

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )	
<b>DTE ELECTRIC COMPANY</b> for authority to increase )	
its rates, amend its rate schedules and rules governing )	Case No. U-20162
the distribution and supply of electric energy, and )	
for miscellaneous accounting authority. )	
_____ )	

At the July 2, 2019 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Norman J. Saari, Commissioner

**ORDER**

On July 6, 2018, DTE Electric Company (DTE Electric) filed an application requesting authority to increase its retail rates for the generation and distribution of electricity by \$328 million, and for other forms of regulatory relief.

On July 25, 2018, Administrative Law Judge Sally L. Wallace (ALJ) conducted a prehearing conference at which she granted petitions to intervene filed by, among others, the Michigan Department of the Attorney General (Attorney General); the Association for Businesses Advocating Tariff Equity (ABATE); the Great Lakes Renewable Energy Association (GLREA); the Residential Customer Group (RCG); and the Michigan Environmental Council, Natural Resources Defense Council, and Sierra Club (MEC/NRDC/SC). The Commission Staff (Staff) also participated.

On May 2, 2019, the Commission issued an order adopting a May 1, 2019, through April 30, 2020, test year and a jurisdictional revenue deficiency of \$125,097,000 (May 2 order). Rates were reset by the May 2 order to reflect the jurisdictional revenue deficiency and the expiration of the Tax Cuts and Jobs Act of 2017 (TCJA) Credit A,<sup>1</sup> and new rates were authorized for application on a service rendered basis on and after May 9, 2019. May 2 order, p. 1, n. 1, and pp. 212-213.

On June 3, 2019, DTE Electric and RCG filed petitions for rehearing pursuant to Mich Admin Code, R 792.10437 (Rule 437). DTE Electric's petition is accompanied by an affidavit. On June 21, 2019, DTE Electric filed a response to RCG's petition. On June 24, 2019, MEC/NRDC/SC, GLREA, RCG, and the Attorney General filed responses to DTE Electric's petition; and ABATE, the Staff, and the Attorney General filed responses to RCG's petition. On June 25, 2019, the Staff filed a response to DTE Electric's petition.

#### DTE Electric Company's Petition for Rehearing

##### A. River Rouge Unit 3 Capital Expense

DTE Electric seeks rehearing of the Commission's decision to exclude from rate base capital costs of \$8.45 million incurred through December 31, 2018, associated with River Rouge Unit 3 (Unit 3). May 2 order, pp. 8-12. DTE Electric contends that the decision does not comport with controlling law because the investments made in Unit 3 were used and useful in public service, were prudent, and made it possible for Unit 3 to provide safe, reliable, and environmentally compliant power in the 2017-2018 time period. DTE Electric notes that these costs went towards the replacement of pumps, motors, valves, instruments, and control system components. 4 Tr 575.

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<sup>1</sup> See, the July 24, 2018 order in Case No. U-20105.

The company states that the disallowance requires DTE Electric to write off or write down the plant such that the utility is denied a fair return on the property.

DTE Electric argues that the Unit 3 costs were justified by the net present value rate of return (NPVRR) analysis provided in evidence. Exhibit A-12, Schedule B6; 3 Tr 367-368. DTE Electric claims that the Commission had previously disallowed Unit 3 capital expense in prior rate cases because the NPVRR had not been updated, and that the update provided in the instant case not only corrects that omission but also supports the decision to continue operation of the unit. DTE Electric posits “Past findings of the Commission have been based on the premise that the Company provided no economic evidence to justify its costs.” DTE Electric’s petition, p. 8. Finally, DTE Electric maintains that the decision in the May 2 order incentivizes early retirement, and this is inconsistent with the Commission’s determination that retirement dates for the Tier 2 plants should be determined in the company’s integrated resource plan (IRP) proceeding, Case No. U-20471. *See*, April 27, 2018 order in Case No. U-18419, pp. 48-49.

The Attorney General opposes the petition, arguing that it fails to meet the standard for rehearing because DTE Electric simply presents the same arguments that were addressed by the Commission in the May 2 order, as well as the same arguments that were rejected by the Commission in ruling on DTE Electric’s petition for rehearing in its last rate case. *See*, June 28, 2018 order in Case No. U-18255. The Attorney General notes that the burden of proof was on DTE Electric to show that the Unit 3 costs were reasonable and prudent, and argues that the May 2 order does nothing to interfere with the IRP process.

