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March 26, 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-20561**

Dear Ms. Felice:

Attached for electronic filing is the Joint Exception of Energy Michigan, Inc. and The Foundry Association of Michigan, and Proof of Service in the above-referenced matter. If you have any questions, please feel free to contact my office.

Very truly yours,
VARNUM

Timothy J. Lundgren

TJL/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 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

JOINT EXCEPTIONS

OF

**THE FOUNDRY ASSOCIATION OF MICHIGAN
AND
ENERGY MICHIGAN, INC.**

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**JOINT EXCEPTIONS OF THE FOUNDRY ASSOCIATION OF MICHIGAN AND
ENERGY MICHIGAN, INC.**

On March 5, 2020, the Administrative Law Judge (“ALJ”), Sharon L. Feldman, issued a Proposal for Decision (“PFD”) in this case.

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, the Foundry Association of Michigan (“Foundry Association”) and Energy Michigan, Inc. (“Energy Michigan”) jointly submit these Exceptions to the PFD.

The Foundry Association’s and Energy Michigan’s failure here to address any issue discussed in the PFD does not signify an agreement with the PFD’s recommendation on that issue, nor should it be construed as a waiver of the positions either party has taken in its testimony and briefing with respect to the issues raised in this proceeding.

I. EXCEPTIONS

Although the following two items discussed in these Exceptions take the procedural form of exceptions to the recommendations of the PFD, the Foundry Association and Energy Michigan broadly agree with the PFD on these two matters and do not seek to overturn what the

ALJ has recommended. Rather, the Foundry Association and Energy Michigan seek to register concerns as to how the ALJ's findings should be implemented.

A. While the PFD Correctly Found That DTE Erred When it Allocated Property Taxes in Determining the Customer Charge, the Commission Should Further Clarify That the Correct Customer Charges Will be Factored in to the Final Rate Designs for Distribution Energy Charges for Rate Classes R1.1 and R1.2.

In her PFD, the ALJ stated as follows:

Citing Mr. Zakem's testimony, the Foundry Association of Michigan argued that DTE's proposed service charge increases were unjustifiably high for subtransmission and transmission voltage customers. Staff addressed these concerns in its reply brief, explaining that DTE did not initially follow Staff's method, and as noted above, Staff's recommended customer charges for subtransmission and transmission voltage customers are the same charges approved in Case No. U-20162:

Staff's customer charge method, which is the same method used by Staff in DTE's last three cases, uses principles that apply to all customer classes, not just residential and commercial secondary. Exhibit S-6, Schedule F-1.4 details the steps in the calculation and produces customer charges for residential, commercial secondary, primary, sub-transmission and transmission customers.

In its continued debate against the Company's customer charges and the method used, the Foundry Association of Michigan and Energy Michigan fail to recognize Staff's revelation that the "Staff method" used by the Company is not actually the method used by Staff in this case or in previous cases. (9 TR 3249.) They also ignore the Company's admission to the same and subsequent recommendation in its rebuttal testimony to adopt Staff's proposed customer charges for primary, sub trans and transmission customers. (7 TR 2047-2048.)903

As Staff argues, Staff's rate design is cost-based and appears to resolve the dispute.

PFD at 402–03 (internal citation omitted). Furthermore, the ALJ noted,

There are no significant disputes between the parties regarding commercial and industrial rate design DTE and Staff now agree the currently approved customer charges for sub-transmission and transmission customers should be retained and the customer charge for primary customers should be increased to \$70.

PFD at 402.

Even though the above findings track the positions taken by the Foundry Association and Energy Michigan in their testimony and briefing, they do not explicitly recognize the potential complexity in correcting the error identified. As explained by DTE’s witness Bloch in his direct testimony,¹ and by the Foundry Association’s witness Zakem,² rates R1.1 and R1.2 do not pay a separate customer charge. Rather, for these rate classes, the customer charge is included in the distribution energy charges for each voltage level. Because of this layer of complexity, DTE might not, as a practical matter, apply the corrections to the customer charge recommended in the PFD to the distribution energy charges for the R1.1 and R1.2 rate classes without being directed to give particular attention to them. There is, in other words, a risk that the utility might otherwise simply overlook them. Therefore, the Commission should ensure that, after its final order in this proceeding, the proper and correct customer charges are factored in to the final rate designs for distribution energy charges for R1.1 and R1.2 customers.

B. The PFD Correctly Concluded That the D8 Tariff is “Insufficiently Clear” and Correctly Recommended That DTE Work With Stakeholders to “Improve the Clarity” of the Language of its D8 Tariff, but Unnecessarily Recommends Delaying Correction Until the Next Rate Case.

In his direct testimony, Foundry Association witness Zakem recommended that the “Capacity Deficiency” provision in the D8 tariff be deleted, leaving “System Integrity” as the only basis for an interruption order. See 9 Tr 2770. In rebuttal, DTE’s witness Bloch suggested that

Witness Zakem’s recommendation conflates the operational requirements to interrupt load under a system integrity order with a pricing provision that does not

¹ 8 Tr 2288.

