

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> and	)	
<b>DTE GAS COMPANY</b> for <i>ex parte</i> authority to	)	Case No. U-21215
waive one attribute of the companies' data privacy	)	
tariffs.	)	
_____	)	

At the February 23, 2023 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair  
Hon. Tremaine L. Phillips, Commissioner  
Hon. Katherine L. Peretick, Commissioner

**ORDER**

On December 15, 2022, DTE Electric Company (DTE Electric) and DTE Gas Company (DTE Gas) (collectively referred to as DTE) filed an application pursuant to Mich Admin Code, R 460.17101 *et seq.*; the Michigan Court Rules, MCR 2.100 *et seq.*; and the Michigan Administrative Procedures Act, MCL 24.201 *et seq.*; requesting that the Commission extend approval of the previously granted waiver to allow DTE to waive an attribute of their data privacy tariffs that relate to personally identifiable information (PII), which are set forth in Section C14 of the Electric Rate Book and Section C12 of the Gas Rate Book. DTE requests a waiver of the identical provisions of each company's respective rate book that state that "[i]nformed Customer Consent is necessary before collection or use of Customer Account Information [which, as the Rate Book defines, is PII] for a Secondary Purpose." Application, p. 2. DTE states that the

purpose of this waiver is to provide datasets to the City of Detroit (City) to assist in predicting the occupancy status of buildings in the City to determine efficient and equitable distribution of services and access to resources for city residents. *Id.*, pp. 1-3.

In the application, the companies state that occupancy data is important in long-term infrastructure maintenance planning. The companies state that DTE's datasets may include residents who do not appear in other data resources, such as datasets from the Detroit Water and Sewer Department, because some residents are electric or gas customers but are without active water service and, as such, these residents are the most vulnerable and under-resourced residents in the City. DTE states that the companies' active account data will allow the City to identify and report possible undercounts of residents to the Census Bureau and will ultimately be used to deliver federally funded services and benefits such as Medicaid, Medicare Part B, Supplemental Nutrition Assistance Program, Special Supplemental Nutrition Program for Women and Children, Children's Health Insurance Program, Title I educational programs, special education, public housing assistance under Section 8, Head Start, and nutrition programs that offer free breakfast, free lunch, and other nutrition assistance for schools and day care centers. Additionally, the application states that "[c]hanges in occupancy data over time will also be an effective way to evaluate the impact of City programs and initiatives." Application, p. 4; *see also, id.*, pp. 3-5.

The City proposes to use DTE data fields including individual site addresses, longitude, latitude, census block Geo ID, census block name, census tract Geo ID, census tract name, location confidence, and occupancy confidence and has assured DTE that no other customer account information will be released. DTE states that the companies' data, in conjunction with existing City datasets, and aggregated with US Postal Service delivery point validation, Detroit Water and Sewer Department accounts with active water usage, Detroit Fire Department building fire

incident records, the Michigan Secretary of State Qualified Voter File, and a list of housing units with active DTE accounts will be developed into an occupancy model. The application continues that the City will work with a data scientist to build the occupancy model, which will shield all raw data inputs resulting in a probability score that will show the likelihood that a residence is occupied. “The output of the model will be a statistically derived threshold used to transform the probabilities into yes/no values.” *Id.*, p. 3; *see also*, pp. 3-5. The City has assured DTE that the occupancy model outputs will be shared only with internal City employees. *Id.*, p. 5.

DTE notes that, in the February 20, 2020 order in Case No. U-20672, the Commission approved a waiver of these same attributes of the companies’ data privacy tariffs to assist the City in the 2020 Census planning. DTE asserts that the approval of that waiver resulted in no demonstrable adverse effects on customer data privacy. Application, p. 5.

