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June 29, 2018

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

Re: MPSC Case No. U-18352

Dear Ms. Kale:

Attached for electronic filing in the above-referenced matter, please find the Initial Brief of the Michigan Energy Innovation Business Council, Institute for Energy Innovation, and Advanced Energy Economy. Thank you for your assistance in this matter.

Sincerely yours,

VARNUM

Timothy J. Lundgren

TJL/daf

Enclosures

c. All parties of record.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)
regarding the regulatory reviews, revisions,)
determination and/or approvals necessary for)
DTE ELECTRIC COMPANY to comply)
with Section 61 of 2016 PA 342.)
_____)

Case No. U-18352

INITIAL BRIEF OF THE
MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL,
INSTITUTE FOR ENERGY INNOVATION,
AND ADVANCED ENERGY ECONOMY

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INSTITUTE FOR ENERGY INNOVATION,
AND ADVANCED ENERGY ECONOMY**

I. INTRODUCTION

This Initial Brief is filed on behalf of the Michigan Energy Innovation Business Council (“Michigan EIBC”), the Institute for Energy Innovation (“IEI”), and Advanced Energy Economy (“AEE”) by its attorneys, Varnum LLP. Failure to address any issues or positions raised by other parties should not be taken as agreement with those issues or positions.

Our organizations appreciate the efforts of the Commission to ensure that implementation of Section 61 of PA 342 of 2016 ("Section 61") results in renewable energy offerings that meet the needs of a range of Michigan customers. Both Michigan EIBC and AEE work with member companies that are large commercial and industrial (“C&I”) customers seeking to increase their access to renewable energy to power their operations, as well as companies that supply C&I customers with renewable energy in many markets. Our perspective in this case is therefore focused on ensuring that implementation of Section 61 results in opportunities for large

customers to access renewable energy through program offerings that are consistent with their needs and preferences.

Given this focus on C&I customers, we are disappointed by DTE's current filing, but encouraged at the Company's indication that it is working to provide new offerings for these customers. The issues with the current application are discussed in Section II, below. In Section III, we recommend a provisional approval of the Company's application conditional upon filing of a new C&I offering within six months that meets specific requirements and that reflects DTE's customers' needs, consistent with the requirements of Section 61.

II. ARGUMENT

A. Michigan EIBC, IEI, and AEE Appreciate the Commission's Process to Develop Clear Criteria for Evaluation of Section 61 Filings

Michigan EIBC, IEI, and AEE applaud the Michigan Public Service Commission ("MPSC" or "Commission") for the thoughtful and thorough process initiated in 2017 to consider appropriate criteria for evaluation of Section 61 filings well in advance of the filing deadline for utility applications. Specifically, we appreciate the Commission's recognition that the statutory language of Section 61 provided helpful but incomplete guidance to ensure successful outcomes for customers, and that additional direction from the Commission was needed. Numerous companies, organizations, and other commenters provided input via the public comment process initiated by the Commission, and the Commission's July 12, 2017 Order consolidates in a clear manner the Commission's view of what utilities should include in their filings.

Our organizations agree with many of the criteria set out in that Order, especially the Commission's emphasis on fair, cost-based programs, experimentation, reliance on competitive solicitation, lack of a need for program caps or limitations, and the importance of meeting the

different needs of different customers. It is on the basis of the criteria in this Order and our experience working with commercial and industrial (“C&I”) customers and renewable energy developers and suppliers that we have evaluated the appropriateness of DTE’s filing, with a focus on the needs of large customers.

B. DTE’s VGPP Offerings Do Not Meet the Requirements of Section 61 or the Clear Criteria Established by the Commission and Reiterated by Commission Staff

The statutory language of Section 61 states that “[t]he customer is responsible for any additional costs incurred and shall accrue any additional savings realized by the electric provider as a result of the customer’s participation in the program.” MCL 460.1061. This statutory language clearly lays out a requirement for cost-based programs that fairly charge customers according to the actual cost to supply them with renewable energy.

