



April 28, 2021

Re: Comment Re. U-20633 – Incorporating Environmental Justice Considerations in Future IRP Cases

To the Michigan Public Service Commission:

On September 23, 2020, Governor Whitmer issued Executive Directive 2020-10 which directed the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”) to include considerations of environmental justice and health impacts in its environmental advisory opinion filed with the Michigan Public Service Commission in the Integrated Resource Process (“IRP”) process. In addition to Executive Directive 2020-10, the Commission itself has acknowledged the need for future IRP proceedings to include public health and environmental justice considerations.<sup>1</sup>

To guide the Commission as to how it may incorporate public health and environmental justice considerations into the IRP process, the Commission directed its Staff to coordinate with EGLE on how this may be achieved and to provide a status update and related recommendations in a report to be delivered on May 27, 2021.

These comments are being provided on behalf of the people and organizations provided below (collectively, “Commenters”) to help inform the Commission and its Staff how to best incorporate public health and environmental justice considerations into the IRP process to ensure that the long-term planning done by utilities will further the goal of providing affordable and reliable electricity to its customers in an equitable manner. These comments have also incorporated research from the Michigan Environmental Justice Coalition; Tony Reames, PhD, PE, University of Michigan School for Environment and Sustainability; Carina Grounlund, PhD, MPH, University of Michigan School of Public Health, and; Amy Schultz, PhD, MPH, University of Michigan School of Public Health. In short, the commenters provide the following recommendations:

- 1.) Require utilities to collect race, income, and geographical-based information regarding billing as well as the implementation and marketing of key utility programs in order to identify race and income-based inequities in utility operations.**

In order to promote environmental justice through Integrated Resource Planning, it is necessary to first identify how racial and economic inequity manifests itself in utility operations. The need for more robust data collection has been recognized by the National Association of Regulatory Utility Commissioners. Without race and income based data regarding energy burdens and the marketing and implementation of

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<sup>1</sup> February 20, 2020 order in Case No. U-20471, p. 46.

utility programs, neither utilities nor the Commission will be able to meaningfully further environmental justice.

- 2.) Require utilities to identify environmental justice communities in their service territory and to describe how they are minimizing environmental risks and promoting equitable access to the utility's services and programs in such communities.**

Once inequities are identified, the Commission should require utilities to describe what they are doing to address those inequities through its Integrated Resource Plan. The Michigan Public Service Commission should follow the lead of the California Public Service Commission which has required utilities to identify environmental justice communities and describe how their operations and programs will impact such communities.

- 3.) Address the inequitable siting of fossil-fuel generation resources in communities of color by requiring utilities to establish an affirmative defense under the Michigan Environmental Protection Act for any proposal to develop new fossil-fuel resources or to re-contract with existing fossil-fuel resources.**

DTE's fossil-fuel generation resources are disproportionately located in communities of color. Specifically, a demographic analysis of the people living within three miles of every DTE fossil-fuel generation resource identified in its first Integrated Resource Plan performed by the Great Lakes Environmental Law Center utilizing the EPA's EJSCREEN tool revealed the following:

- Approximately 119,500 people live within three miles of a DTE coal-fired generation resources and 38% are people of color;
- Approximately 270,500 people live within three miles of a DTE gas-fired generation resource and 54% are people of color.

Given that 25% of all Michiganders are people of color, fossil-fuel generation resources are clearly disproportionately sited in communities of color. Further, this disparity is significantly worse for gas-fired generation resources. Once again, the Michigan Public Service Commission should follow California's lead by acknowledging the clear disparity regarding the siting of fossil-fuel generation resources in communities of color and require utilities to establish an affirmative defense under the Michigan Environmental Protection Act for fossil-fuel resources.

- 4.) Require utilities to conduct a Health Impact Assessment for each model run required by the Michigan Public Service Commission and each scenario or pathway proposed by the utility.**

Electric utilities are significant sources of environmental risks. In order to determine whether an Integrated Resource Plan provides for the most reasonable and prudent means for meeting the electricity needs of its customers it must assess the health impacts associated with its plan. These assessments should quantify the health impacts associated with the environmental risks that will impact residents.

Thank you for the opportunity to provide comments on this important issue. Please do not hesitate to contact me if you have any additional concerns or questions.

Sincerely,

*/s/Nicholas Leonard*

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- Earthjustice
- Ecology Center
- Empower Michigan
- MI Air MI Health
- Michigan Environmental Council
- Michigan Environmental Justice Coalition
- Michigan Interfaith Power and Light
- Natural Resources Defense Council
- Original United Citizens of Southwest Detroit
- Sierra Club
- Soulardarity
- Southwest Detroit Community Benefits Coalition
- We the People of Michigan
- We Want Green Too

## I. Race and the Environment

As noted by historian Thomas Sugrue, “[t]o a great extent in postwar America, geography is destiny.”<sup>2</sup> This is particularly true when it comes to the intersection of race, housing, and environmental justice. America’s history of housing segregation has enabled the proliferation of an inequitable distribution of environmental risk and a lack of equitable access to natural resources.

### A. History of Housing Discrimination

Since rising in the national consciousness in the 1980’s, the environmental justice movement has steadily revealed a persistent pattern of communities of color being subjected to discriminatory treatment as it relates to the distribution of both environmental risk and access to natural resources. Relating to environmental risk, environmental justice research has steadily demonstrated that people of color commonly bear a disproportionately large share of environmental risks. These risks are multifaceted and numerous, and include commercial hazardous waste facilities being disproportionately sited in Black communities<sup>3</sup> to communities of color experiencing disproportionately high levels of a variety of air pollutants compared to White communities.<sup>4</sup> Relating to natural resources, environmental justice research has demonstrated that people of color commonly lack access to natural resources and the benefits that they provide in a number of contexts. For example, parks and green spaces are disproportionately sited in White communities compared to communities of color.<sup>5</sup> To put it simply, the inequities experienced by people of color regarding environmental risks and access to natural resources and their beneficial byproducts is pervasive and systemic.

These inequities did not occur by accident. Instead, they are a direct result of decades of intentional, racially biased policy decisions at the local, state and federal levels. In particular, housing policy has had a profound impact on environmental justice. At the federal level, housing policy directly contributed to racial segregation by redlining communities of color to exclude such areas from receiving mortgages backed by the Federal Housing Administration (FHA). Prior to the FHA, homeownership was inaccessible for most Americans. Banks commonly required 50% down payments, interest-only

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<sup>2</sup> Thomas Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Post-War Detroit*, Princeton University Press (Apr. 1996)

<sup>3</sup> Bullard, Mohai, Saha, and Wright, *Toxic Wastes and Race at Twenty 1987-2007: A Report Prepared for the United Church of Christ Justice & Witness Ministries*, March 2007, available at <https://www.nrdc.org/sites/default/files/toxic-wastes-and-race-at-twenty-1987-2007.pdf>

<sup>4</sup> See, Tessum, et al., *Inequity in consumption of goods and services adds to racial-ethnic disparities in air pollution exposure*, *Proceedings of the National Academy of Sciences of the United States of America* (Mar. 11, 2019), available at <https://www.pnas.org/content/116/13/6001>

<sup>5</sup> Shivani Shukla, *Racial Disparities in Access to Public Green Space*, *Chicago Policy Review* (Sept. 23, 2020), available at <https://chicagopolicyreview.org/2020/09/23/racial-disparity-in-access-to-public-green-space/>

payments, and repayment in full after five to seven years.<sup>6</sup> By comparison, FHA-backed mortgages were amortized and had longer repayment terms.<sup>7</sup> In effect, the FHA made ownership possible for many Americans; many, but not all. In a 1939 report, Homer Hoyt, the Federal Housing Administration's principal housing economist stated that racial segregation in housing was a "sound public and private housing and home financing policy" because "where members of different races live together...racial mixtures tend to have a depressing effect on land values."<sup>8</sup> More concretely, the FHA's underwriting manual, which was used to determine which mortgages the FHA could insure, systematically required underwriters to give low ratings to communities of color. The FHA's underwriting manual gave high ratings if a neighborhood was protected against "adverse influences," including the "infiltration of inharmonious racial or nationality groups."<sup>9</sup> It also expressly discouraged banks from making loans in urban neighborhoods stating that "older properties...have a tendency to accelerate the rate of transition to lower class occupancy."<sup>10</sup> In short, people of color were locked out of affordable, federally-insured mortgages. The federal government redlined black and integrated communities for the purpose of excluding such communities from receiving financing that could have been used to improve the quality of housing stock.

