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October 28, 2021

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48917

RE: MPSC Docket No. U-20816

Dear Ms. Felice:

Enclosed herewith for filing in the above-referenced matter, please find the ***Initial Brief of Retail Energy Supply Association*** and its ***Proof of Service***.

If you have any questions, please feel free to contact my office. Thank you.

Very truly yours,

Fraser Trebilcock Davis & Dunlap, P.C.

Jennifer Utter Heston

Jennifer Utter Heston (P65202)

Jennifer Utter Heston
Digitally signed by Jennifer Utter Heston
Date: 2021.10.28 09:20:17 -04'00'

JUH/jlh
Enclosures
cc: All counsel of record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of DTE GAS COMPANY for a Gas Cost Recovery Plan, 5-year Forecast and Monthly GCR Factor for the 12 months ending March 31, 2022	))))))	Case No. U-20816

**INITIAL BRIEF OF THE
RETAIL ENERGY SUPPLY ASSOCIATION**

Dated: October 28, 2021

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NOW COMES the Retail Energy Supply Association ("RESA")[1], by and through its attorneys, Fraser Trebilcock Davis & Dunlap, P.C., and pursuant to the schedule adopted by Administrative Law Judge Katherine E. Talbot ("ALJ"), hereby respectfully submits this Initial Brief on DTE Gas Company's ("DTE Gas'") application for approval of a gas cost recovery ("GCR") plan, five-year forecast, and monthly GCR factor for the 12 months ending March 31, 2022.

I. **INTRODUCTION**.

RESA is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient customer-oriented outcome than a regulated utility structure. RESA members are licensed to sell natural gas to retail customers in Michigan as Alternative Gas Suppliers ("AGS"), including to customers in DTE's gas customer choice ("GCC") program. RESA members also serve customers as part of DTE's End Use Transportation ("EUT") program. As a result, RESA is keenly interested in the rates, terms and conditions of DTE's GCC and EUT programs approved by the Commission.

This docket involves an application by DTE Gas for approval of a GCR plan for the 12 months ending March 31, 2022. DTE Gas requests approval to implement a maximum base GCR factor of $2.53/Mcf plus a contingency factor. DTE Gas also requests approval of a Supplier of Last Resort ("SOLR") reservation charge of $0.42/Mcf for GCR customers and a SOLR reservation charge of $0.28/Mcf that will be billed to GCC customers.

[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

In connection with this proceeding, the Attorney General presented the testimony of her expert witnesses, Mr. Sebastian Coppola.[2] Mr. Coppola is an independent business consultant with more than 30 years of experience in public utility and related energy work.[3] Mr. Coppola has testified before the Michigan Public Service Commission ("MPSC") on numerous occasions.[4]

Mr. Coppola reviewed DTE Gas' filings in this proceeding and made one recommendation concerning DTE Gas' interstate pipeline capacity used to backstop gas deliveries by AGSs. Mr. Coppola observes that DTE Gas "is incurring excess interstate pipeline transportation capacity costs to unnecessarily backstop Alternative Gas Suppliers' gas deliveries for GCC customers."[5] Mr. Coppola recommends that the Commission direct DTE Gas to present an analysis in the next DTE Gas GCR plan case filing with evidence showing why additional transportation capacity is needed to backstop AGS deliveries for GCC customers and to identify the cost savings from avoiding the purchase of such excess capacity.[6]

For the reasons stated further below, the Commission should adopt the AG's excess interstate pipeline capacity recommendation.

II. THE COMMISSION SHOULD ADOPT THE AG'S RECOMMENDATION DIRECTING DTE GAS TO SUBSTANTIATE ITS CONTINUING DECISION TO HOLD EXCESS INTERSTATE PIPELINE CAPACITY TO BACKSTOP AGS DELIVERIES..

In its application in this proceeding, DTE Gas includes approximately $60 million in firm pipeline capacity costs with interstate pipelines.[7] DTE Gas purchases interstate pipeline

[2] 2 Tr. 250-310
[3] 2 Tr. 251.
[4] 2 Tr. 252-253.
[5] 2 Tr. 256, ln. 25-27.
[6] 2 Tr. 256-257.
[7] See, Exhibit A-11 Revised, p. 1.

capacity for both GCR and GCC customers.[8] DTE Gas plans to charge GCC customers approximately $6 million under the SOLR reservation charge for pipeline capacity that DTE Gas holds to backstop the potential delivery failure by one or more AGS.[9]

