Automated Metering Infrastructure (AMI) interval metering data for our over 2 million full service and retail access service AMI meters is not electronically available through dteenergy.com currently. Customers may call DTE Electric to *request* this information or access their interval data through the DTE Energy Insight *App*.”<sup>15</sup> Unstated are DTE’s obligations regarding the timeliness of its reply to the “request.” Also, assumed in this response is that interval data coming through a cell phone App is a reasonable way to receive hourly data for an entire month, when it is often needed in a computer usable form. Energy Michigan believes that customers should have the right, as specified in the tariff, to more than merely “request” their data and have it provided in whatever format DTE determines, but rather the customer should have a right to timely and accurate data in a usable format and not be dependent on the benevolence of DTE to obtain it.

Staff does not oppose Energy Michigan’s proposed changes in Exhibit EM-5 (AJZ-5).<sup>16</sup> Yet Energy Michigan believes the Staff perspective should go further. Staff witness Ms. Heather A. Cantin states:

However, Staff would like to note for the record that the process of providing meter data to a DTE electric customer and/or the customer’s

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<sup>15</sup> 5 Tr 1261 (emphasis added).

<sup>16</sup> See Staff testimony at 8 Tr 4226.

designated supplier is not something that Commission Staff is typically privy to. This is handled between DTE and the customer or the customer's supplier directly. Staff will only get involved at the request of the supplier and/or the utility if there is an issue with the data or an issue obtaining the data in general. Staff believes it is reasonable for suppliers to request that data needed for billing be issued in a timely and accurate manner.<sup>17</sup>

Again, without a performance standard in the tariff, all that a customer or AES can do is “request” and rely on the benevolence of DTE. It is also difficult for a customer or an AES to identify an “issue” to bring to the attention of Staff or the commission when DTE’s obligations are not clearly defined. Clear standards related to data reporting in the tariff will allow all parties, including the Commission, to assess whether or not DTE is reporting data in a timely and accurate manner, and will protect DTE from unreasonable requests.

As Mr. Zakem notes, "if DTE is already performing satisfactorily, then the recommended changes serve to codify what DTE is doing and make clear to all – DTE, customers, AESs, Staff, and Commission – what is supposed to be done, a clear objective. If DTE is not already performing satisfactorily, then Electric Choice customers and AESs will have a standard of performance with which to compare DTE's performance to aid in resolving difficulties with DTE regarding provision of customer metered data."<sup>18</sup>

Energy Michigan is proposing two changes to the EC2 tariff with respect to access to meter data, as Mr. Zakem details. The first change is the addition of language in Section E2.7A, as set forth in Mr. Zakem's Direct Testimony and Exhibit EM-5.<sup>19</sup> As Mr. Zakem notes, the proposed language makes clear what DTE's responsibilities are, while the existing language does not. As Mr. Zakem observes, under the existing language, "[d]ata could be incomplete, delayed,

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<sup>17</sup> *Ibid.* Emphasis added.

<sup>18</sup> 7 Tr 3102.

<sup>19</sup> 7 Tr 3098.

in non-computer-readable form, etc., and the tariff provides no way to determine if DTE has reasonably performed and no recourse if it perhaps has not."<sup>20</sup> Certainly this is not a good place for either the utility or its customers to be, as this uncertainty and lack of clear requirements is likely to engender confusion and disputes.

In contrast, the proposed language provides clear principles under which the meter data is to be provided with enough specificity that a supplier or customer, if it disagrees with DTE, can enunciate a clear explanation of where they believe the utility has not met the standards. If this does not speed resolution, then at least it will aid the Staff or Commission in assisting in identifying and helping to resolve the issue.<sup>21</sup>

The second proposed change is in Sections E18.2 and E 18.3 to allow a marketer taking Meter Data Management Agent ("MDMA") service from DTE to obtain the same data from the utility that the utility is reporting to MISO. Like the changes above, this change creates a plain standard of performance and ensures that marketers have access to the data going to MISO. Energy Michigan believes that these are reasonable changes that accord with good customer service and do not impose a significant burden on the utility.

**C. Pricing Options Should Be Retained in the Tariff Under DTE's Simplified Return-To-Service Proposal**

Currently there are two sets of rules in the EC2 Tariff for "return to service" customers on Electric Choice returning to full utility power supply service. One set is for residential customers and the other set is for non-residential customers. The rules for non-residential customers allow the returning customer to select one of two pricing options: Option 1, "12

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<sup>20</sup> 7 Tr 3099.

<sup>21</sup> Note that Staff witness Ms. Cantin observes that Staff gets involved when asked, if there is a dispute between a supplier and a utility over access to data. See 8 Tr 4226.

Month Service Commitment,” offers the selection of a standard tariff rate if the customer commits to full service for 12 months; Option 2, “Short Term Service,” offers full utility service for less than 12 months if the customer pays a market-based price for energy instead of the energy price on the standard rate.

DTE has proposed consolidating these into one set of rules for all customers, which would be what are now the current residential rules. Energy Michigan supports DTE’s proposal with the provision that the two pricing options be retained.<sup>22</sup> This would continue to provide more flexibility for customers while protecting DTE from short-term gaming. Although there is a cap on Electric Choice now and the cap is full, the pricing options would be necessary if the cap were raised or eliminated, or if Electric Choice falls below the cap, or if future energy prices become volatile. Energy Michigan believes that retaining the current pricing options with the new rules – not deleting them as DTE has proposed – maintains a more comprehensive, more adaptable, more flexible, and more customer-focused Electric Choice tariff – a better tariff overall – with no harm to DTE.

Energy Michigan’s simple proposed revisions to retain the two options are shown in Exhibit EM-4, pages 1 and 2.

### **III. CONCLUSIONS AND PRAYER FOR RELIEF**

WHEREFORE, Energy Michigan hereby respectfully requests that the Commission do the following:

- a) Reject DTE's calculation of capacity cost as proposed and accept the corrected calculation presented here and in Energy Michigan's Testimony and Exhibits.

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<sup>22</sup> 7 Tr 3092.

- b) Accept Energy Michigan's changes to DTE's customer meter data requirements in the EC2 Tariff, as discussed herein and set forth in Energy Michigan's Exhibit EM-5.
- c) Accept Energy Michigan's proposed modifications to DTE's proposed changes to the return to service tariff requirements, as discussed herein and set forth in Energy Michigan's Exhibit EM-4.

Respectfully submitted,

Varnum LLP  
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January 11, 2019

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\_\_\_\_\_ )

Case No. U-20162

**PROOF OF SERVICE**

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF INGHAM )

Kimberly J. Champagne, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at Varnum LLP and that on the 11th day of January, 2019, she served a copy of the Initial Brief of Energy Michigan, Inc. and this Proof of Service upon those individuals listed on the attached Service List via email at their last known addresses.

\_\_\_\_\_  
Kimberly J. Champagne

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**MPSC CASE NO. U-20162**

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