In addition to blocking communities of color from obtaining affordable, federally-insured mortgages, the FHA also blocked people of color from obtaining homes in subsidized housing developments built in partnership with the Department of Veteran Affairs for returning World War II veterans. In subsidized housing developments, veterans could obtain homes for very low prices with no down payment.<sup>11</sup> However, such homes were not available for everyone. In order to be eligible for FHA financing, private developers had to commit to excluding people of color from their developments.<sup>12</sup>

The expressly discriminatory practices of the FHA had both immediate and long-term negative cascading effects. In the near-term, people of color were forced into densely populated urban neighborhoods, and formerly integrated neighborhoods became starkly segregated. Detroit provides a common example of how Black residents migrating from the South to the North during the Great Migration were commonly funneled into specific Black neighborhoods. The most commonly used tool at the time were racially-restrictive covenants in real estate deeds. As a result of these covenants, it has been estimated that in 1947, while there were 545,000 housing units available in Detroit, only 47,000 - approximately 8.5% - were available to Blacks.<sup>13</sup> Restricted to residing in specific neighborhoods, Black residents often took drastic measures to house the influx of residents during the Great Migration, such as overcrowding apartment units and converting all types of buildings into housing units. For example, in 1943, eighteen Black

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<sup>6</sup> Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America*, Liveright, at 63 (May 2017).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 93.

<sup>9</sup> *Id.* at 65.

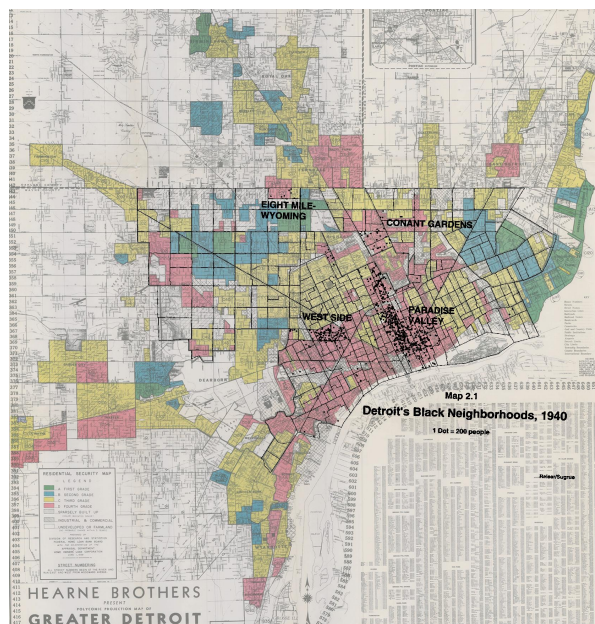
<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 70.

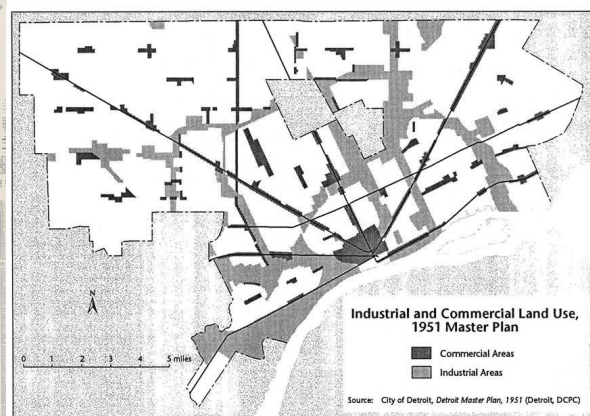
<sup>12</sup> *Id.* at 71.

<sup>13</sup> Sugrue at 44.

families lived in a former church that had been converted into an apartment building.<sup>14</sup> This overcrowding quickly led to dilapidated housing conditions. Since the area was redlined by the federal government, obtaining an affordable, federally-insured mortgage to improve the quality of housing was impossible for residents. Rather than lend assistance, local governments often used the dilapidated conditions as justification for “slum clearance.” While there were many methods of slum clearance, one common method was to target overcrowded and dilapidated Black neighborhoods for industrial development. For example, in 1951 Detroit established industrial corridors in its Master Plan and proposed the condemnation and demolition of substandard residential structures in such areas. The proposed industrial areas closely matched the areas of Detroit that had been redlined by the federal government. (See Figures 1 and 2, below.)



*Figure 1 – Residential Security Map  
Home Loan Bank Board  
by 1940 Mapped and Commercial Areas  
Locations of Detroit’s Black Neighborhoods*



*Figure 2 – Map from the City of Detroit’s By the Federal  
1951 Master Plan Proposing Industrial (1939) Superimposed*

In the long-term, by excluding Black residents from obtaining federally-insured mortgages and from federally-subsidized housing developments, the federal government excluded such residents from the greatest wealth building subsidy of the 20<sup>th</sup> century for low and middle class Americans. Homes that were built by private developers with federal backing were often sold at very affordable prices, often for about \$8,000– which is equivalent to \$75,000 in current dollars – with no down payment required. These same homes are now often worth \$350,000 today.<sup>15</sup> Unable to obtain federally-insured mortgages or

<sup>14</sup> *Id.* at 42.

<sup>15</sup> *Id.* at 182.

federally subsidized housing, many Black residents turned to rent-to-own contracts, which required the buyer to make inflated payments in full before acquiring any equity in the property. If any payment was missed, the owner could commonly terminate the contract, keep all previous payments, and take back the property. Later in the 20<sup>th</sup> century, Black neighborhoods were subjected to “reverse redlining” where residents would be subjected to excessive marketing for exploitative subprime mortgages.<sup>16</sup> These mortgages commonly had high closing costs, high interest rates, and negative amortization.<sup>17</sup> Reverse redlining was a widespread practice throughout the late 20<sup>th</sup> century and was largely based on race rather than income.<sup>18</sup> By 2006, Black mortgage recipients had subprime loans at three times the rate of white borrowers despite most Black mortgage recipients being eligible for conventional financing.<sup>19</sup> In 2010, the Justice Department noted that “[t]he more segregated a community of color is, the more likely it is that homeowners will face foreclosure because lenders who peddled the most toxic loans targeted those communities.”<sup>20</sup> Discriminatorily targeted for subprime loans, communities of color were particularly devastated by the burst of the housing bubble and the mortgage foreclosure crisis.

In short, white families were able to drastically reduce both the amount they were paying for housing and were able to freely participate in the heavily subsidized real estate market which allowed them to acquire real estate assets that would greatly appreciate in value in the coming decades.

As a result of discrimination in federal housing policy, the wealth gap for Blacks continues to be far greater than the income gap. Specifically, while the median family income for Blacks is about 60% of that for whites, the median net worth of Black households is only 10% of that for white households.<sup>21</sup> This disparity between the income gap and the wealth gap is largely attributable to the discriminatory federal housing policy that locked people of color into crowded and deteriorating urban neighborhoods and made affordable loans unavailable in their neighborhoods.

Furthermore, discrimination in federal housing policy segregated, or exacerbated existing segregation, in areas which were previously more integrated. Thus, federal housing policies created both a geographic landscape in which environmental burdens could be isolated to people of color communities and an economic landscape in which people of color were not only deprived of opportunities for wealth-building but subjected to viciously extractive housing markets.