DTE requests that the extension be effective from the date of a Commission order approving the waiver until December 31, 2024, and states that the companies will provide up to 12 updates of individual site addresses to the City per year until the waiver expires. DTE states that a nondisclosure agreement (NDA) will be executed by the companies and the mayor of the city and will be in place prior to the disclosure of any address information to the City. DTE asserts that the companies’ information technology (IT) experts and the City’s IT experts have developed a secure process for the data exchange and that the raw active account data will only be shared with a small, restricted team from the City. Finally, DTE believes that granting this request “is reasonable and prudent, in the public interest, and will not result in any harm or negative effect to its customers, nor will it have any effect on customer rates.” *Id.* Accordingly, DTE asserts that the extended waiver requested in this application may be authorized and approved without notice or hearing pursuant to MCL 460.6a(1). *Id.*

Mich Admin Code, R 460.153(2) (Rule 53(2)) states, in relevant part:

Each electric and natural gas utility shall file with the commission, for the commission's approval, a customer data privacy tariff that contains a customer data privacy policy. The privacy policy shall do all of the following:

\* \* \*

(d) Ensure that, for secondary purposes, customer usage data, personally identifiable information, and certain other customer information are only disclosed to third parties with the customer's written consent.

In addition, Mich Admin Code, R 460.101a(3) (Rule 1a(3)) states that "[u]pon written request of a person, utility, or on its own motion, the commission may temporarily waive any requirements of these rules when it determines the waiver will further the effective and efficient administration of these rules and is in the public interest."

The Commission finds that it is reasonable and in the public interest to grant an extension of the waiver of Rule 53(2) for the limited and specific purpose of allowing DTE to supply the data fields of individual site addresses, longitude, latitude, census block Geo ID, census block name, census tract Geo ID, census tract name, location confidence, and occupancy confidence to the City to assist in predicting the occupancy status of buildings in the City so as to allow for efficient and equitable distribution of services and improved access to resources for City residents. The Commission finds that release of the above information, limited to premises that receive energy (gas, electric, or both) from DTE within the City, will not harm customers or affect customer rates. Approval of the waiver is contingent upon the City's agreement that, if at any time, the City decides to publicly release its occupancy model, the City will coordinate with the Commission Staff to determine the appropriate level of aggregation prior to public release. While adverse effects are not expected, the Commission reminds the company of its obligation to report any adverse effects on customer data privacy and security to the Commission in the unlikely event they do occur. Therefore, the Commission finds that DTE's *ex parte* request for the waiver should be

granted pursuant to Rule 1a(3) and MCL 460.6a(3). In addition, the Commission has reviewed DTE's draft NDA and finds that it sufficiently protects customer data and addresses concerns regarding privacy of the datasets that would be released to the City.

THEREFORE, IT IS ORDERED that:

A. DTE Electric Company and DTE Gas Company's request for an extension to waive an attribute of the companies' data privacy tariffs as it relates to personally identifiable information to assist the City of Detroit in predicting the occupancy status of buildings and to allow for the equitable distribution of services and improved access to resources is approved, as set forth in the order.

B. Approval of the waiver is contingent upon the City of Detroit's agreement that it shall coordinate with the Commission Staff to determine the appropriate level of aggregation prior to public release if, at any time, the City of Detroit decides to publicly share its occupancy model.

C. DTE Electric Company and DTE Gas Company shall report any adverse impacts caused by the waiver on customer data privacy and security to the Commission.

D. The waiver shall be effective from the date of this order until 5:00 p.m. (Eastern time) on December 31, 2024.

E. DTE Electric Company and DTE Gas Company's Nondisclosure Agreement, attached as Exhibit A, is approved.

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, pursuant to 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 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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Daniel C. Scripps, Chair

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Tremaine L. Phillips, Commissioner

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Katherine L. Peretick, Commissioner

By its action of February 23, 2023.

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Lisa Felice, Executive Secretary

## **CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT**

The City of Detroit Michigan ("City"), and DTE Electric Company and DTE Gas Company (collectively referred to as the "Companies") enter into this Confidentiality and Nondisclosure Agreement ("Agreement") with regard to the Company voluntarily providing addresses and longitude and latitude data within the City of Detroit boundaries that receive electric, gas, or both services from the Companies (confidential information) for the City's use solely for improving the efficiency and distribution of City resources.

1. The Companies will provide the City with addresses and longitude and latitude data within the City of Detroit's boundaries that receive gas, electric, or both services from either of the Companies commencing upon the receipt of an order from the Michigan Public Service Commission ("MPSC") approving the Companies' data privacy waiver request until December 31, 2024 (the "Data Sharing Period"). Any such data provided by the Companies during that the Data Sharing Period shall only be used by the City for the purposes of improving the efficiency and distribution of City resources and challenging the 2020 U.S. Census and shall be limited to the City's use of said data to compare individual addresses provided by the Companies with individual addresses already known by the City.

