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January 21, 2020

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
P.O. Box 30221
Lansing, MI 48909

Re: **MPSC Case No. U-20471**

Dear Ms. Felice:

Attached for electronic filing in the above-referenced matter, please find Energy Michigan, Inc.'s Replies to Exceptions and Proof of Service. If you have any questions, please feel free to contact my office.

Very truly yours,

VARNUM

Laura A. Chappelle

Laura A. Chappelle

LAC/sej
Enclosures
c. ALJ
All parties of record.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **DTE ELECTRIC COMPANY** for approval of its Integrated Resource Plan pursuant to MCL 460.6t, and for other relief.	)))))	**Case No. U-20471**

REPLY TO EXCEPTIONS

OF

ENERGY MICHIGAN, INC.

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Contents

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REPLY TO EXCEPTIONS OF ENERGY MICHIGAN, INC.

On December 23, 2019, the Administrative Law Judge ("ALJ"), Sally J. Wallace, issued a Proposal for Decision ("PFD") in this case. On January 9, 2020, Exceptions to the PFD were filed by DTE Electric Company ("DTE" or the "Company"); the Michigan Public Service Commission ("Commission" or "MPSC") Staff ("Staff"); the Attorney General; the Ecology Center ("EC"), the Environmental Law and Policy Center ("ELPC"), the Union of Concerned Scientists ("UCS"), and Vote Solar (collectively, "ELPC *et al.*"); Great Lakes Renewable Energy Association ("GLREA"); the Michigan Environmental Council, Natural Resources Defense Council, and Sierra Club ("MEC-NRDC-SC"); and Soulardarity.

Pursuant to Rule 435 of the Commission's Rules of Practice and Procedure before the Commission, R 792.10435, and in accordance with the schedule set in this proceeding, Energy Michigan submits these Replies to Exceptions to the PFD.

Energy Michigan's failure here to reply to Exceptions of any party does not signify an agreement with those Exceptions, nor a waiver of the positions Energy Michigan has taken in its testimony and briefing with respect to the issues raised in this proceeding.

I. REPLIES TO EXCEPTIONS

A. The PFD correctly found that parties, such as Energy Michigan, could appropriately respond to the CIL/ECIL issues raised by DTE in this IRP proceeding.

In its discussion of resource adequacy requirements and the current assumptions impacting those requirements made by the Midcontinent Independent System Operator ("MISO"), DTE raised significant concerns with MISO's capacity import limit ("CIL"), or what DTE refers to as the "Effective Capacity Import Limit" ("ECIL") for Zone 7.[1] Following an extensive background discussion of the CIL/ECIL, DTE concluded that Zone 7's ECIL is expected to be only 164 MW for Planning Year ("PY") 2019/20.[2] Given the limited CIL/ECIL under MISO's tariff, in DTE's opinion, "it would be unwise to plan on using imports external to Zone 7 to meet long-term resource adequacy needs."[3]

Energy Michigan responded to DTE's discussion and assessment of the CIL/ECIL with its own discussion of resource adequacy, testimony regarding why the CIL/ECIL is important to customers in the state, and a proposal to address inadequacies in MISO's CIL tariff.[4] Staff responded to Energy Michigan's testimony by stating, in part, that

> **This proceeding is specific to DTE's IRP and the MISO tariff issues are beyond the scope of DTE's IRP.** Staff supports further examination of the MISO resource adequacy tariff for errors and inconsistencies and believes the best place for that work is in conjunction with the work already being planned in response to the observations and recommendations of the Statewide Energy Assessment.[5]

[1] 4 Tr 793-793-794; 7 Tr 2953; 4 Tr 807-811.

[2] 4 Tr 793.

[3] 4 Tr 807.

[4] 7 Tr 2910-2922.

[5] Initial Brief of MPSC Staff, p. 61 (emphasis added).

The PFD agreed with Staff only in part, finding that, "While this proceeding is specific to DTE's IRP, the company justified its limited transmission evaluation on the basis of its concerns about the CIL and ECIL. These are the very issues that Energy Michigan addresses in its proposal."[6] The PFD does acknowledge that "the Commission has already signaled its intent to evaluate capacity import in the SEA final report."[7] To that end, the PFD "recommends that the Commission take up Energy Michigan's proposal as part of its examination of improvements to resource adequacy requirements as outlined in the SEA ["Statewide Energy Assessment]."[8]

Staff takes exception to the PFD's finding that the MISO projection of CIL and the ITC Transmission Report should have trigged a more granular transmission analysis by DTE. In part, Staff points out that MCL 460.6t(6) allows for alternative proposals to be submitted by third-parties for purposes of evaluation. Staff then claims that no party submitted any alternative proposals, stating that, "significantly, no alternative proposals were submitted during the course of this IRP."[9]

It is hard to reconcile Staff's initial rejection of Energy Michigan's comments on DTE's CIL/ECIL analysis and proposal for rectifying deficiencies with MISO's CIL tariff, with Staff's exceptions that claim that no party offered any alternative to the CIL/ECIL issues. On the other hand, the PFD spends considerable time referencing Energy Michigan's CIL/ECIL analysis and concerns, and notes that, "Energy Michigan provides an interesting proposal for addressing the ECIL (*i.e.*, the usable portion of the CIL) through modifying the MISO Module E-1 tariff."[10]

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[6] PFD, p. 177.