MEC/NRDC/SC also oppose the petition, stating that DTE Electric seeks to simply relitigate this issue without providing any new argument or identifying any newly discovered evidence, unintended consequences, or errors. MEC/NRDC/SC contend that the company again failed to

meet its evidentiary burden in this case just as it had failed in three prior rate cases where the same cost category was disallowed. MEC/NRDC/SC argue that the “used and useful” standard does not guarantee cost recovery because the expense must still be shown to be reasonable and prudent; and that the company’s complaint regarding the possibility of a write off should be ignored, since a \$10 million disallowance is unlikely to impact DTE Electric’s credit rating given its \$17 billion rate base.

Rule 437 provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. As the Commission has stated many times, a petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission’s decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences of the decision, the Commission will not grant rehearing.

All of the arguments made by DTE Electric were addressed by the Commission in the May 2 order, pp. 8-12, and the Commission is not persuaded that its decision does not comport with precedent. Precedent reveals that the company has repeatedly seen these costs disallowed based on its failure to demonstrate their cost-effectiveness. December 11, 2015 order in Case No. U-17767, p. 14; January 31, 2017 order in Case No. U-18014, p. 17; and April 18, 2018 order in Case No. U-18255, p. 8. As the Commission stated, “while the unit is in use, reasonable and prudent O&M [operations and maintenance] costs should be approved to ensure safe operation and a smooth transition to retirement. However, the updated NPVRR provided on this record does not persuade the Commission to award the 2017-2018 capital costs to DTE Electric nor the future

capital expense, because the evidence is simply not conclusive on the issue of reasonableness and prudence.” May 2 order, pp. 11-12. The petition for rehearing presents no convincing claim of error and is denied.

#### B. 3G to 4G Relay Capital Expense

DTE Electric seeks rehearing of the Commission’s decision to disallow \$9.6 million in capital expense (the cost of 300 additional cell relays) associated with the upgrade of advanced metering infrastructure (AMI) equipment from 3G to 4G. May 2 order, pp. 34-35. DTE Electric argues that the decision has unintended consequences in that the 300 additional cell relays would assist the company in complying with the December 20, 2018 order in Case No. U-20084. That order approved a settlement agreement which requires DTE Electric to reduce the number of customers receiving consecutive estimated bills. DTE Electric contends that the additional 300 cell relays will provide better communication and will enable the company to come closer to the meter read rate of Consumers Energy Company (Consumers).

DTE Electric also argues that the actual disallowance associated with the 300 relays should be \$2.37 million, as the company had posited in its exceptions, based on \$7,900 per relay. DTE Electric argues that the Staff’s proposed disallowance of \$9.6 million comes to one-third of the total project costs for a project that covers 3,300 relays.

RCG opposes the petition, arguing that the utility’s AMI mesh network has major design and implementation flaws and that DTE Electric failed to substantiate its expenditures.

The Attorney General also opposes the petition, noting that the Commission already considered all of DTE Electric’s arguments on the record and that the utility has added nothing new. The Attorney General contends that DTE Electric’s obligations under the settlement in Case No. U-20084 are independent of this rate case issue.

The Staff similarly opposes the petition on grounds that the utility's arguments were addressed by the Commission, while advocating for a different disallowance amount which appeared in the Staff's initial brief but not on the record.

The Commission is not persuaded to grant rehearing, since all of DTE Electric's arguments, including those addressing the disallowance amount, were addressed in the May 2 order, pp. 34-35. The Commission was aware of the outcome of Case No. U-20084 at the conclusion of the rate case, and the Commission sees no unintended consequences from the decision. The petition for rehearing presents no convincing argument and is denied.

#### C. Demand Side Management Program Capital Expense

DTE Electric seeks rehearing of the Commission's decision in the May 2 order to disallow \$6.2 million in capital expense associated with the programmable communicating thermostat (PCT) program. May 2 order, pp. 37-39. DTE Electric states that it is seeking reconsideration not of the full amount of the disallowance, but of \$5.1 million in actual costs incurred to implement the program. DTE Electric indicates that \$5.1 million was spent through the end of the bridge period to develop the software platform that is essential to implement and run the program. DTE Electric states that it had enrolled 6,017 customers by May 29, 2019. This date is 27 days after the issuance of the May 2 order; thus, the company offers new evidence by affidavit.