#### B. Race and Energy Utilities

Energy utilities are key actors for both the distribution of environmental risks and access to natural resources. Regarding environmental risks, energy utilities are a main source of both local toxic emissions and greenhouse gas pollution. Regarding access to natural resources, energy utilities rely on a variety of

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<sup>16</sup> Rothstein, at 110.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 111.

<sup>21</sup> *Id.* at 184.



renewable and non-renewable natural resources to provide electric and heating services that are basic necessities for every household. **The key question is whether the environmental risks created by energy utilities and the services it provides are equitably distributed on the basis of race.**

i. Equity and the Environmental Risks Created by Energy Utilities

Answering this question, particularly in regards to environmental risks, is made complicated by the significant impacts commonly caused by fossil-fuel generation resources upstream of the power plant itself. For example, fossil-fuel generation resources commonly rely on one of two types of fuel: coal or natural gas. Both of these natural resources must be extracted from the earth, processed for use, and then transported long distances to be burned at a power plant.<sup>22</sup> The environmental risks associated with fossil-fuel fired power plants reach far beyond the plant itself. However, the upstream environmental risks and the environmental justice implications are often ignored in energy planning and decision-making.<sup>23</sup>

The operation of energy utilities generates a number of environmental risks that may impact public health. In many urban areas, one of the most prominent forms of environmental risk associated with energy utilities is air pollution, particularly from fossil fuel- fired power generation resources. These facilities generate both local air pollutants (specifically, criteria and toxic air pollutants), as well as greenhouse gases, which further exacerbate climate change.

Local Air Pollution

Air pollution, including particulate matter less than 2.5 micrometers in aerodynamic diameter (PM<sub>2.5</sub>), nitrogen dioxide (NO<sub>2</sub>), and sulfur dioxide (SO<sub>2</sub>), cause adverse human health effects. These health effects include premature mortality from respiratory or cardiac disease or lung cancer, asthma exacerbations, myocardial infarctions, hospitalizations, and emergency department visits. In turn, these health effects result in missed days of work and school. Each of these pollutants are emitted by fossil fuel-fired power plants.

In general, fossil fuel power plants are disproportionately sited in low-income communities of color. In a 2013 nationwide study of 378 coal-fired power plants, it found that the people who live within three miles of a coal-fired power plant had an average per capita income of \$18,400, compared to the U.S. average of \$21,587, and that 39% were people of color.<sup>24</sup> This problem has historically been more acute regarding DTE's coal-fired power plants; of the roughly 119,500 people living within three miles of DTE's coal

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<sup>22</sup> Noel Healy, Jennie C. Stephens, Stephanie A. Malin, Embodied energy injustices: Unveiling and politicizing the transboundary harms of fossil fuel extractivism and fossil fuel supply chains, *Energy Research & Social Science*, Volume 48, Feb. 2019, Pages 219-234, available at, <https://www.sciencedirect.com/science/article/pii/S2214629618306698>

<sup>23</sup> Id.

<sup>24</sup> Adrian Wilson et al., *Coal Blooded: Putting Profits Before People*, at 15, available at <https://www.naacp.org/wp-content/uploads/2016/04/CoalBlooded.pdf> at 15.



plants, 38% have been people of color despite being only 25% of Michigan's population.<sup>25</sup> To make matters worse, DTE's coal-fired power plants are often located in areas with poor air quality. *Every DTE coal-fired power plant is currently located in an ozone nonattainment area.* The coal-fired power plants located in St. Clair and River Rouge are also located in sulfur dioxide nonattainment areas. These issues are not isolated to the present. Historically, the areas where DTE coal-fired power plants are working have routinely struggled or failed to meet National Ambient Air Quality Standards.

Due to the amount of pollution emitted by DTE's coal-fired power plants and their locations near people of color, DTE was one of twelve companies that received an "F" from NAACP regarding corporate environmental justice performance based on emissions data for all of the coal-fired power owned by DTE and the income and racial demographic data for the populations living within three miles of each plant.<sup>26</sup>

The health impacts of air pollution attributable to energy utilities can be quantified and monetized using standard exposure assessment and Health Impact Assessment (HIA) methods. The Michigan Environmental Justice Coalition (MEJC) partnered with researchers at the University of Michigan, including Drs. Carina Gronlund (Institute for Social Research), Amy Schulz (School of Public Health), and Tony Reames (School for Environment and Sustainability), to conduct exactly such an assessment of DTE Energy air pollution, as well as an assessment of energy affordability, energy efficiency, and health impacts associated with energy inaccess. Air pollution impacts were assessed for present-day emissions, as well as for alternate future scenarios considered by DTE in their Integrated Resource Plan filed in 2019. The researchers obtained power plant stack heights and diameters, meteorological information for 2019, and DTE Energy emissions estimates from 2000-2040 according to the previously submitted Integrated Resource Plan. Then, using standard methods, they estimated the risks and costs of various health outcomes and mortality associated with the air pollution from DTE Energy power plants.

In the present-day 2018 scenario, exposures varied widely across Eastern Michigan, with the highest concentrations near the coal plants as well as in the majority-Black City of Detroit (Figure 1). The total annual burden across Eastern Michigan summed to 40 deaths, 7 non-fatal myocardial infarctions, 26,000 restricted activity days, 1,000 asthma exacerbations, 4,400 lost work days, and \$295 million in health costs. These health effects and costs varied widely by census tract, with a \$183 dollar difference in annual per capita health costs between the most exposed and the least exposed census tracts (Figure 2). The most exposed census tracts have an annual per capita health burden over \$200. By comparison, annual influenza costs have been estimated at around \$300 per person<sup>27</sup>.

The health burden disproportionately falls on low- to moderate-income neighborhoods, and on African American, Latinx and Arab American households in the Detroit metropolitan area.

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<sup>25</sup> See, EJSCREEN Demographic Report, 3-Mile Radius, Gas-Fired Generation Resources Identified in DTE Integrated Resource Plan (on file with author).

<sup>26</sup> Id.

<sup>27</sup> Molinari, N.-A. M., Ortega-Sanchez, I. R., Messonnier, M. L., Thompson, W. W., Wortley, P. M., Weintraub, E., & Bridges, C. B. (2007). The annual impact of seasonal influenza in the US: measuring disease burden and costs. *Vaccine*, 25(27), 5086-5096.

Figure 1. Annual exposure to PM<sub>2.5</sub> modeled from DTE Energy power plant emissions in 2018.