In its July 12, 2017 Order, the Commission set forth multiple principles that it would consider when reviewing the utilities' VGPP offerings. These guidelines were reiterated by the MPSC Staff testimony of Katie Trachsel, who laid out four clear criteria based on the Commission’s Order. The first criteria recognizes the intent of Section 61 to apply to all customers, asking “...the extent to which the VGP programs include offers available to different customers with different preferences and objectives.” 2 Tr 132. The remaining three criteria relate to program costs and fees, consistent with the requirement in Section 61 that customers be responsible for any additional costs and accrue any additional savings. Specifically, Ms. Trachsel lists as the second criteria, “...the reasonableness and transparency of the calculation of the cost of the VGP products.” *Id.* She lists the third as, “...the extent to which program fees are used for marketing and administration versus the VGP product offered.” 2 Tr 133. And she lists the fourth as, “...whether the accounting for the program is clear and whether the program is based on cost-of-service principles.” 2 Tr 134.

DTE's proposed program and proposed costs for its VGPP offerings do not meet these requirements, as we will explain in more detail below, looking first at the variety of options made available to customers and then at the reasonableness of the costs of DTE's proposed VGP offerings.

1. DTE's VGPP Offerings Do Not Include Sufficient Offers Available to Different Customers with Different Preferences and Objectives

The Commission made clear in its Order that utilities should provide offerings to meet the different needs of "different customers with different preferences and objectives." Order at 13. Commission staff reiterated this requirement in the testimony of Ms. Trachsel.

In its October 18 filing, however, DTE proposes that its existing MIGreenPower program should be considered sufficient to meet its obligations under Section 61. Approval of DTE's application would result in a one-size-fits-all approach not appropriate for all customers. In particular, the MIGreenPower program is not a viable offering for C&I customers, who are increasingly seeking to meet their electricity needs with renewable energy, driven by corporate sustainability and renewable energy goals. The Commission Order recognized the importance of providing solutions for these customers, stating:

"Recognizing that the preferences and objectives of many commercial and industrial customers are perhaps more easily satisfied with an approach that allows independent contracting between customers and third-party renewable energy providers, the Commission encourages utilities to work in cooperation with these customers to source and contract for renewable energy that meets individual corporate sustainability goals at a competitive price... there are myriad ways that a VGP program, contract, or tariff can be structured in a regulated market and the Commission recommends the providers explore various opportunities in collaboration with interested customers." [Order, p. 12.]

Our organizations have significant experience working with companies seeking to meet their own renewable energy and sustainability goals, and based on this experience we agree with the Commission's assessment and recommendations. Here, we provide some additional detail

regarding the needs and preferences of C&I customers, and explain why MIGreenPower is not an appropriate offering for these customers. Section III concludes with recommendations to amend DTE's application.

a. Commercial and Industrial Customers Have Clearly Articulated and Demonstrated Their Needs and Preferences Regarding Renewable Energy.

As demand for renewable energy among C&I customers has grown, these customers have made clear—through their statements and their actions—what their needs and preferences are regarding utility-provided renewable energy offerings. While different C&I customers have different needs, there are common threads that unite such customers. In Direct Testimony, Ms. Marquis details these criteria, drawing from the Renewable Energy Buyers Principles, a set of six guiding principles that 75 companies have signed onto, and AEE's *Essential Elements of Renewable Energy Tariffs*, a set of criteria for designing utility renewable energy offerings developed in conjunction with AEE's members, which include both large C&I customers and renewable energy developers familiar with the needs of these customers.¹ See 2 Tr 210-213.

To summarize, Ms. Marquis emphasizes that customers are looking for cost-competitive resources chosen through a competitive process; fair, market-based pricing; long- and variable-term contracts; clear additionality and impact; and flexibility and variety. In addition, it is important to note the scale of corporate demand for renewable energy: since 2013, over 11 GW of offsite renewable energy projects have been signed by corporate offtakers, with an average project size of 96 MW.² 2 Tr 210.

¹ Renewable Energy Buyers Principles are available here: <https://buyersprinciples.org/principles/>, accessed June 28, 2018; see also Making Corporate Renewable Energy Purchasing Work for All Utility Customers, available at: <https://info.aee.net/making-corporate-renewable-energy-purchasing-work-for-all-utility-customers>, accessed June 28, 2018.

