

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

In the matter of the application of)
DTE ELECTRIC COMPANY for)
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-20561

PROTECTIVE ORDER

This Protective Order governs the use and disposition of Protected Material that DTE Electric Company (“Applicant”) or any other Party discloses to another Party during the course of this proceeding. The Applicant or other Party disclosing Protected Material is referred to as the “Disclosing Party”; the recipient is the “Receiving Party” (defined further below). The intent of this Protective Order is to protect non-public, confidential information and materials so designated by the Applicant or by any other party, which information and materials contain confidential, proprietary, or commercially sensitive information. This Protective Order defines “Protected Material” and describes the manner in which Protected Material is to be identified and treated. Accordingly, it is ordered:

I. “Protected Material” and Other Definitions

A. For the purposes of this Protective Order, “Protected Material” consists of trade secrets or confidential, proprietary, or commercially sensitive information provided in Disclosing Party’s Exhibits, discovery or audit responses, any witness’ related exhibit and testimony, and any arguments of counsel describing or relying upon the Protected Material. Subject to challenge under Paragraph IV.A, Protected Material shall consist of non-public confidential information and

materials including, but not limited to, the following information disclosed during the course of this case if it is marked as required by this Protective Order:

1. Trade secrets or confidential, proprietary, or commercially sensitive information provided in response to discovery, in response to an order issued by the presiding hearing officer or the Michigan Public Service Commission (“MPSC” or the “Commission”), in testimony or exhibits filed later in this case, or in arguments of counsel;
 - a. Examples of such trade secrets, confidential, proprietary, or commercially sensitive information include, but are not limited to, information regarding compensation, generation, transmission and distribution facilities and related equipment, infrastructure, energy market projections or assumptions, forecasts, gas conversion analyses, sensitivity analyses, revenue requirement analyses, or financial arrangements including but not limited to those set forth in contracts.
2. To the extent permitted, information obtained under license from a third-party licensor, to which the Disclosing Party or witnesses engaged by the Disclosing Party is a licensee, that is subject to any confidentiality or non-transferability clause. This information includes reports; analyses; models (including related inputs and outputs); trade secrets; and confidential, proprietary, or commercially sensitive information that the Disclosing Party or one of its witnesses receives as a licensee and is authorized by the third- party licensor to disclose consistent with the terms and conditions of this Protective Order.
3. Information that could identify the bidders and bids, including the winning bid, in a competitive solicitation for a power purchase agreement or in a competitively bid engineering, procurement, or construction contract at any stage of the selection process (*i.e.*, before the Disclosing Party has entered into a power purchase agreement or selected a contractor).

B. The information subject to this Protective Order does not include:

1. Information that is or has become available to the public through no fault of the Receiving Party or Reviewing Representative and no breach of this Protective Order, or information that is otherwise lawfully known by the Receiving Party without any obligation to hold it in confidence;
2. Information received from a third party free to disclose the information without restriction;
3. Information that is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization;

4. Information that is required by law or regulation to be disclosed, but only to the extent of the required disclosure; or
5. Information that is disclosed in response to a valid, non-appealable order of a court of competent jurisdiction or governmental body, but only to the extent the order requires.

C. “Party” refers to the Applicant, MPSC Staff (“Staff”), Michigan Attorney General, or any other person, company, organization, or association that is granted intervention in Case No. U-20561 under the Commission’s Rules of Practice and Procedure, Mich Admin Code, R 792.10401 et al.

D. “Receiving Party” means any Party to this proceeding who requests or receives access to Protected Material, subject to the requirement that each Reviewing Representative sign a Nondisclosure Certificate attached to this Protective Order as Attachment 1.

E. “Reviewing Representative” means a person who has signed a Nondisclosure Certificate and who is:

1. An attorney who has entered an appearance in this proceeding for a Receiving Party;
2. An attorney, paralegal, or other employee associated, for the purpose of this case, with an attorney described in Paragraph I.E.1;
3. An expert or employee of an expert retained by a Receiving Party to advise, prepare for, or testify in this proceeding; or
4. An employee or other representative of a Receiving Party with significant responsibility in this case.

A Reviewing Representative is responsible for assuring that persons under his or her supervision and control comply with this Protective Order.