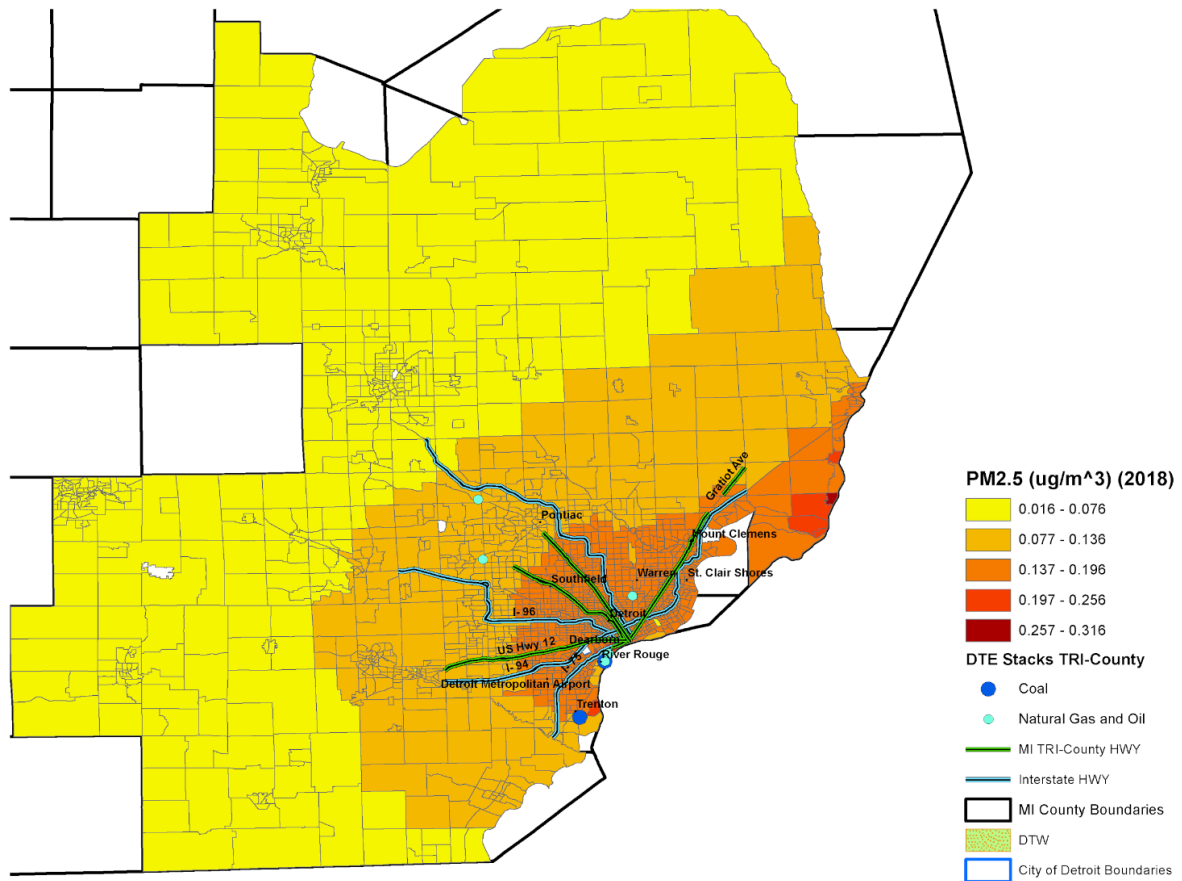
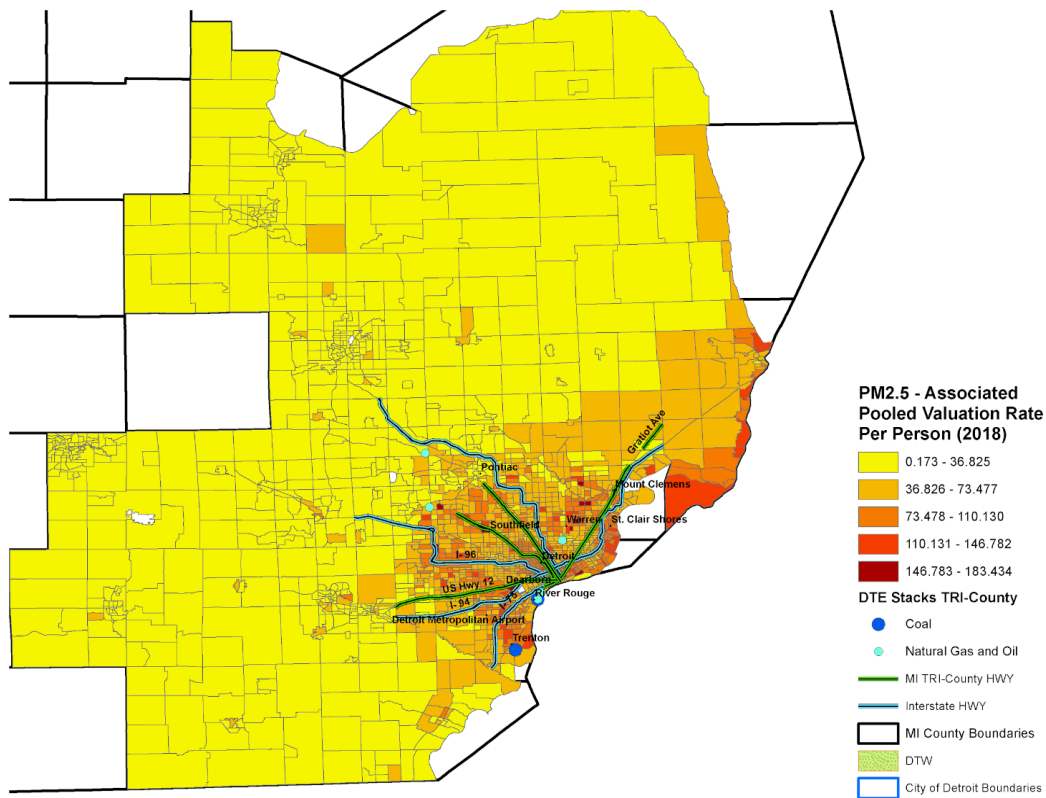


Figure 2. Annual health costs per person associated with PM<sub>2.5</sub> exposure from DTE Energy power plants in 2018



Air pollution burden is borne more highly by the oldest and youngest, and when accounting for age structure, census tracts that were most vulnerable were those that were both more highly exposed and those that had older populations. The health burden -- and associated costs -- also disproportionately affect the youngest and oldest members of Detroit metropolitan communities. Because households with young children are more likely to have lower incomes, those vulnerability factors tend to overlap or cluster in the same communities -- low to moderate income and people of color communities.

In summary, DTE's coal-fired power plants are disproportionately located in communities of color, resulting in the company receiving an "F" from the NAACP regarding environmental justice. This issue has caused serious and discrete harm, including dozens of deaths and thousands of missed work days every year.

### Greenhouse Gas Emissions

While greenhouse gas emissions do not cause local impacts, they do further climate change. The impacts of climate change are not and will not be equal. Instead, the degree of impact a person or community experiences due to a natural disaster is a matter of access to both natural and human resources -- such as

capital, durable infrastructure, quality housing, transportation, and migration support.<sup>28</sup> When communities have sufficient access to a multitude of resources, they are generally more resilient to the natural disasters. This phenomenon has played out recently in both Hurricane Sandy and Hurricane Katrina. In Hurricane Sandy, the deaths associated with the disaster were concentrated among individuals who lacked access to healthcare and transportation resources in the wake of the storm.<sup>29</sup> In Hurricane Katrina, many of the New Orleanians that died were Black because their communities were the closest to the levees that breached.<sup>30</sup>

ii. *Equity and Energy Services*

In addition to creating environmental risks, energy utilities also provide an essential service. However, access to this service varies based on a number of factors. The most prominent variables for the purpose of this comment are affordability and reliability.

While low-income households use the least amount of energy, they still bear the greatest energy burden – the percentage of household income that is dedicated to paying energy costs.<sup>31</sup> Given that energy is an essential service, unaffordable energy bills can often force households into dangerous coping behavior, including cutting back on other basic necessities such as food, clothing, and medicine.<sup>32</sup> Additionally, there is evidence that suggests low-income Black households are disproportionately subject to electric service disconnections when compared to low-income White households.<sup>33</sup> Studies also show homes in neighborhoods with more Black or Lantinx households are on average less energy efficient than neighborhoods with more white households, even after controlling for income.<sup>34</sup>

The HIA conducted by Drs. Gronlund, Reames, and Schulz and the Michigan Environmental Justice Coalition examined the distribution of energy burden, residential energy efficiency, and health impacts of extreme heat exposure, which is associated with a lack of access to air conditioning, among DTE customers. They showed that high household energy burdens (Figure 3), low residential energy efficiency

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<sup>28</sup> Kimberley Thomas et al., Explaining differential vulnerability to climate change: A social science review, WIREs Climate Change, Volume 10, Issue 2, Dec. 7, 2018, available at, <https://onlinelibrary.wiley.com/doi/full/10.1002/wcc.565>

<sup>29</sup> <https://onlinelibrary.wiley.com/doi/full/10.1002/wcc.565Id>.

<sup>30</sup> Id.