² Business Renewables Center, BRC Deal Tracker, available at <http://businessrenewables.org/corporate-transactions/>, accessed April 20, 2018.

b. MIGreenPower Does Not Meet the Needs and Preferences of Commercial and Industrial Customers, as These Customers Have Made Clear and as DTE Recognizes.

Keeping in mind the straightforward criteria summarized above, it is clear that the MIGreenPower program does not meet the needs of C&I customers, and that the program does not, alone, meet the Commission’s criteria of satisfying “different customers with different preferences and objectives.”

Specifically, the MIGreenPower program falls short of meeting C&I needs because the program:

- Lacks competitive pricing, as described in more detail in Section II.B.2., below;
- Is capped at just 150,000 MWh annually, too small to meet the needs of many of DTE’s *individual* C&I customers, and a clear violation of the Commission’s finding that “there is no need to set any limit on the amount of renewable energy to be obtained under the Act 61 programs and tariffs” Order at 8;
- Lacks a clear and transparent competitive selection process that allows full participation by third-party entities to ensure that customers are served by the most competitive option available, exacerbating concerns with the cost-effectiveness of the program; and
- Does not provide customers with an opportunity to benefit from a longer commitment, with customers paying the same price whether they commit for 12 months or 12 years.³

These elements, including the cost concerns described in more detail below, clearly demonstrate that the MIGreenPower program, while perhaps appropriate (with some

³ DTE claims that customers can benefit over the term of their participation because they have a locked-in price, but DTE can terminate the program at any time, with no protection for customers. This also does not address the benefit the customer could bring through a binding longer-term commitment, which many customers are willing to make in exchange for financial benefit.

improvements) for residential and small business customers, is not suited to the needs of C&I customers.

Perhaps most importantly, C&I customers themselves have expressed to the Commission that the MIGreenPower program does not meet their needs. In comments filed July 5, 2016 in Docket No. U-18076, the Corporate Purchasers Roundtable, including Crystal Mountain, the Dow Chemical Company, General Motors, and Steelcase, Inc., told the Commission, “a number of the elements of the proposed program lack justification and would set an arbitrarily high price for renewable energy procurement, resulting in reduced demand for the renewable energy resources made available.” The group concluded by urging the Commission “to establish a more collaborative process to ensure an offering that meets the objectives of both DTE Electric and its customers...” rather than simply approve the program as proposed.⁴ Consistent with the concerns of these customers, as of April 2018, C&I customers had subscribed to only 6,267 MWh annually, which accounts for just 0.02% of DTE’s total C&I load.⁵

Finally, DTE itself recognizes that MIGreenPower is not appropriate for C&I customers, and has indicated that it is undertaking steps to introduce another program for these customers. See 2 Tr 40-41, 2 Tr 93-97.

2. DTE’s VGPP Offerings Do Not Offer Renewable Energy Options at a Reasonable Cost.

As noted above, the Commission set three criteria for evaluating the reasonableness of program costs, consistent with the language of Section 61 and reiterated by Ms. Trachsel. First that the calculation of the cost of the VGP products must be reasonable and transparent; second

⁴ Comments of the Corporate Purchasers Roundtable, U-18076-0010, filed July 5, 2016 in Docket No. U-18076.

⁵ DTE Electric Company’s Quarterly Report for MIGreenPower, U-18076-0023, filed April 30, 2018 in Docket No. U-18076. Total C&I sales based on DTE’s self-reported numbers for 2017, available at https://www.michigan.gov/documents/mpsc/DTE_ELECTRIC_Form_P-521_2017_623830_7.pdf.

the extent to which program fees are used for marketing and administration versus the VGP product offered; and third, whether the accounting for the program is clear and whether the program is based on cost-of-service principles. Order, pp. 13-14.

a. DTE's Costs and Credits Are Neither Reasonable Nor Transparent

DTE has been inconsistent about the actual costs of the program to DTE's customers, as Mr. Jester explains. See 2 Tr 175 and Exhibit MEC-6. Furthermore, DTE's latest number, at 3.5 cents per kWh, is significantly above what would be expected given where Michigan's other utilities are in their costs, as Mr. Jester explained: "The projected net costs of the programs other than DTE's ranges from 0.755 cents per kWh to 3.02 cents per kWh." 2 Tr 175. Mr. Jester goes on to note that the only other programs that exceed three cents are those of Upper Peninsula utilities. *Id.* DTE's costs therefore do not seem reasonable nor in line with those of its peers.