The Attorney General opposes the petition, characterizing it as simply a relitigation to obtain a different result. The Attorney General points out that the affidavit is not part of the record in this case and does not meet the definition of newly discovered evidence because it simply records events that occurred after the close of the record.

The Staff also opposes the petition, arguing that the attached affidavit does not constitute newly discovered evidence.

Though DTE Electric seeks rehearing on a lesser amount, the Commission is not persuaded to change the disallowance. DTE Electric essentially made these arguments in exceptions (albeit seeking more money and providing proof of fewer enrollments) and they were addressed by the Commission in the May 2 order, pp. 38-39. Even assuming that further enrollments have occurred since the record closed in this matter, the Commission does not find that this constitutes newly discovered evidence or facts or circumstances arising after the hearing which should result in a rehearing. The Commission is hopeful that enrollments will continue to increase between rate cases because that is the intended result. The petition for rehearing is denied.

#### D. Rider 18 Banked Credits

DTE Electric seeks rehearing of the Commission's determination that when a residential customer ends participation in the distributed generation (DG) Rider 18 program "any existing credit on the customer's account will be either applied to the power supply portion of the customer's bill or refunded to the customer if the customer leaves the residence." May 2 order, p. 200; 8 Tr 3892, 4172. DTE Electric argues that this results in unintended consequences in light of the fact that, in the remainder of the DG discussion, the Commission limited the application of outflow credits to the power supply component of the customer's bill. May 2 order, p. 182. The company contends that allowing a refund "would circumvent the power supply limit the Commission recognized with respect to the outflow credit calculation." DTE Electric's petition, p. 14. DTE Electric contends that any refund would actually be the same as issuing a credit for non-power-supply charges such as distribution or fixed customer charges. DTE Electric posits that this is contrary to MCL 460.1177(4) and the Commission's findings regarding the outflow calculation.

RCG opposes the petition, arguing that allowing DTE Electric to force the customer to forfeit the value of the energy provided to the grid would amount to an unjust enrichment to the utility and a confiscation of the property of the customer.

GLREA opposes the petition on similar grounds, and notes that DTE Electric has presented no information as to how its proposal would alter the economics of the outflow compensation program. GLREA urges the Commission to allow for time and experience with the new tariff, which may result in further refinement in future rate cases.

The Attorney General also opposes the petition, arguing that the utility fails to make an apples to apples comparison because a refund is not the same as a credit. The Attorney General contends that DTE Electric's proposal would deprive the customer of the value of the energy added to the grid, and that the refund does not circumvent the power supply restriction.

The Staff also opposes the petition, arguing that DTE Electric fails to explain how the refund could apply to the non-power supply portion of a bill where the customer is no longer billed.

The Commission addressed DTE Electric's arguments in the May 2 order, pp. 180-182, 200, and finds no unintended consequences resulting from its decision. As the Commission explained, the inflow/outflow methodology approved in the rate case is in conformance with MCL 460.6a(14), and is not governed by MCL 460.1177(4). May 2 order, pp. 180-182; April 18, 2018 order in Case No. U-18383, pp. 13-15. However, even if MCL 460.1177(4) was the controlling law, the approved outflow credit and refund mechanism comply with the language of that statute. With respect to an outflow credit, MCL 460.1177(4)(b) states:

The credit shall appear on the bill for the following billing period and shall be limited to the total power supply charges on that bill. Any excess kilowatt hours not used to offset electric generation charges in the next billing period will be carried forward to subsequent billing periods. Notwithstanding any law or regulation, distributed generation customers shall not receive credits for electric utility transmission or distribution charges. The credit per kilowatt hour for kilowatt hours delivered into the utility's distribution system shall

be . . . [t]he electric utility's . . . power supply component, excluding transmission charges, of the full retail rate during the billing period or time-of-use pricing period.