2. Such confidential information received by the City under this Agreement shall not be shared with any other party except in accordance with the terms set forth in this Agreement or as otherwise required by law.

3. The confidential information shared by the Companies as described in paragraph 1 is hereby deemed to be exempt from disclosure under the Michigan Freedom of Information Act, Act 442 of 1976 (FOIA), specifically section 13 of FOIA. The City shall take all reasonable care to facilitate a separation of the confidential information from any nonexempt information as described in section 14 of FOIA.

4. The City will record a description of the confidential information, referenced in paragraph 1, within a reasonable time after it has been submitted, maintain it in a central place within the City, and make the description available to a person upon request.

5. The City agrees not to use such confidential information other than for the purposes for which the confidential information was disclosed, as described in paragraph 1 above, and to exercise reasonable care in protecting the confidential information from unauthorized access or disclosure.

6. This obligation extends to all such confidential information, when included in notes of City staff members, internal memos, and other City work product. In the event the City believes that an unauthorized disclosure has or may have occurred, it will immediately notify the Companies. When information is no longer needed, and if consistent with City or department document retention and disposal schedules, the City agrees to destroy all of the confidential information beyond recognition or reconstruction prior to disposal.

7. The obligations of the City under this Agreement shall not apply to any

confidential information that:

7.1. Was in the possession of the City prior to receipt from the Companies,

7.2. Is independently developed by the City without access to the confidential information disclosed under this Agreement,

7.3. Is now, or later becomes, publicly known without any breach by the City of its obligations established by this Agreement,

7.4. Is received by the City in good faith from a third party,

7.5. Comes to the City in the course of discovery or other legal proceedings,  
or

7.6. The City is required to produce by a judicial order or decree, law, or regulation; however, the City shall provide the Companies with prompt written notice so that the Companies may seek whatever legal remedies it deems appropriate, and, to the extent permitted under the law, the City will cooperate with the Companies in any good faith effort the Companies undertakes to protect the confidentiality of the information.

8. Consistent with this Agreement, the City will invoke the exemption under section 13(1)(f) of the FOIA, MCL 15.243(1)(f), in response to any FOIA request for information described in paragraph 1 of and protected by this Agreement. The City acknowledges that some information received from the Companies may be exempt from disclosure under the FOIA for other reasons, including protection from disclosure under another statute. The City is not, by entering into this Agreement, waiving any other confidentiality protections for information received from the Companies.

9. Upon demand by the Company, and if consistent with City or department document retention and disposal schedules, all documents and other materials disclosed to the City under this Agreement shall be returned to the Companies. This includes any copies of such disclosed documents in the possession of the City. However, such copies containing the work product of staff of the City may be destroyed by the City, rather than provided to the Companies, upon the discretion of the City and in compliance with all applicable document retention and disposal schedules.

10. The provisions of this Agreement shall remain in effect after the Data Sharing Term expires.

11. The execution of this Agreement is subject to approval by the MPSC. The Companies must receive an order from the MPSC approving the release of said data prior to releasing it.



This document constitutes the entire Agreement between the City and the Companies, and there are no further items or provisions, oral or otherwise. This Agreement takes effect upon its full execution.


# PROOF OF SERVICE

STATE OF MICHIGAN )

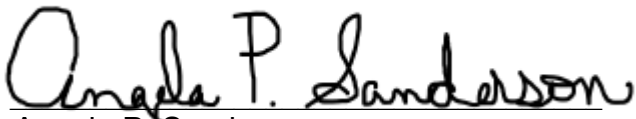
Case No. U-21215

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on February 23, 2023 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 23<sup>rd</sup> day of February 2023.



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

**Service List for Case: U-21215**

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Name	On Behalf of	Email Address
Andrea E. Hayden	DTE Energy Company	andrea.hayden@dteenergy.com
DTE Electric Company	DTE Electric Company	mpscfilings@dteenergy.com
DTE Gas Company	DTE Gas Company	mpscfilings@dteenergy.com