<sup>31</sup> John Howat et al., Reversing Energy System Inequity: Urgency and Opportunity During the Clean Energy Transition, available at [https://www.nclc.org/images/pdf/special\\_projects/climate\\_change/report-reversing-energy-system-inequity.pdf](https://www.nclc.org/images/pdf/special_projects/climate_change/report-reversing-energy-system-inequity.pdf)

<sup>32</sup> Id.

<sup>33</sup> Keith Kueny and John Howat, Current Utility Regulation Issues & How You Can Respond, available at <https://communityactionpartnership.com/wp-content/uploads/2018/09/Current-Utility-Regulatory-Issues-and-How-You-Can-Respond.pdf>

<sup>34</sup> [Bednar, D. J., Reames, T. G., & Keoleian, G. A. \(2017\). The intersection of energy and justice: Modeling the spatial, racial/ethnic and socioeconomic patterns of urban residential heating consumption and efficiency in Detroit, Michigan. Energy and Buildings, 143, 25-34. https://justurbanenergy.files.wordpress.com/2018/03/bednar-reames-keoleian-2017-intersection-of-energy-and-justice.pdf](https://justurbanenergy.files.wordpress.com/2018/03/bednar-reames-keoleian-2017-intersection-of-energy-and-justice.pdf)

(Figure 4), and extreme heat exposure (Figure 5), are concentrated in the same census tracts which are more highly exposed to DTE air pollution, and more likely to be Black, People of Color, and low- to moderate-income (Figure 6).

Figure 3. Residential electricity cost burdens

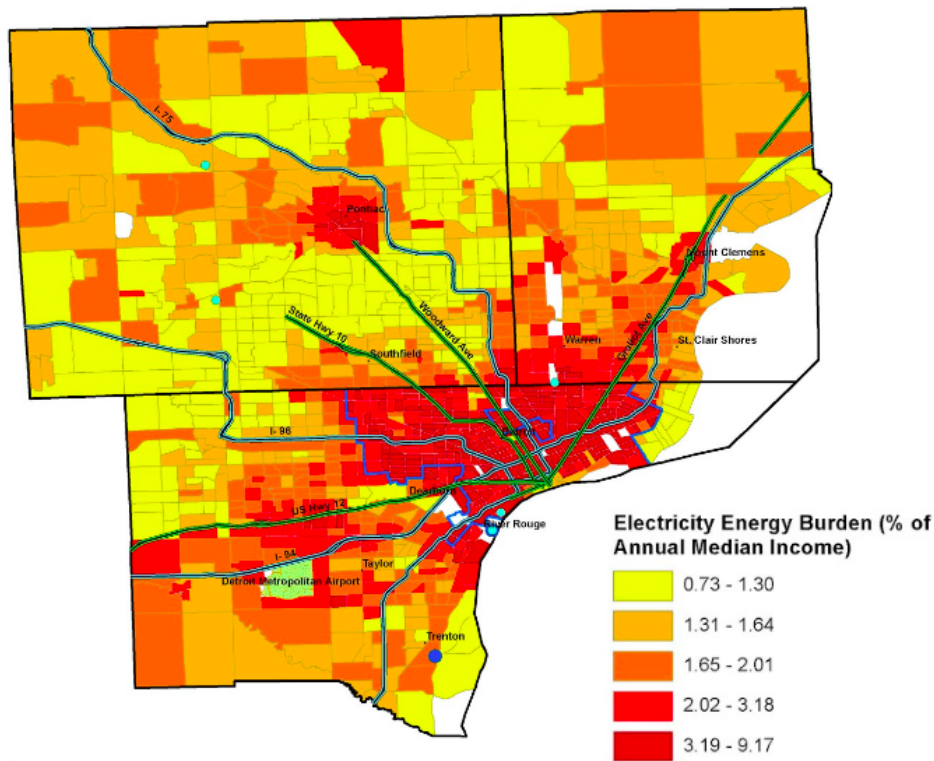


Figure 4. Residential electricity energy use intensity (yellow denotes areas with more energy efficient homes, while areas in red

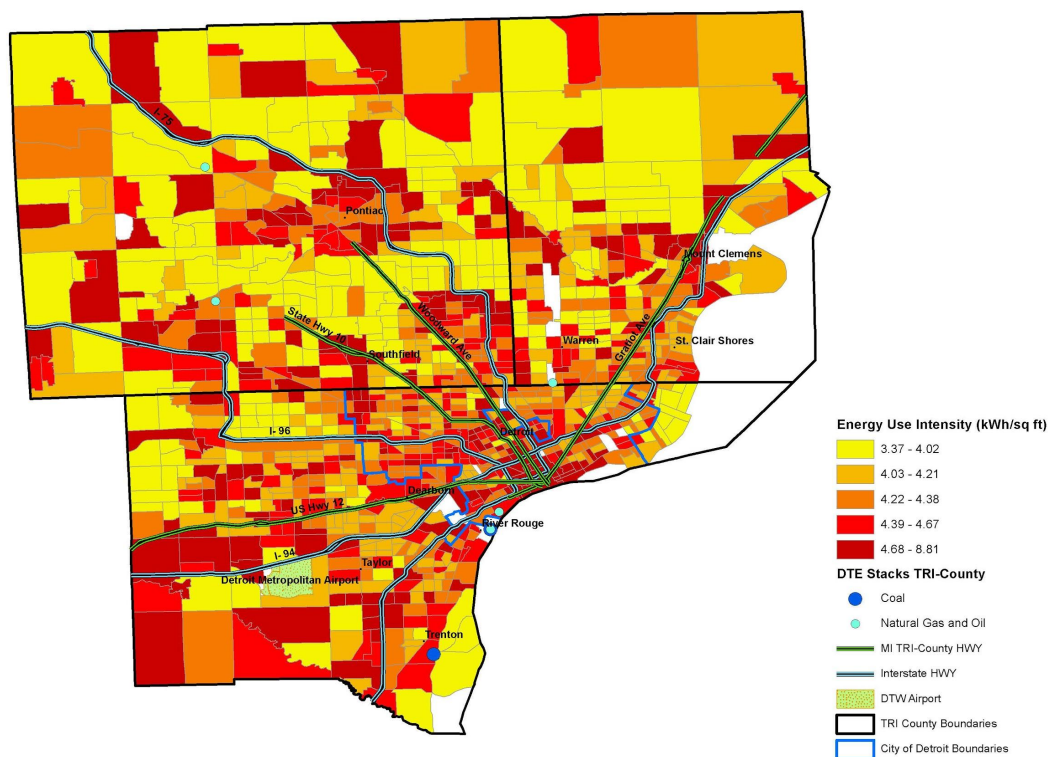


Figure 5. Annual health costs per person associated with extreme heat attributable to lack of air conditioning