The outflow credit approved in the May 2 order is calculated on the basis of power supply less transmission, is applied to power supply charges on the bill, reflects neither transmission nor distribution, and is carried forward to subsequent billing periods, all of which comports with the quoted language. However, the statute does not address the situation where the customer terminates participation in the program and leaves the residence. At that point, the customer can no longer receive a credit because there is no bill to credit against. DTE Electric's position would result in the customer providing energy to the utility without compensation. The Commission found that the customer is entitled to the value of the energy provided to the grid in the form of a refund that is equal to what the outflow credit would be if a credit were an option. May 2 order, p. 200; 8 Tr 4172.<sup>2</sup> Because the value of the refund will be calculated on the basis of the outflow credit methodology, that value will reflect neither transmission nor distribution and thus is consistent with MCL 460.1177(4). The Commission finds no unintended consequences or error, and the petition for rehearing is denied.

#### Residential Customer Group's Petition for Rehearing

Again, Rule 437(1) provides that a petition for rehearing must be based on "a claim of error . . . a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order." As the Commission has stated many times, a petition for rehearing will be denied if it

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<sup>2</sup> Rider 18 provides "Upon customer termination from the Distributed Generation Program, any existing Outflow credit on the customer's account will be applied to the power supply component and PSCR [power supply cost recovery] components of the customer's future bills for customers who remain in the residence. Outflow credit will be refunded to customers who do not remain in the residence." May 2 order, Attachment B, p. 77; Tariff Sheet D-117.00.

merely expresses disagreement with the Commission's decision. In its petition, RCG makes no mention of newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences of the May 2 order. The Commission thus assumes that RCG intends to assert a claim of error on each issue.

#### A. The Historical Test Year

RCG argues that the Commission should have adopted its proposal for use of a historical test year adjusted for known changes rather than a projected test year.

DTE Electric opposes the petition, noting that RCG has simply reprinted its exceptions and has acknowledged that its position is contrary to established regulatory practice.

The Staff also opposes the petition, noting that RCG has simply copied its exceptions, all of which were considered and addressed by the Commission in the May 2 order.

The Attorney General, while never stating that she supports the petition, "requests that the Commission carefully consider this issue, both in this case and on a forward-going basis. The AG argues that the Commission should consider instituting a bright-line rule, to avoid ongoing interpretation issues with what is meant by a 'future projected test year.'" Attorney General's answer to RCG's petition, p. 4. The Attorney General suggests that a projected test year should commence no more than two months after the date of a rate case filing.

ABATE supports the petition, arguing that the historical test year may have produced a revenue sufficiency in this case, and the Commission should consider restricting the test year to the historical test year because of the impossibility of thoroughly analyzing all of the data built into a projected test year.

The Commission addressed RCG's exceptions on this issue (which are identical to the rehearing arguments) in the May 2 order, pp. 3-4. The petition for rehearing fails to meet the standards set out in Rule 437 and is denied.

#### B. The Impact of Tax Law Changes

RCG argues that the rate adjustments resulting from passage of the TCJA should have no impact on the revenue deficiency arrived at in this rate case. RCG contends that the May 2 order "erroneously excludes any explanation of how a 40% reduction in federal corporate income tax expense for DTE Electric results in a major increase in customer rates." RCG's petition, p. 9; *see* May 2 order, pp. 123-124. RCG argues that the addition of any amount to the revenue deficiency related to the effect of the TCJA is in error, and that the Commission should follow the precedent set in Case Nos. U-8681 and U-8683 after passage of the Tax Reform Act of 1986 (TRA).

DTE Electric opposes the petition, stating that RCG has simply reprinted its exceptions and appears to misunderstand how the revenue deficiency is calculated.

ABATE supports the petition, arguing that the ALJ never showed why it was necessary to add the TCJA impact to the revenue deficiency.

The Commission is not persuaded that it has mishandled the rate effects of the TCJA, or that Commission precedent demonstrates any error. In the December 27, 2017 and February 22, 2018 orders in Case No. U-18494, the Commission commenced proceedings very similar to the proceedings commenced for the purpose of addressing the TRA. *See*, December 17, 1986 order in Case No. U-8638, pp. 2-6, and January 27, 1987 order in Case No. U-8638, pp. 6-7.<sup>3</sup> For the largest utilities, those cases concluded with a refund of past overcollections based on the old tax

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<sup>3</sup> However, the Commission had over six months until the TRA tax changes went into effect, whereas, with the TCJA, the Commission had only a few days.

rate and a reduction to rates going forward to reflect the correct tax rate. August 4, 1987 order in Case No. U-8681 (Consumers), and September 1, 1987 order in Case No. U-8683 (DTE Electric). The Court of Appeals affirmed the Commission's authority to order refunds and to adjust rates going forward; to do so in a single issue case examining the TRA; and to determine which factors it would consider in ascertaining the effect of the TRA. *Consumers Power Co v Public Service Comm*, 181 Mich App 261, 266-268; 448 NW2d 806 (1989). The Commission finds nothing in its handling of the TCJA that conflicts with its handling of the TRA.