[7] PFD, p. 178.

[8] PFD, p. 179.

[9] MPSC Staff Exceptions, p. 16.

[10] PFD, p. 175.

While Energy Michigan does, indeed, appreciate the Commission's leadership identifying the CIL issue in the SEA, and more recently, announcing that it will hold stakeholder meetings on the issue (a recommendation also made by Energy Michigan in this proceeding[11]), the Commission should affirmatively support the PFD's recommendations regarding the CIL/ECIL issue, especially the finding that Staff erred in asserting that parties should not have commented on the CIL/ECIL in this IRP proceeding the first place.

B. The PFD's findings that DTE's EWR analysis suffered multiple and significant flaws should be upheld. Staff's and MEC-NRDC-SC's recommendations for a proactive response by the Commission to address this IRP should be accepted.

The PFD found numerous errors and deficiencies with DTE's Energy Waste Reduction ("EWR") program, including MEC-NRDC-SC's position that the Company "should have incorporated long-term benefits in an end effects assessment of EWR," and that "failure to do so results in an understated benefit-cost ratio for EWR."[12] As MEC-NRDC-SC noted, "The PFD recognized that EWR costs are significantly front-loaded, while benefits accrue over 10 to 20 years, and thus 'failure to include end effects results in bias against EWR investments.'[13] While agreeing with the PFD's findings in this regard, both Staff and MEC-NRDC-SC request that the Commission address these failings in this IRP, not deferred to DTE's next IRP filing, which the ALJ recommends to be within 24-30 months.

[11] See Initial Brief of Energy Michigan, pp. 13-17.

[12] PFD, p. 147.

[13] Exceptions of MEC-NRDC-SC, p. 3., citing PFD, pp. 146-147; MEC-NRDC-SC Initial Brief, pp. 113-117.

Energy Michigan fully supports Staff's and MEC-NRDC-SC's recommendation that a 2% EWR savings level is more reasonable and cost-effective than DTE's proposed 1.75% EWR level,[14] and that this and other specified corrections to DTE's EWR program should be corrected in this IRP proceeding.

C. The PFD Correctly Concluded That DTE Erred in Failing to Issue an RFP Before Filing its IRP.

In her PFD, the ALJ noted that at least some of the lost capacity from DTE's planned retirement of its Tier 2 coal units between 2019 and 2022 "will be replaced by the renewables included in the first few years of this IRP."[15] MCL 460.6t(6) requires that, "[b]efore filing an integrated resource plan under this section, each electric utility whose rates are regulated by the commission shall issue a request for proposals to provide any new supply-side generation capacity resources needed to serve the utility's reasonably projected electric load, applicable planning reserve margin, and local clearing requirement for its customers in this state ... during the initial 3-year planning period to be considered in each integrated resource plan to be filed under this section." DTE admits in its Exceptions that it "will be bringing a few new resources online in the first three years of the IRP."[16] But DTE attempts to argue that these resources somehow do not count because they are being used to satisfy the utility's obligations under PA 295 (Renewable Portfolio Standard or RPS), or PA 342 (Voluntary Green Pricing or VGP), and so are not designed to fill a capacity need for PURPA purposes. There are two problems with this position.

[14] Exceptions of MEC-NRDC-SC, p. 4.

[15] PFD, p. 104.

[16] DTE Exceptions, p. 6.

First, there is no reason to believe that when Section 6t(6) speaks of "load" it is speaking of PURPA capacity. The term "load" is not defined in the statute. Nothing in Section 6t(6) indicates that it is meant to be synonymous with a capacity need for PURPA purposes. Customers who seek renewable energy from the utility, whether through the PA 295 program or through the Voluntary Green Pricing program, certainly represent "load." The utility is adding resources to meet that projected load, and so those resources should have been subject to an RFP, as the ALJ correctly noted.