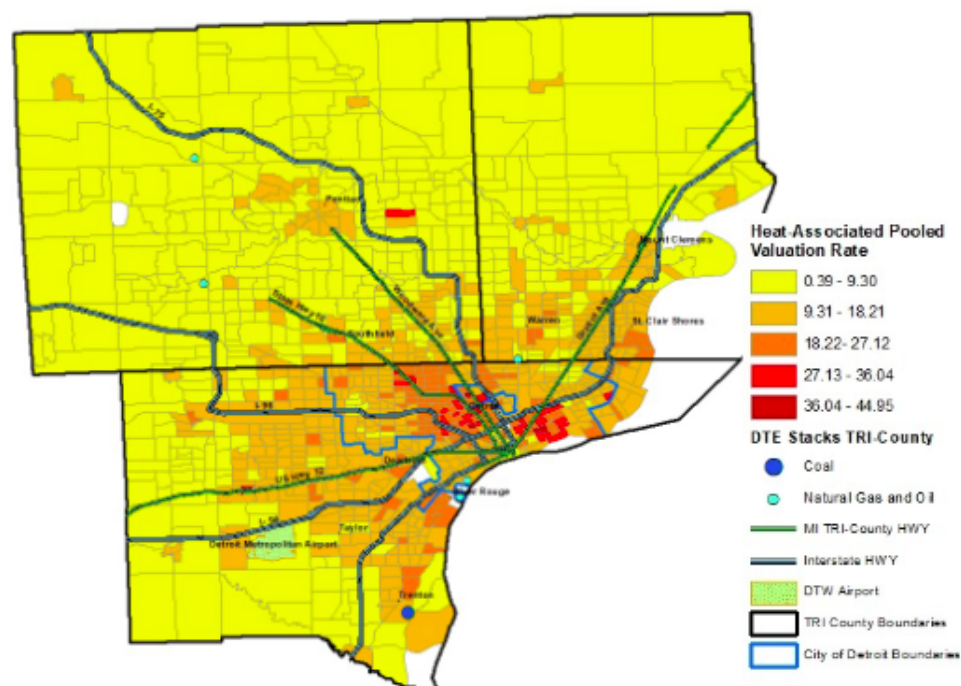
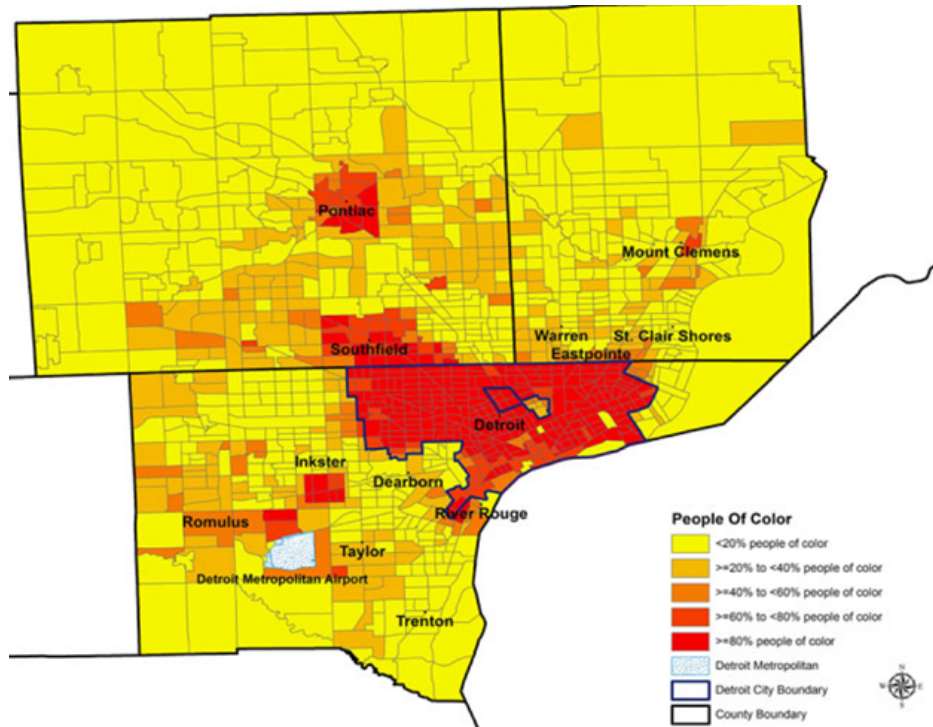


Figure 6. People of Color (primarily Non-Hispanic Black and Hispanic residents) in Wayne, Oakland, and Macomb Counties





It is unsurprising that these two key measures of energy access, both affordability and reliability, are often closely linked to our nation's history of housing discrimination. The older housing stock commonly found in communities of color is often less energy efficient than newer suburban homes built in the second half of the 20<sup>th</sup> century. The energy infrastructure in communities of color is also often older than in newer communities, making it more susceptible to reliability issues.

### C. Summary

Energy utilities are both generators of environmental and health burdens, and administrators of an essential service which confers health, quality of life, financial benefits. These benefits and burdens are inequitably distributed, in part due to historic and persistent housing discrimination on the basis of race, and in part due to multitude other historic and persistent manifestations of structural racism perpetuated by government policies.

Low income and people of color communities served by DTE are subject to disproportionate pollution burden. Currently, DTE's fossil-fuel generation resources are disproportionately located in communities of color. The air pollution associated with these fossil-fuel generation resources measurably exacerbates pre-existing health effects that are disproportionately prevalent in communities of color, such as asthma. Furthermore, the DTE Energy emissions-associated health costs in Wayne County account for 42% of the total health costs, while Wayne County's population accounts for only 29% of the total 17-county population. In absolute terms, per capita health costs differ dramatically between census tracts. The annual DTE Energy emissions exposures in Wayne County census tracts accounted for as much as \$183



per person in health costs, while in less-exposed census tracts in other counties, these attributable costs were as low as 17 cents per person.

Additionally, low income and people of color communities have less access to energy benefits. Our nation's history of housing discrimination has resulted in a multitude of inequities.

First, people of color predominantly reside in older communities with a physically deteriorated housing stock compared to newly developed suburban communities. Housing in these communities is often less energy efficient, requiring many people of color to dedicate more money to pay their energy utility bills. Energy efficiency aside, high and fast-rising energy rates are an extreme burden on low income households, which are more likely to be people of color. Finally, energy infrastructure in low income and people of color communities is often very old, making it more subject to reliability issues, particularly as the effects of climate change, exacerbated by utility emissions, become more pronounced.

## **II. Equity and Integrated Resource Planning**

An Integrated Resource Plan must provide the most reasonable and prudent means for an electric utility to meet the energy and capacity needs of its customers.<sup>35</sup> To determine whether the plan is the most reasonable and prudent, Michigan law requires the Public Service Commission to consider and balance a number of factors, including (1) resource adequacy and capacity, (2) compliance with applicable state and federal environmental regulations, reliability, and (3) diversity of generation supply.<sup>36</sup>

In addition to these statutory criteria, Executive Directive 2020-10 provided additional guidance. It directs the Michigan Department of Environment, Great Lakes, and Energy (EGLE) to include considerations of environmental justice and health impacts under the Michigan Environmental Protection Act in its advisory opinion to the Commission, and requires the Commission to analyze EGLE's advisory opinion in accordance with the standards of MCL 460.6t and the filing requirements and planning parameters established thereto.<sup>37</sup>

As discussed in Section I above, there are a number of inequities inherent in the operation of energy utilities. While all of these inequities have not been caused by electric utilities, they are still important to identify, understand, and plan for in IRPs. This is necessary for IRPs to serve their most basic function – to ensure that the Plan provided by the utility is the most reasonable and prudent means for meeting the energy and capacity needs of its customers.

Unfortunately, most energy utilities do not collect data on the basis of race or household income that may enable the utilities and the Commission to pinpoint where inequities in energy service and the utility's

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<sup>35</sup> MCL 460.6t(8).

<sup>36</sup> Id.

<sup>37</sup> Governor Gretchen Whitmer, Executive Directive 2020-10, Sept. 23, 2020, available at [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90704-540278--,00.html#:~:text=Michigan%20will%20aim%20to%20achieve,negative%20greenhouse%20gas%20emissions%20thereafter.](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90704-540278--,00.html#:~:text=Michigan%20will%20aim%20to%20achieve,negative%20greenhouse%20gas%20emissions%20thereafter.)

programs may exist.<sup>38</sup> As noted by Dr. Tony Reames, “[t]he data you don’t have is the problem you can’t see.”<sup>39</sup> This has proved to be true in DTE’s recently approved IRP. In that contested case, intervenors repeatedly requested income and race-based data from DTE regarding the implementations of its services and programs. A common response from DTE was that it did not have this data.

This data is absolutely essential and is the starting point for how the Commission should address environmental justice issues in the IRP process.

### **III. Comments**

#### **A. Require utilities to collect and distribute comprehensive residential billing data on the basis of race, income and geography (Zip+4)**

The need for more robust data collection on arrearages and disconnections has been recognized National Association of Regulatory Utility Commissioners.<sup>40</sup> By failing to collect data for residential households on the basis of race and low-income, utilities (and by extension the Commission) are ignoring the inequities that plainly exist in the operation of energy utilities. By ignoring these inequities, IRPs cannot perform their basic function of providing for the most reasonable and prudent means for meeting the energy needs of people of color and lower income.