The Commission assumed that all parties understood that, when rates are reset in a rate case, it is axiomatic that those rates will reflect the current corporate tax rate. Credits A and B reflected the amounts due to be refunded to ratepayers based on past rates that included, and future rates that would have included, the incorrect tax rate. With the filing of a rate case, the Commission has the opportunity to correct the tax rate going forward and the credit that had been temporarily built into rates to reflect the correct tax rate is no longer necessary. Consistent with the July 24, 2018 order in Case No. U-20105, Credit A expired with the resetting of rates. May 2 order, p. 1, n. 1, and p. 212. That amount is not part of a new revenue deficiency; rather, the expiration of the credit represents the opportunity to return to normal rates presented by the conclusion of a rate case. The petition for rehearing presents no convincing argument and is denied.

### C. Opt-Out Charges

RCG argues that opt-out charges are not cost based, and should be sharply reduced or eliminated. RCG contends that DTE Electric's monthly opt-out charges are substantially higher than Consumers' monthly opt-out charges, and states that DTE Electric's AMI program is in chaos.

DTE Electric opposes the petition, noting that RCG has largely reprinted its exceptions and continues to assert arguments that have been repeatedly rejected by the Commission and the courts.

The Commission addressed RCG's arguments in the May 2 order, pp. 36-37, citing to the numerous opinions issued by the Michigan Court of Appeals affirming the Commission's decisions addressing opt-out charges. RCG's petition for rehearing cites to no error and contains no new information, and is denied.

#### D. The Impact of the Order in Case No. U-20084

RCG makes two arguments in favor of rehearing with respect to issues related to the December 20, 2018 order in Case No. U-20084 in which the Commission approved a settlement agreement addressing purportedly non-transmitting meters that were actually transmitting. First, RCG argues that rates should be adjusted to reflect the settlement; and, second, RCG argues that the Commission has failed to enforce the settlement agreement in Case No. U-20084 and should use this rate case to do so.

DTE Electric opposes the petition, noting that no ratemaking adjustments were made in this case because the record was closed before the settlement agreement was approved.

The Commission addressed RCG's arguments on these two issues (which were identical to the rehearing arguments) in the May 2 order, p. 36. RCG's petition for rehearing cites to no error and contains no new information regarding these two issues, and is denied.

#### E. 3G to 4G Upgrade Program

RCG argues that the Commission should eliminate all projected capital and O&M expense associated with DTE Electric's AMI mesh network and should initiate an investigation into the costs.

DTE Electric opposes the petition, noting that RCG simply repeats its exceptions and cites to no evidence to support the notion that the AMI mesh network is failing.

The Commission addressed RCG's exceptions on this issue (which were identical to the rehearing arguments) in the May 2 order, pp. 34-35. The petition for rehearing fails to meet the standards set out in Rule 437 and is denied.

THEREFORE, IT IS ORDERED that the petitions for rehearing filed by DTE Electric Company and the Residential Customer Group are denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General – Public Service Division at [pungpl@michigan.gov](mailto:pungpl@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General – Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

I abstain.

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Daniel C. Scripps, Commissioner

By its action of July 2, 2019.

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Barbara S. Kunkel, Acting Executive Secretary


# PROOF OF SERVICE

STATE OF MICHIGAN )

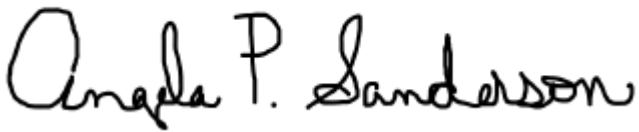
Case No. U-20162

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on July 2, 2019 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

  
Brianna Brown

Subscribed and sworn to before me  
this 2<sup>nd</sup> day of July 2019.



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Angela P. Sanderson  
Notary Public, Shiawassee County, Michigan  
As acting in Eaton County  
My Commission Expires: May 21, 2024

**Service List for Case: U-20162**

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