F. “Nondisclosure Certificate” means the certificate attached to this Protective Order as Attachment 1, which is signed by a Reviewing Representative who has been granted access to Protected Material and agreed to be bound by the terms of this Protective Order.

II. Access to and Use of Protected Material

A. This Protective Order governs the use of all Protected Material that is marked as required by Paragraph III.A and made available for review by the Disclosing Party to any Receiving Party or Reviewing Representative. This Protective Order protects: (i) the Protected Material; (ii) any copy or reproduction of the Protected Material made by any person; and (iii) any memorandum, handwritten notes, or any other form of information that copies, contains, or discloses Protected Material. Access to Protected Material shall be limited to persons authorized to have access subject to the provisions of this Protective Order. All persons afforded access to Protected Material pursuant to this Order shall keep the Protected Material secure in accordance with the purposes and intent of this Order and shall adopt all reasonable precautions to assure continued confidentiality, including precautions against unauthorized copying, use, or disclosure thereof.

B. Protected Material shall be used and disclosed by the Receiving Party solely in accordance with the terms and conditions of this Protective Order. A Receiving Party may authorize access to, and use of, Protected Material by a Reviewing Representative identified by the Receiving Party, subject to Paragraphs III and V below, only as necessary to analyze the Protected Material; make or respond to discovery; present evidence; prepare testimony, argument, briefs, or other filings; prepare for cross-examination; consider strategy; and evaluate settlement. These individuals shall not release or disclose the content of Protected Material to any other person or use the information for any other purpose.

C. The Disclosing Party retains the right to object to any designated Reviewing Representative if the Disclosing Party has reason to believe that there is an unacceptable risk of misuse of confidential information. If a Disclosing Party objects to a Reviewing Representative, the Disclosing Party and the Receiving Party will attempt to reach an agreement to accommodate that Receiving Party's request to review Protected Material. If no agreement is reached, then either the Disclosing Party or the Receiving Party may submit the dispute to the presiding hearing officer. If the Disclosing Party notifies a Receiving Party of an objection to a Reviewing Representative, then the Protected Material shall not be provided to that Reviewing Representative until the objection is resolved by agreement or by the presiding hearing officer.

D. Before reviewing any Protected Material, including copies, reproductions, and copies of notes of Protected Material, a Receiving Party and Reviewing Representative shall sign a copy of the Nondisclosure Certificate (Attachment 1 to this Protective Order) agreeing to be bound by the terms of this Protective Order. The Reviewing Representative shall also provide a copy of the executed Nondisclosure Certificate to the Disclosing Party.

E. Even if no longer engaged in this proceeding, every person who has signed a Nondisclosure Certificate continues to be bound by the provisions of this Protective Order. The obligations under this Protective Order are not extinguished or nullified by entry of a final order in this case and are enforceable by the MPSC or a court of competent jurisdiction. To the extent Protected Material is not returned to a Disclosing Party, it remains subject to this Protective Order.

F. Members of the Commission, Commission staff assigned to assist the Commission with its deliberations, and the presiding hearing officer shall have access to all Protected Material that is submitted to the Commission under seal without the need to sign the Nondisclosure Certificate.

G. A Party retains the right to seek further restrictions on the dissemination of Protected Material to persons who have intervened or may subsequently seek to intervene in this MPSC proceeding. DTE Electric has expressly indicated that it intends to seek further restrictions or to object to any disclosure of information it characterizes as: i) Critical Energy Infrastructure Information (“CEII”), Supervisory Control and Data Acquisition (SCADA) information, technical data subject to U.S. export control laws and regulations, including but not limited to 10 C.F.R. Part 810 *et. seq.*, North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection (CIP) material and information, and information regarding Cyber Security; ii) individual DTE Energy employee compensation benefits or other personal information; iii) information supplied by a vendor of commercially-available market analyses and/or studies concerning employee compensation levels who demands protection from all means of disclosure; and iv) particularly sensitive commercial information regarding current contract negotiations and contract-re-negotiations.

H. Nothing in this Protective Order precludes a Party from asserting a timely evidentiary objection to the proposed admission of Protected Material into the evidentiary record for this case.