A. A Brief History of DTE Gas' SOLR Reservation Charge.

DTE Gas' SOLR reservation charge is intended to compensate DTE Gas for acting as the SOLR should an AGS fail to serve its customers. The charge was first approved by the Commission for Michigan Consolidated Gas Company ("MichCon", predecessor to DTE Gas) in its April 15, 2014, order in Case No. U-17131, MichCon's 2013-2014 GCR plan proceeding.[10]

In that proceeding, MichCon argued that a SOLR reservation charge was needed. DTE claimed that GCR customers were providing a subsidy to GCC customers through the GCR factor that paid for firm pipeline capacity used to provide SOLR protection to GCC customers.[11] RESA, however, raised a number of concerns with DTE's uniform SOLR reservation charge proposal.[12] RESA argued that the charge is duplicative, that no suppliers had defaulted in the previous five years, and that credit requirements provide funds to obtain service in case of default.[13] RESA also explained that GCC customers had to inefficiently pay for transportation service twice under DTE Gas' reservation charge proposal, once to the GCC customer's AGS and again to DTE Gas under the SOLR reservation charge.[14]

IGS Energy, an AGS operating in DTE Gas' GCC program, specifically advocated that DTE Gas revisit its policy of holding enough capacity to serve all GCR and GCC customers

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[8] See, 2 Tr. 206.
[9] See, Exhibit A-26, line 21.
[10] Order dated April 15, 2014, MPSC Case No. U-17131, pp. 8-9.
[11] *See*, *Id.*, p. 4.
[12] *Id.*, pp. 3-8.
[13] *Id.*
[14] *Id.*

alike.[15] At the time, the Commission rejected that recommendation based on the view that DTE Gas must meet its operational requirements and has a legal obligation to act at the SOLR to all of its customers.[16]

Of particular concern to RESA is the fact that GCC customers do not receive the same benefit of DTE Gas' pipeline assets as GCR customers. RESA explained that the main benefit of holding pipeline capacity is having the ability to transport natural gas from point A to point B through the pipeline. Delivering supply from point A to point B allows DTE Gas to capture a market spread value between two points on the pipeline, which ultimately lowers the average supply cost for GCR customers. DTE Gas utilizes the pipeline assets it retains to transport gas for GCR customers to DTE Gas' city-gate, whereas AGSs are responsible for delivering the gas to the city-gate for GCC customers. Thus, GCC customers do not receive that same reduced supply costs from DTE Gas' pipeline assets. Under DTE's uniform reservation charge, GCC customers paid the same charge that GCR customers pay. However, the two classes of customers do not receive the same benefits.

Rather than impose a capacity reservation charge, AGSs proposed adopting a capacity assignment plan ("CAP").[17] A CAP would have assigned a portion of DTE Gas' pipeline capacity to AGSs, and in exchange AGSs would have paid for the cost of the capacity to the pipeline directly thereby alleviating the need for GCC customers to pay the SOLR reservation charge. A CAP is very common to natural gas choice programs outside Michigan. In its April 15, 2014, order in Case No. U-17131, however, the Commission deferred ruling on a proposed

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[15] *Id.*, p. 13.
[16] *Id.*, p. 15, ("the Commission rejects this recommendation based on its earlier analysis that the utility must meet its operational requirements and has a legal obligation to act as the supplier of last resort for all of its customers. Accordingly, the Commission rejects the recommendation that it revisit that policy at this time . . . ").
[17] *Id.*, pp. 9-14.

CAP suggesting that more information should be presented in DTE Gas' next GCR plan proceeding.[18]

The Commission again addressed the SOLR reservation charge in DTE's 2014-2015 GCR plan proceeding, Case No. U-17332. In that case, RESA and IGS Energy proposed a more detailed CAP, which was largely supported by the AG.[19] The judge in that proceeding, Judge Feldman, found that "requiring GCC customers to continue to pay the costs of pipeline capacity only used to serve those customers in the event of colder-than-normal conditions or supplier default is economically inefficient where an alternative capacity assignment program is feasible."[20]

In fact, Judge Feldman noted that DTE's reservation charge, as applied equally to both GCC and GCR customers, results in a subsidy by GCC customers to GCR customers. Quoting AG witness Ralph Miller, Judge Feldman explained:

> '[T]he newly established Reservation Charge tilts the playing field in favor of DTE Gas and its GCR program. GCC customers must pay the Reservation Charge for capacity that their commodity gas suppliers cannot use to serve them, and DTE Gas itself can use that capacity (paid for by GCC customers) to reduce its own cost of serving GCR customers. This tilting of the playing field is an unnecessary and inappropriate impediment to competition.'[21]

Thus, IGS Energy, RESA, the AG and the judge in Case No. U-17332 all determined that DTE's uniform capacity reservation charge was inequitable.