² 9 Tr 2758–59.

require interruption. Under a system integrity interruption order (System Integrity) a customer is required to interrupt load. System integrity interruption orders are initiated by either MISO during capacity or transmission emergencies, or DTE Electric during distribution emergencies (which the Company's proposed interruptible tariff and Rule C3 Emergency Electrical Procedures changes fully address). The D8 capacity deficiency provision is a pricing provision that permits a customer to choose to pay higher hourly energy rates under certain market and operating conditions, or avoid paying the higher energy rates by reducing or interrupting their load, at their discretion. This D8 pricing provision, commonly referred to as the "buy-through provision", is economic in nature and not intended for, nor used as, an operational tool as the Company has no rights under this provision to require a customer to interrupt load. Witness Zakem's recommendation to delete this provision is based on operational considerations that are simply not related to this pricing provision. This provision operates in a similar manner as time of day rates or market-based rates where the customer receives notification of higher energy prices and can choose to pay the higher rates (buy-through) or choose to reduce or interrupt their load.

8 Tr 2296-97.

However, as explained by the Foundry Association and Energy Michigan in their Joint Initial Brief, DTE's objections were "puzzling," since "DTE claim[ed] not to consider D8 to be interruptible for 'capacity deficiency' despite the title and the wording of the tariff." Foundry Association and Energy Michigan Initial Joint Brief ("Joint Brief") at 4. In other words, "Mr. Bloch assert[ed] that the customers on D8 cannot be ordered to actually interrupt for a capacity deficiency, but rather that a 'capacity deficiency' interruption is only a notice that the customer is moving to a different pricing mechanism." *Id.* To the contrary, however, the Foundry Association and Energy Michigan pointed out that this testimony was "in direct conflict with the terms of the tariff that DTE . . . put into evidence," which stated plainly that

All interruptible load served hereunder shall be subject to curtailment **on order of the Company**. Customers may **be ordered to interrupt** only when the Company finds it necessary to do so either to maintain system integrity **or when the existence of such loads shall lead to a capacity deficiency** by the utility. . . . **A Capacity Deficiency Interruption Order may be given by the Company** when the Company's available ~~system~~ generation assets are insufficient to meet the Company's anticipated full service system load.

DTE Exhibit A-16, Schedule F8, Sheet No. D-40.00 (emphasis added).

The basic problem, according to the Joint Brief, was a “lack of clarity.” The ALJ recognized this, stating that

[t]his PFD agrees with the Foundry Association that the tariff language is insufficiently clear regarding a declaration of a capacity deficiency. For example, Exhibit A-16, Schedule F8, Proposed Sixth Revised Sheet No. D-40.00 states: “Customers may be ordered to interrupt only when the Company finds it necessary to do so either to maintain system integrity or when the existence of such loads shall lead to a capacity deficiency by the utility.” **This language is more than a mere pricing provision.** Additionally, to achieve DTE’s stated goal, what causes DTE to declare a capacity deficiency should at a minimum be tethered to a reasonable belief that it will be obligated to pay more than the energy rate under the tariff. DTE should work with stakeholders to improve the clarity of this language for reconsideration in its next rate case.

PFD at 439.

The Foundry Association and Energy Michigan welcome the PFD’s recommendation but see no reason why the revisions to the D8 tariff should be delayed until the *next* rate case. There is no obvious impediment to implementing the changes in *this* rate case, similar to how a utility submits its final tariff sheets in accordance with the Commission’s decisions in the final order.

To that end, the Foundry Association and Energy Michigan request that the Commission order that DTE file clarifications to the D8 tariff making it consistent with the company's testimony and clearly separating the two types of interruptions so that customers will have clear notice when an interruption is optional for pricing purposes and when it is ordered for system integrity purposes.

II. CONCLUSION

WHEREFORE, the Foundry Association and Energy Michigan hereby respectfully request that the Commission:

A. Accept the PFD's finding that DTE erred when it allocated property taxes in determining the customer charge, but that the Commission clarify that the proper and correct customer charges must be factored in to the final rate designs for distribution energy charges for rate classes R1.1 and R1.2 as indicated herein;

B. Accept the PFD's findings and conclusions regarding the need for clarification of the D8 tariff language, but rather than delay revisions until the next rate case, order DTE to make such revisions now; and

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

Respectfully submitted,

Varnum LLP
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The Foundry Association of Michigan

March 26, 2020

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STATE OF MICHIGAN
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Case No. U-20561

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 26th day of March, 2020 she served a copy of Energy Michigan, Inc. and The Foundry Association of Michigan's Joint Exceptions served upon those individuals listed on the attached Service List via email.

Sarah E. Jackinchuk

MPSC Case No. U-20561

Administrative Law Judge

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