III. Procedures

A. The Disclosing Party shall mark any information that it considers confidential as “CONFIDENTIAL: SUBJECT TO THE PROTECTIVE ORDER ISSUED IN CASE NO. U-20561.” Software executable files containing protected material may not be capable of being marked with the foregoing required protective language. The inability to mark software executable files containing protected material with such protective language shall not diminish the requirements of this Protective Order. It shall be sufficient if the medium used to deliver software executable files containing protected information is marked with the required protective language.

However, any output from the software executable files containing protected material that is generated only as a reproducible document, whether electronic or non-electronic, that is capable of being marked with the required protective language, shall be marked by the party who generated the output with such protective language and subject to the requirements of this Protective Order. If the Receiving Party or a Reviewing Representative makes copies of any Protected Material, they shall conspicuously mark the copies as Protected Material. Notes of Protected Material shall also be conspicuously marked as Protected Material by the person making the notes.

B. If a Receiving Party wants to quote, refer to, or otherwise use Protected Material in pleadings, pre-filed testimony, exhibits, cross-examination, briefs, oral argument, comments, or in some other form in this proceeding (including administrative or judicial appeals), the Receiving Party shall do so consistent with procedures that will maintain the confidentiality of the Protected Material. For purposes of this Protective Order, the following procedures apply:

1. Written submissions using Protected Material shall be filed in a sealed record to be maintained by the MPSC's Docket Section, or by a court of competent jurisdiction, in envelopes clearly marked on the outside, "CONFIDENTIAL – SUBJECT TO THE PROTECTIVE ORDER ISSUED IN CASE NO. U-20561." Simultaneously, identical documents and materials, with the Protected Material redacted, shall be filed and disclosed the same way that evidence or briefs are usually filed;
2. Oral testimony, examination of witnesses, or argument about Protected Material shall be conducted on a separate record to be maintained by the MPSC's Docket Section or by a court of competent jurisdiction. These separate record proceedings shall be closed to all persons except those furnishing the Protected Material and persons otherwise subject to this Protective Order. The Receiving Party presenting the Protected Material during the course of the proceeding shall give the presiding officer or court sufficient notice to allow the presiding officer or court an opportunity to take measures to protect the confidentiality of the Protected Material; and
3. Copies of the documents filed with the MPSC which contain Protected Material, including the portions of the exhibits, transcripts, or briefs that refer to Protected Material, shall be marked or identified as, "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER IN CASE NO. U-20561" and shall be maintained in a separate portion of the record under seal, segregated in the files

of the Commission, and withheld from inspection by any person not bound by the terms of this Order.

C. The Protected Material subject to this Order shall be shielded from disclosure to the extent permitted by law. If any person files a Freedom of Information Act (“FOIA”) request with the Commission seeking access to documents subject to this Order, then the Commission’s Executive Secretary shall notify the Disclosing Party as soon as reasonably practicable and the Disclosing Party may take whatever legal actions it deems appropriate to protect the Protected Material from disclosure. In light of section 5 of the Freedom of Information Act, MCL 15.235, the notice must be given at least five (5) business days before the MPSC, its Staff, and/or the Michigan Attorney General grant the request in full or in part. In the event that the FOIA requester commences suit against the Commission to compel disclosure of a document for which privilege is claimed, the Commission shall promptly notify the Disclosing Party of the suit.

IV. Termination of Protected Status

A. A Receiving Party reserves the right to challenge whether a document or information is Protected Material and whether this information can be withheld under this Protective Order. In response to a motion, the Commission or the presiding hearing officer in this case may revoke a document’s protected status after notice and hearing. If the presiding hearing officer revokes a document’s protected status, then the document loses its protected status after 14 days unless a Party files an application for leave to appeal the ruling to the Commission within that time period. Any Party opposing the application for leave to appeal shall file an answer with the Commission no more than 14 days after the filing and service of the appeal. If an application is filed, then the information will continue to be protected from disclosure until either the time for appeal of the Commission’s final order resolving the issue has expired under MCL 462.26 or, if

the order is appealed, until judicial review is completed and the time to take further appeals has expired.

B. If a document's protected status is challenged under Paragraph IV.A, the Receiving Party challenging the protected status of the document shall explicitly state its reason for challenging the confidential designation. The Disclosing Party bears the burden of proving that the document should continue to be protected from disclosure.