Second, it is not even clear that the VGP and RPS resources that DTE is planning to add are not "capacity" resources in a traditional PURPA sense. DTE argues that the Commission determined in Case No. U-18091 that "RPS assets that are built for non-capacity reasons cannot be considered as evidencing a need for capacity."[17] Energy Michigan believes that DTE is over reading the Commission's statement in its U-18091 Order. What the Commission actually said was: "The electric provider shall meet the REC standards by generating electricity from renewable energy systems or purchasing or acquiring RECs with or without the associated renewable energy. MCL 460.1028(3). Thus, the RPS compliance requirement is not designed to fill a capacity need because an electric provider is not limited to generating the renewable energy needed." The Commission did not say that assets built to meet RPS requirements cannot be considered as evidence of a capacity need. The Commission merely noted that the RPS compliance requirement was not designed to meet a capacity need and that one way of meeting it (i.e., purchasing of RECs) would not address capacity at all. That does not mean that the Commission cannot consider the utility's choice to build a generating unit as evidence of its response to a capacity need, especially when, as here, we see that these units that are supposedly

[17] *Id.*

"non-capacity" units are suddenly being used to plug capacity shortfalls that would otherwise occur when the utility retires other generation. In short, when a "non-capacity" unit can suddenly change its spots and be relied on by the utility for its capacity, then, to borrow a phrase from the Commission's Order in U-18419, as cited by the ALJ, "this may result in sanctioned discrimination by the utility against PURPA qualifying facilities and fully undermine PURPA's intent,"[18] unless they are considered capacity resources and fairly weighed as such. For these reasons, Energy Michigan supports the ALJ's determination that DTE was required by MCL 460.6t(6) to file an RFP before it filed its IRP, and that in failing to do so it violated the statute. DTE's and Staff's objections to the contrary are based on reading the statute as if "load" were just another word for "PURPA capacity" and as if DTE did not have a capacity need which, as is addressed below, it does. Their objections, therefore, can be dismissed.

D. Energy Michigan Disagrees with DTE and Staff That DTE Does not Have a Capacity Need.

In the PFD, the ALJ found that DTE does have a capacity need in the next five years. DTE and the Staff both have taken exception to that finding. DTE declined to count certain new RPS- and VGP-related generation assets as capacity resources in its starting point, but, as the ALJ pointed out, later relies on those assets to fill capacity needs. DTE can only claim to have no capacity need if one accepts the premise that these assets can change their spots – that they can switch from being “non-capacity” assets to being able to be relied on by the utility for capacity purposes – at DTE’s whim. This is a classic example of a vertically integrated utility weaponizing its control of the planning process to prevent unwanted third parties from

[18] PFD, p. 134.

competing with it. In short, this situation is exactly what PURPA was designed to prevent from happening.

As ELPC notes in its filed Exceptions, which Energy Michigan supports, "DTE has repeatedly thumbed its nose at federal PURPA law, and by extension at the Commission's implementation of that law.[] The Company established a pattern of 'forecast a capacity need, develop a plan to address the need with company-owned resources, and then declare that there is no capacity need.' (PFD at 134) This IRP case is one more cycle in that pattern."[19] Energy Michigan agrees with ELPC that further delay of the Commission's determination of DTE's capacity need will enable DTE to avoid development of the 1,429 MW of potential QF projects in its interconnection queue, increasing the likelihood that DTE will ultimately build another gas-fired power plant instead of renewable generation, as GLREA warns. Furthermore, the Energy Michigan agrees with ELPC and GLREA in advocating that the Commission use witness Jester's testimony on DTE's capacity need to establish and quantify shortfalls for the next five years.

II. CONCLUSION

WHEREFORE, Energy Michigan hereby respectfully requests that the Commission:

A. Accept the PFD's finding that Energy Michigan correctly commented upon, and supplemented the record with responsive material regarding, the CIL/EICL as presented in DTE's IRP;

B. Accept the PFD's findings and conclusions regarding the deficiencies with DTE's EWR program, and accept Staff's and MEC-NRDC-SC's recommendations for more clarity surrounding the timing of those corrections and the level of savings realized for DTE's EWR;

C. Accept the PFD's finding that DTE erred in failing to issue an RFP before filing its IRP;

[19] ELPC exceptions, p. 3.

D. Accept the PFD's finding that DTE does have a capacity need, and further, accept witness Jester's calculation of the amount of that capacity need; and

E. Grant such other relief as the Commission may find appropriate.

Respectfully submitted,

Varnum LLP
Attorneys for Energy Michigan, Inc.

January 21, 2020

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Sarah E. Jackinchuk, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at Varnum LLP and that on the 21st day of January, 2020 stating she served a copy of Energy Michigan, Inc.'s Replies to Exceptions, and this Proof of Service upon those individuals listed on the attached Service List via email.

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Sarah E. Jackinchuk

MPSC Case No. U-20471

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