Mr. Jester also finds that DTE has significantly undervalued renewable resources, thereby failing to establish reasonable credits for its customers. See 2 Tr 175-177. In his Direct Testimony, Mr. Jester identifies several flaws in the calculations used by DTE witness Schroeder to generate the credit to be offered to DTE's customers. 2 Tr 175-177 and 183-187. Rather than DTE's methodology, Mr. Jester recommends that the Commission conclude DTE's avoided cost proceeding, U-18091, and base the credits for DTE's customers on the avoided costs as determined in that case. 2 Tr 187. In her Rebuttal Testimony, Ms. Schroeder challenges Mr. Jester's conclusion, arguing that, "PURPA avoided costs are for Qualified Facilities, who may or may not be customers of DTE, to build their own generation." 2 Tr 45. Rather, as FERC defines it, "avoided costs" are, "the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." 18 CFR § 292.101(b)(6). Thus,

like the customer credits here, the avoided cost should be based on the utility's own costs to provide power to its customers. The avoided cost structure is therefore an appropriate measure for use in the VGP program, as Mr. Jester suggests.

Mr. Jester further recommends that it would reduce the potential for confusion on the part of customers if the program credits are set no more often than annually. *Id.* However, if the VGP program offered by DTE requires a customer to commit for an extended period of time, then the customer should have the option of locking in the pricing over the length of the time commitment under that program. 2 Tr 187.

b. DTE's Explanation of Marketing and Administration Expenses is Deficient, and the Proposed Expenses and Fees are Unreasonable

In the July 12, 2017 Order, the Commission called out for special attention the administrative and marketing expenses associated with the proposed VGP programs. As Mr. Jester notes, DTE has not supported its proposed administrative and marketing expenses with sufficient budgetary detail or testimonial justification. In her Rebuttal Testimony, DTE witness Schroeder explains that "a budget for marketing and administration was created and then divided across forecasted subscribed MWh prior to program launch." 2 Tr 41. In that case, then, it should have been a simple matter for DTE to put on the record a detailed explanation of the administrative and marketing expenses for which it is seeking to have its customers pay, and yet it has failed to do so here. For this reason, Mr. Jester recommends that these expenses be carefully audited by Staff to ensure their appropriateness.

Furthermore, based on the limited information provided through Discovery, the costs proposed appear to be unreasonable. Ms. Trachsel in her Direct Testimony points out that "even if the marketing and administration budget is a true \$3 million and not net of the \$838,807

expensed in 2017...” this should result in a program fee of \$0.0008/kWh based on the program cap, which is “less than half of the Company’s requested fee of \$.002 per kWh.” 2 Tr 133.

In addition to pointing out DTE’s inflation of its program fee, Ms. Trachsel in her critique hints at a concern that the \$3 million estimated budget is inaccurate, a point explored in the Direct Testimony of Ms. Marquis. Specifically, Ms. Marquis notes that DTE provides very little detail or justification of its cost estimates, specifically failing to explain “how it arrived at annual totals when some costs (e.g., website development, marketing material design, outreach team uniforms) appear to be one-time, upfront costs, while others (website maintenance, call center outreach, marketing materials printing) would occur across the three years.” 2 Tr 219. Regarding these estimates, DTE has also failed to explain “why it has selected the “high” estimate for administrative and marketing costs, a choice that results in total program administrative and marketing costs that are more than \$1 million higher than costs under the “low” estimate.” *Id.* Furthermore, Ms. Marquis notes that “[f]or companies that have set ambitious renewable energy or greenhouse gas targets, very little education or marketing will be needed beyond informing companies about the new offering through existing channels of customer engagement.” *Id.* This has proven true for Consumers Energy’s Large Customer Renewable Energy Program (“LC-REP”) Option A, which has received significant customer interest despite having no marketing budget included in the program fees. Overall, it appears that DTE’s marketing and administrative costs are likely unjustifiably high, and the company should be required to provide additional detail about how it arrived at these costs and how its upfront estimates align with actual spending.

c. DTE's MIGreenPower Program Cannot be Reasonable Found to Follow Cost-of-Service Principles.