To address this shortcoming, energy utilities should be required to track and make publicly available the following data. This data should be broken out by both race, income, and geography.

- Number of residential accounts
- Total billed and receipts amounts
- Total number of “protected” accounts (e.g., for serious illness, elderly, disability)
- Number and dollar value of unpaid accounts 30-60 days after issuance of a bill
- Number and dollar value of unpaid accounts 60-90 days after issuance of a bill
- Number and dollar value of unpaid accounts 90+ days after issuance of a bill
- Number of accounts referred to collection agencies
- Number of new payment agreements
- Number of accounts sent notice of disconnection for non-payment, and number of service disconnections for non-payment
- Number of service restorations after disconnection for non-payment
- Number of customers completing an extended payment plan
- Average duration of service disconnection for restored accounts
- Number and dollar value of accounts written off as uncollectible

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<sup>38</sup> Kathiann M. Kowalski, Racial disparities persist in electric service. Is ‘willful blindness’ to blame?, Energy News Network, Jul. 1, 2020, available at <https://energynews.us/2020/07/01/racial-disparities-persist-in-electric-service-is-willful-blindness-to-blame/>

<sup>39</sup> Id.

<sup>40</sup> National Association of Regulatory Utility Commissioners, Resolution Supporting the Gathering of Data for Electric and Gas Distribution Companies by Individual State Utility Commissions or Energy Offices, Nov. 14, 2007, available at <https://pubs.naruc.org/pub.cfm?id=53976517-2354-D714-5123-0DB132D8026B>

**B. Require utilities to collect and distribute comprehensive data regarding the implementation and marketing of its programs on the basis of race, income, and geography**

In addition to tracking race and income data regarding billing and arrearages, it is also critical for utilities to track this data regarding the implementation of its own programs to ensure they are equitable by being accessible to all people regardless of race or income. For example, one potential equity issue involved in IRPs is ensuring that all people, regardless of income and race, have equitable access to electricity generated by renewable energy resources. However, DTE's development of renewable energy resources is largely dependent on its Voluntary Green Pricing program, which relies on customers voluntarily paying more money for renewable energy. DTE has noted that subscriptions to its VGP program are concentrated in affluent communities and among individuals with high levels of education and income.<sup>41</sup> It has also noted that DTE markets its VGP program primarily to customers that are "Caucasian, Higher income, College graduate[s]."<sup>42</sup> In essence, DTE admits that its VGP program, the primary program by which customers can acquire renewable energy, is inequitable. In doing so, people of color and lower income lack equitable access to electricity generated by renewable energy resources.

Once again, data collection regarding DTE's programs is a key barrier to ensuring equity. Utilities often do not collect data on the basis of race or income regarding the marketing or implementation of its programs. In particular, the following programs are particularly relevant for regarding equity considerations:

- Voluntary Green Pricing Program
  - Data regarding DTE's marketing of the VGP program on the basis of race and income.
  - Data regarding customer participation in the VGP program on the basis of race and income.
- Demand Response Program
  - Data regarding DTE's marketing of its Demand Response program on the basis of race and income.
  - Data regarding customer participation in the Demand Response program on the basis of race and income.
- Residential Energy Waste Reduction Program
  - Data regarding DTE's marketing of its residential Energy Waste Reduction program on the basis of race and income.
  - Data regarding customer participation in the residential Energy Waste Reduction program on the basis of race and income.

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<sup>41</sup> U-20471, Ex. SOU-68 at 2.

<sup>42</sup> U-20471, Ex. SOU-58 at 28.

**C. EGLE should identify environmental justice communities and should require utilities to describe how they are minimizing environmental risks and promoting equitable access to the utility's services and programs in environmental justice communities.**

As discussed in detail in Section I, our nation's history of racial discrimination in housing still largely defines our communities. Historically, communities of color have been the victims of housing discrimination, lending discrimination, public and private disinvestment, and disproportionately large shares of environmental risk. Reversing this history of discrimination will require more than the data collection efforts described in Sections III.A and III.B; it will require affirmative action.

The first step is for EGLE to identify environmental justice communities. This can be done through any number of methods. California relies on its Environmental Health Screening Tool (CalEnviroScreen) to assess and number of economic and environmental factors to assign an environmental justice score to every census tract in the state. The top 25% highest scoring census tracts are designated as "disadvantaged communities." Michigan should develop a screening tool similar to CalEnviroScreen and use it for the purpose of identify environmental justice communities as California has done.

The second step is to have energy utilities then identify the environmental justice communities within their service territories and address how it will reduce environmental risks associated with its operations in these communities and ensure its IRP presents the most reasonable and prudent means for meeting the electricity needs of the residents within these communities in an equitable manner.

California is one state that has taken the lead on requiring utilities to ensure the needs of environmental justice communities are met by IRPs. At a minimum, it requires IRPs to provide the following:<sup>43</sup>

- Describe the disadvantaged communities it serves;
- Describe current and planned activities and programs that impact disadvantaged communities, and;
- Provide a qualitative description of the demographics of the customers it serves and how it currently plans to minimize air pollutants, including a disclosure of annual greenhouse gas emissions as well as local air pollutant emissions.

In addition to these requirements, in consideration of the fact that environmental justice communities are generally more vulnerable to the more frequent and extreme weather events associated with climate change, each IRP should ensure that utilities are taking adequate steps to ensure that residents in such communities will continue to receive reliable energy service in a world increasingly defined by climate change. To meet this goal, each IRP should provide the following:

- Describe programs focused on increasing the deployment of distributed renewable energy resources in environmental justice communities identified and the total number of non-utility owned distributed renewable energy resources installed in environmental justice communities.

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<sup>43</sup> Decision Setting Requirements for Load Serving Entities Filing Integrated Resource Plans, Rulemaking 16-02-007, Decision 18-02-018, at p. 171-72, ¶ 7 (Feb. 8, 2018).

- Require each IRP to provide for a specific baseline for distributed renewable energy resources in environmental justice communities.
- Require each IRP to describe outreach efforts and levels of participation in voluntary renewable energy subscription programs (such as DTE's Voluntary Green Pricing programs) in environmental justice communities.
- Require each IRP to describe residential programs focused on promoting energy efficiency and rates of participation in such programs in environmental justice communities as well as the proportion of energy efficiency program spending in environmental justice communities compared to non-environmental justice communities.

**D. For All Proposed Fossil-Fuel Fired Generation Resources, Require Utilities to Demonstrate That There Is No Reasonable and Prudent Alternative and that the Defendant's Conduct is Consistent with the Promotion of Public Health, Safety, and Welfare**

Executive Directive 2020-10 expressly required EGLE to consider the Michigan Environmental Protection Act when issuing its advisory opinion to the Commission.<sup>44</sup>

Additionally, the Commission has also concluded that the Michigan Environmental Protection Act (MEPA) applies to IRP proceedings and that it is appropriate to determine under MEPA: (1) whether the IRP would impair the environment; (2) whether there was a feasible and prudent alternative to the impairment, and, (3) whether the impairment is consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, and destruction.<sup>45</sup>

The Michigan Environmental Protection Act (MEPA) prohibits any person from polluting, impairing, or destroying the air, water, or other natural resources and the public trust in these resources.<sup>46</sup> MEPA not only prohibits actual degradation of environmental resources, but it applies to probable degradation as well.<sup>47</sup>

While the text of MEPA does not specify a threshold of harm, Michigan courts have described several different versions of a threshold of harm that may give rise to a successful MEPA claim.