V. Retention of Documents

Protected Material remains the property of the Disclosing Party and only remains available to the Receiving Party until the time expires for petitions for rehearing of a final MPSC order in Case No. U-20561 or until the MPSC has ruled on all petitions for rehearing in this case (if any). However, an attorney for a Receiving Party who has signed a Nondisclosure Certificate and who is representing the Receiving Party in an appeal from an MPSC final order in this case may retain copies of Protected Material until either the time for appeal of the Commission's final order resolving the issue has expired under MCL 462.26 or, if the order is appealed, until judicial review is completed and the time to take further appeals has expired. On or before the time specified by the preceding sentences, the Receiving Party shall return to the Disclosing Party all Protected Material in its possession or in the possession of its Reviewing Representatives-including all copies and notes of Protected Material-or certify in writing to the Disclosing Party that the Protected Material has been destroyed. Counsel for the requesting Party or Parties may maintain a single confidential file of Protected Material subject to all other provisions in this Order. If the Protected Material is relevant or reasonably calculated to lead to admissible evidence in a future Commission case, then it may be used subject to the issuing of a new protective order in that case. Counsel for the requesting Party or Parties shall have the right to retain copies of the pleadings,

orders, transcripts, briefs, comments, and exhibits in these proceedings, but this Order will continue in effect with respect to the Protected Material contained in these documents.

VI. Limitations and Disclosures

The provisions of this Protective Order do not apply to a particular document, or portion of a document, described in Paragraph II.A if a Receiving Party can demonstrate that it has been previously disclosed by the Disclosing Party on a non-confidential basis or meets the criteria set forth in Paragraphs I.B.1 through I.B.5. A Receiving Party intending to disclose information taken directly from materials identified as Protected Material must-before actually disclosing the information-do one of the following: (i) contact the Disclosing Party's counsel of record and obtain written permission to disclose the information, or (ii) challenge the confidential nature of the Protected Material and obtain a ruling under Paragraph IV that the information is not confidential and may be disclosed in or on the public record.

VII. Remedies

If a Receiving Party violates this Protective Order by improperly disclosing or using Protected Material, the Receiving Party shall take all necessary steps to remedy the improper disclosure or use. This includes promptly notifying the MPSC, the presiding hearing officer, and the Disclosing Party, in writing, of the identity of the person known or reasonably suspected to have obtained the Protected Material. A Party or person that violates this Protective Order remains subject to this paragraph regardless of whether the Disclosing Party could have discovered the violation earlier than it was discovered. This paragraph applies to both inadvertent and intentional violations. Nothing in this Protective Order limits the Disclosing Party's rights and

remedies, at law or in equity, against a Party or person using Protected Material in a manner not authorized by this Protective Order, including the right to obtain injunctive relief in a court of competent jurisdiction to prevent violations of this Protective Order.

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

Sharon L. Feldman
Administrative Law Judge

Issued and Served:
September 23, 2019

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) Case No. U-20561
distribution and supply of electric energy,)
and for miscellaneous accounting authority)
_____)

NONDISCLOSURE CERTIFICATE

By signing this Nondisclosure Certificate, I acknowledge that access to Protected Material is provided to me under the terms and restrictions of the Protective Order issued in Case No. U-20561, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by the terms of the Protective Order. I understand that the substance of the Protected Material (as defined in the Protective Order), any notes from Protected Material, or any other form of information that copies or discloses Protected Material, shall be maintained as confidential and shall not be disclosed to anyone other than in accordance with the Protective Order.

Reviewing Representative

Date: _____

Title: _____

Representing: _____

Printed Name

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

* * * * *

STATE OF MICHIGAN)
)
County of Ingham)
_____)

Case No. U-20561

PROOF OF SERVICE

Meaghan Dobie being duly sworn, deposes and says that on September 23, 2019, she served a copy of the attached Protective Order via email and/or first-class mail, to the persons as shown on the attached service list.

Meaghan Dobie

Subscribed and sworn to before me
this 23rd day of September 2019.



Brianna L. Brown
Notary Public, Clinton County
My Commission Expires July 4, 2021

**SERVICE LIST
CASE NO. U-20561**

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