The Commission, however, ultimately determined not to implement the proposed CAP. The Commission determined that more information was needed:

> The Commission takes note of the ALJ's finding that the capacity acquired to meet the SOLR obligation may provide benefits to GCR

[18] *Id.,* p. 14.
[19] *See*, Order dated April 23, 2015, MPSC Case No. U-17332, p. 9.
[20] *Id.*, p. 9 quoting the ALJ's Proposal for Decision at pp 41-42.
[21] ALJ's Proposal for Decision, pp. 41-42, MPSC Case No. U-17332, quoting the AG's witness testimony at 5 Tr. 544.

> customers that are not available to GCC customers. PFD, pp. 42-43. However, the Commission also notes that IGS and RESA failed to show the extent of any such inequity or that the CAP was a feasible and appropriate mechanism to attempt to remedy any inequity.[22]

The Commission, however, did take note of the judge's findings and stated that it seeks to ensure that the capacity reservation charge "is equitable and accurate."[23] The Commission stated the following:

> Going forward, the Commission seeks to ensure that the allocation of pipeline reservations costs and associated SOLR service is equitable and accurate. No party took issue with the amount of the reservation charge in this case. The Commission expects the amount of the reservation charge to be reviewed in plan cases to make sure that it is appropriate based on actual operations and expenses, and is commensurate with the benefits afforded by SOLR service for both GCR and GCC customers.[24]

Thus, the Commission acknowledged that DTE Gas' allocation of capacity costs and level capacity reservation charge was not equitable or accurate. The Commission, however, did not believe that the record in Case No. U-17332 was sufficient to order a CAP.

In light of the Commission's previous rulings, RESA presented substantial evidence in MPSC Case No. U-17691 in support of an adjustment to DTE's capacity reservation charge. RESA's witness in that case presented a capacity valuation model that quantified the gas commodity savings that GCR customers receive from DTE's capacity assets. In its November 22, 2016, Order in Case No. U-17691, the Commission directed DTE Gas to continue charging GCC customers a SOLR reservation charge, but that the charge should be discounted by 30% to reflect the different value that GCC and GCR customers receive from DTE Gas' capacity assets.[25] DTE Gas' SOLR reservation charge has been discounted by 30% for GCC customers

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[22] Order dated April 23, 2015, MPSC Case No. U-17332, p. 13.
[23] *Id.*, p. 14.
[24] *Id.*, p. 14.
[25] Order dated November 22, 2016, MPSC Case No. U-17691, p. 24.

since 2016.

In contrast, GCC customers of Consumers Energy Company do not pay any SOLR reservation charge. Consumers Energy Company has long taken the position that it does not hold excess pipeline capacity to serve GCC customers. As such, Consumers Energy Company does not incur an incremental cost to backstop AGS deliveries on Consumers Energy's system.

B. The AG's Recommendation for an Updated Analysis of DTE Gas' SOLR Capacity Holdings.

Mr. Coppola now testifies that DTE Gas' "practice of acquiring capacity to backstop AGS's gas deliveries is a relic of the past and may no longer be necessary."[26] Mr. Coppola testifies that DTE Gas' practice increases gas supply costs for both GCR and GCC customers unnecessarily and should be discontinued.[27] In support of his position, Mr. Coppola notes that historical data shows that most AGSs have delivered the quantities of gas directed by the utility and that any variations in deliveries amounted to less than 1%.[28] Mr. Coppola testifies that "the reliability of gas deliveries by AGSs has been extraordinary,"[29] In his 45 years in the gas distribution industry, Mr. Coppola is unaware of any AGS that failed to meet its gas delivery obligations by any large or significant amount.[30] Mr. Coppola also testifies that DTE Gas admitted that it has never made any gas supply purchases to backstop any shortfall in gas deliveries from AGSs.[31] Mr. Coppola testifies that the percentage of gas delivered by the top five AGSs in January 2021 represents between 1.1% and 4.9% of the total gas supply available to DTE Gas from gas purchases and storage in a normal January, meaning that DTE Gas could

[26] 2 Tr. 283, ln. 1-2.
[27] 2 Tr. 283.
[28] *Id.*
[29] 2 Tr. 283, ln. 16-17.
[30] 2 Tr. 283.
[31] 2 Tr. 284.