In *City of Portage v. Kalamazoo Cty. Rd. Comm'n*, the Michigan Court of Appeals considered whether the removal of 74 trees exceeded the threshold of harm to natural resources prohibited by MEPA. In assessing whether the degradation to the natural resources rose to the level of a MEPA violation, the court enunciated a number of factors to consider:<sup>48</sup>

1. Whether the natural resource involved is rare, unique, endangered, or has historical significance;
2. Whether the resource is easily replaceable;

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<sup>44</sup> Executive Directive 2020-10 (Sept. 23, 2020)

<sup>45</sup> February 20, 2020 order in Case No. U-20471, p. 43.

<sup>46</sup> MCL 324.1701(1).

<sup>47</sup> *Ray v. Mason Cty. Drain Comm'r*, 393 Mich. 294, 309 (1975); *Michigan United Conservation Clubs v. Anthony*, 90 Mich. App. 99, 109 (1979).

<sup>48</sup> *City of Portage v. Kalamazoo Cty. Rd. Comm'n*, 136 Mich. App. 276 (1984).

3. Whether the proposed action will have any significant consequential effect on other natural resources, and;
4. Whether the direct or consequential impact on animals or vegetation will affect a critical number, considering the nature and location of the wildlife affected.

While the *Portage* factors have been utilized in several cases, in *Nemeth v. Abonmarche Dev. Inc.*, the Michigan Supreme Court limited the *Portage* factors, noting that they “are not mandatory, exclusive, or dispositive” because their use stifles the development of the “common law of environmental quality.”<sup>49</sup>

If it is established that a person's actions is or likely will result in the pollution, impairment, or destruction the air, water, or other natural resources and the public trust in these resources, then a prima facie violation of MEPA is established. This prima facie violation may be rebutted by the offending party through showing through “reasonable certainty” that the environmental degradation at issue will not occur.<sup>50</sup> Alternatively, the offending party can raise an affirmative defense by demonstrating that there is no feasible and prudent alternative and that the offending conduct is consistent with the promotion of public health, safety, and welfare in light of the state’s paramount concern for the protection of its natural resources.<sup>51</sup>

As discussed above, the primary environmental risks generated by energy utilities is air pollution both in the form of greenhouse gas emissions and local air pollutant emissions. Given that fossil-fuel resources are significant contributors to both climate change through their greenhouse gas emissions and air quality and nonattainment through their local air pollution, the commenters believe that any IRP that proposes to develop new fossil-fuel resources or re-contract with existing fossil-fuel resources should be regarded as a prima facie violation of MEPA and should require the utility to establish the affirmative defense.

#### *i. Greenhouse Gas Emissions*

The electricity generation sector accounts for 27% of all greenhouse gas emissions in the United States.<sup>52</sup> While combusting natural gas causes less greenhouse gas emissions than combusting coal, a significant source of greenhouse gas emissions associated with natural gas are methane emissions caused by leakage of natural gas from pipelines. While the EPA currently estimates that the natural gas leak rate is 1.4%, a study, a recent study found that 3.7% of natural gas produced in the Permian Basin leaked into the atmosphere. A leak rate of greater than 3% would result in no immediate climate benefits from retiring coal plants.<sup>53</sup>

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<sup>49</sup> *Nemeth v. Abonmarche Dev. Inc.*, 457 Mich. 16, 37 (1998).

<sup>50</sup> *Wayne Cty. Dep’t of Health v. Olsonite Corp.*, 79 Mich. App. 668 (1977).

<sup>51</sup> MCL 324.1704

<sup>52</sup> U.S. EPA, Sources of Greenhouse Gas Emissions, available at <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>

<sup>53</sup> Anthony J. Marchese and Dan Zimmerle, The U.S. natural gas industry is leaking way more methane than previously thought, *Science*, July 4, 2018, available at <https://www.pbs.org/newshour/science/the-u-s-natural-gas-industry-is-leaking-way-more-methane-than-previously-thought#:~:text=The%20EPA%20currently%20estimates%20this%20methane%20leak%20rate%20to%20be%201.4%20percent.&text=An%20earlier%20EDF%20study%20showed,of%20natural%20gas%20power%20plants.P>

The greenhouse gas emissions from fossil fuel fired generation resources will further climate change. The effects of climate change will undoubtedly result in the impairment, pollution, and destruction of a multitude of natural resources. Considering the greenhouse gas emissions that not only occur at the generation resource, but also upstream, the commenters believe that any IRP that proposes new fossil fuel generation resource or renewed contract for any such resource should be regarded as a prima facie violation of MEPA and should require the utility to establish the affirmative defense described in MCL 324.1704.

*ii. Local Air Pollutant Emissions*

As detailed above, people living within 3-miles of a DTE coal-fired power plant are disproportionately people of color.<sup>54</sup> However, the problem of disproportionately siting fossil-fuel generation resources in communities of color is even worse for gas-fired resources. Despite people of color comprising only 25% of Michigan's population, they make up 54% of the population living within 3 miles of a natural gas fired generation resource.<sup>55</sup> Given the clear nexus between natural gas generation and emissions in communities of color, many of which have continuously struggled to attain National Ambient Air Quality Standards, any IRP that proposes a new fossil fuel generation resource or renewed contract for any such resource should be regarded as a prima facie violation of MEPA and should require the utility to establish the affirmative defense described in MCL 324.1704. A similar approach has been adopted by the California Public Service Commission, and given the racial disparity regarding the siting of gas-fired generation resources and the Michigan Environmental Protection Act, we believe this approach is necessary in Michigan as well.<sup>56</sup>

**E. Require utilities to conduct a Health Impact Assessment for each model run required by the Michigan Public Service Commission and each scenario or pathway proposed by the utility**

As described above, MEPA prohibits any person from polluting, impairing, or destroying the air, water, or other natural resources and the public trust in these resources.<sup>57</sup> Michigan courts have noted that in order for a MEPA violation to occur, the harm to the natural resource must rise to an unspecified threshold.

In order to ensure that a proposed IRP will not result in a MEPA violation, it is necessary for each model run required by the Michigan Public Service Commission and each scenario or pathway proposed by the utility to include a Health Impact Assessment. This assessment should assess the health impacts associated with activities associated with fossil-fuel energy generation resources both at the resource and upstream of the resource at the point of extraction and distribution and identify the affected populations. Specifically, the health impacts to be assessed should include asthma and deaths. The assessment should also identify the affected populations, including a race and income demographic analysis. Lastly, the assessment should quantify the health impacts of each model run as well as utility-proposed scenario or pathway and provide methods for minimizing associated negative health effects.

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<sup>54</sup> Supra, note 25.

<sup>55</sup> See, EJSCREEN Demographic Report, 3-Mile Radius, Gas-Fired Generation Resources Identified in DTE Integrated Resource Plan (on file with author).

<sup>56</sup> Decision Setting Requirements for Load Serving Entities Filing Integrated Resource Plans, Rulemaking 16-02-006, Decision 18-02-018, at p. 172, ¶ 8 (Feb. 8, 2018).

<sup>57</sup> MCL 324.1701(1).



#### **IV. Conclusion**

Furthering environmental justice requires agencies to understand the historical roots of injustice, acknowledge the present day consequences of historical injustices, and to take affirmative steps to stop the legacy of injustice and the resulting inequities.

While advancements have been in a number of federal and state agencies to ensure they are incorporating environmental justice considerations into their decision making, it has often been hindered by agencies failing to fully embrace their role in furthering environmental justice. A recent book by Jill Lindsey Harrison highlighted this phenomenon within the EPA. She noted that many agencies resist fully incorporating environmental justice considerations into their decision making and justify their resistance by asserting that environmental protection is colorblind and that the agency is a technocratic in nature and should not address broader societal issues focused on racial and economic justice.

Of course, it is this narrow view of our government's role in remedying our nation's entrenched history of racial and economic injustice that allows the present day consequences of these injustices to not continue and stretch perpetually into our future. To stop this legacy will take courageous leadership and bold action. The commenters urge the Commission to take this bold action that is necessary to further Michigan down the path towards environmental justice by meaningfully incorporating racial and economic justice considerations into the IRP process through the measures described above.