The lack of transparency in DTE's proposed costs, discussed above, make a determination about whether or not the program is based on cost-of-service principles difficult, if not impossible. Without a clearer and more detailed record from DTE, the Commission should find that DTE has not demonstrated that its program is in accordance with cost-of-service principles. Moreover, to minimally satisfy cost of service principles, the credit to a customer for voluntarily using renewable energy must be at least equal to avoided costs. As explained above, this is not the case for the MIGreenPower program.

III. CONCLUSIONS AND PRAYER FOR RELIEF

WHEREFORE, the Michigan Energy Innovation Business Council, Institute for Energy Innovation, and Advanced Energy Economy hereby respectfully request that the Commission grant conditional approval of DTE's application, with the stipulation that DTE must (1) continue the existing MIGreenPower program, with some amendments, including a closer evaluation of its cost structure; and (2) introduce a new program tailored for C&I customers that meets certain Commission requirements, to be filed at the Commission within six months. These adjustments are necessary to ensure that DTE's application fully complies with the requirement in Section 61 to provide customers with options to purchase renewable energy, and with the criteria set forth by the Commission in its July 12 Order.

With regard to the existing MIGreenPower program, DTE should preserve the existing program for any customers interested in this flexible offering, but should make changes to ensure the program is responsive to customer needs and aligned with the criteria set forth in the Commission order. Specifically, DTE should be required to provide more detailed information on the administrative and marketing fees for consideration and potential adjustment by the

Commission. DTE should also adjust the program credits to bring them into alignment with cost-of-service principles, and expand the program as it nears full enrollment, making use of a competitive selection process to ensure customers are served by the most cost-competitive resources available.

With regard to a new C&I program, the Commission should direct DTE to file a program in this docket within six months, and should set out specific criteria that the program must meet.

Specifically, the new program should:

1. Utilize a competitive procurement and selection process, with the costs of the resources passed directly to participating customers;
2. Credit customers fairly for non-renewable energy no longer used, such as through an avoided cost mechanism or a market-based credit;
3. Be sized according to customer demand, which should be assessed in advance of procuring a first tranche of resources, and include clear provisions to create a second tranche if the initial offering is fully subscribed;
4. Fairly allocate available resources among customers if customer demand exceeds resource availability during the first tranche, such as by apportioning each customer's resource availability during the first tranche, such as by apportioning each customer's proportion of the total available output on the basis of each customer's stated interest;
5. Provide customers with flexibility regarding project term (with options in the 10-15 year range) and subscription amount. and
6. Be open to all customers with average maximum annual demand of 1 MW or higher, including customers with 1 MW of load aggregated across multiple locations;

DTE should continue to work with customers to design a program consistent with these minimum criteria. DTE should submit its proposed C&I VGP offering to the Commission within

six months. Given that there are numerous examples of C&I programs across the country to draw from as examples, six months is a reasonable timeframe to complete a proposal for a new program. In addition, DTE has indicated that it has already started developing such a program in collaboration with its customers, making this six month time allowance a generous one. The Commission should consider and rule on the program within one year of issuing its final order in the VGP case, and conduct an initial evaluation of the program during the next VGP review in two years.

These changes are necessary to ensure that all of DTE's customers have meaningful, actionable access to renewable energy options—not just options on paper, but options that meet their needs and that fulfill the requirement of Section 61 to ensure that “the customer is responsible for any additional costs incurred and shall accrue any additional savings realized...” by delivering cost-competitive offerings consistent with cost-of-service principles.

Respectfully submitted,

Varnum LLP
Attorneys for the Michigan Energy
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Institute for Energy Innovation,
and Advanced Energy Economy

June 29, 2018

By: _____

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STATE OF MICHIGAN

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Case No. U-18352

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

Deliah A. Fowler, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at Varnum LLP and that on the 29th day of June, 2018, she served a copy of the Initial Brief of the Michigan Energy Innovation Business Council, Institute for Energy Innovation, and Advanced Energy Economy upon those individuals listed on the attached Service List via email at their last known addresses.

Deliah A. Fowler

SERVICE LIST
MPSC CASE NO. U-18352

Administrative Law Judge

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