likely manage any AGS shortfall with its portfolio.[32] Mr. Coppola also testifies that DTE Gas' tariff contains several requirements that ensures strong incentives for AGSs to meet their supply obligations making failure unlikely.[33] Finally, Mr. Coppola observes that Michigan's other large natural gas distribution utility, Consumers Energy Company, does not hold excess pipeline capacity to backstop AGS deliveries and testifies that DTE Gas' decision to hold excess capacity is a contributing factor to the $40 million in additional pipeline capacity costs paid by DTE Gas customers in comparison to Consumers Energy's customers.[34] In light of this GCC history and current circumstances, Mr. Coppola recommends that the Commission direct DTE Gas to substantiate why holding excess pipeline capacity to backstop AGSs is still necessary and to identify the cost savings from avoiding such purchases.[35]

In its rebuttal testimony, DTE Gas opposes Mr. Coppola's recommendation.[36] DTE Gas explains its obligation to serve as the SOLR and contends that just because there has not been a problem with AGS deliveries in the past does not mean that there will not be a problem in the future.[37] DTE Gas asserts that its tariff and supplier security requirements are insufficient to ensure that AGSs will perform.[38] DTE Gas disputes Mr. Coppola's assessment about DTE Gas' ability to manage AGS supply disruptions and contends that Mr. Coppola provided no analysis to support his views.[39] DTE Gas contends that it manages its SOLR function for both GCR and GCC customers on a combined basis and is a different utility than Consumers Energy making any comparisons inappropriate.[40] DTE Gas opposes being required to perform the

[32] 2 Tr. 284-285.
[33] 2 Tr. 285.
[34] 2 Tr. 286-287.
[35] 2 Tr. 288-289.
[36] 2 Tr. 113-122.
[37] 2 Tr. 114.
[38] 2 Tr. 116-117.
[39] 2 Tr. 117-118.
[40] 2 Tr. 119-120.

analysis Mr. Coppola recommends and states that his recommendation would put customers at risk.[41]

To be clear, Mr. Coppola's recommendation at this point is merely for a detailed analysis of DTE Gas' decision to continue to hold excess pipeline capacity. An analysis does not put customers at risk. The AG has not yet recommended that DTE Gas shed excess capacity or that the costs of excess capacity be disallowed. The AG is merely asking for an analysis of the current operating characteristics of DTE Gas' system that necessitate DTE Gas holding excess pipeline capacity to meet its SOLR function with cost information. Much has changed about the operating characteristics of DTE Gas' system since the SOLR reservation charge was first adopted in 2014, including new interconnects with the NEXUS pipeline. The AG has raised legitimate questions about whether contemporary circumstances warrant DTE Gas' on-going decision to hold excess pipeline capacity. Importantly, it is the utility that bears the burden of demonstrating that its GCR costs are reasonably and prudently incurred.[42]

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[41] 2 Tr. 121.

[42] *See,* MCL 460.6h(3)*; see also, In re Michigan Gas Utilities Co*, Opinion and Order dated August 30, 1983, MPSC Case No. U-7484, p. 10, and *In re Detroit Edison Co*, Opinion and Order dated July 9, 1987, MPSC Case No. U-8020-R, pp. 16-17.

III. <u>CONCLUSION AND PRAYER FOR RELIEF</u>.

For all the reasons explained in the preceding sections of this Initial Brief, RESA respectfully requests that the Administrative Law Judge issue a proposal for decision recommending that the Commission adopt the AG's recommendation directing DTE Gas to present an analysis and evidence in its next GCR plan filing showing why additional interstate pipeline transportation capacity to backstop AGSs is still necessary and identify the cost savings from avoiding the purchase of such excess pipeline capacity.

Respectfully submitted,

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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CERTIFICATE OF SERVICE

Jennifer Hansen hereby certifies that, on the 28th day of October 2021, she served the ***Initial Brief of Retail Energy Supply Association*** and its ***Proof of Service*** in the above docket on the persons identified on the attached service list by electronic mail and filed it electronically with the Michigan Public Service Commission.

/s/ Jennifer Hansen

Jennifer Hansen

Jennifer Hansen

Digitally signed by Jennifer Hansen
Date: 2021.10.28 09:21:26 -04'00'

SERVICE LIST FOR U-20816

Administrative Law Judge

Honorable Katherine Talbot	talbotk@michigan.gov	*Michigan Public Service Commission*	7109 W. Saginaw Hwy. Lansing, MI 48917

(***Proof of Service Only***)

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