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August 3, 2018

Ms. Kavita Kale
Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48917

RE: MPSC Docket No. U-18999

Dear Ms. Kale:

Attached herewith for filing, please find the *Exceptions of Retail Energy Supply Association* and Certificate of Service of same.

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

JUH/ab
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 authority to)
increase its rates, amend its rate schedules)
and rules governing the distribution and)
supply of natural gas, and for miscellaneous)
accounting authority)
_____)

Case No. U-18999

**EXCEPTIONS OF
RETAIL ENERGY SUPPLY ASSOCIATION**

Dated: August 3, 2018

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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 Martin D. Snider (“ALJ”), hereby respectfully submits these exceptions to the ALJ’s Proposal for Decision (“PFD”) issued on July 16, 2018 on DTE Gas Company’s (“DTE Gas”) application for authority to increase its rates for the distribution of natural gas and for other relief.

I. INTRODUCTION.

On November 22, 2017, DTE Gas filed an application, testimony and exhibits seeking authority to increase its rates for the distribution of natural gas and for other relief. In its application, DTE Gas seeks to increase rates by \$85.1 million based on a test year ending September 30, 2019, plus approval of a revenue decoupling mechanism and an infrastructure recovery mechanism.

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 Gas’ end-use transportation (“EUT”) and gas customer choice (“GCC”) program. As a result, RESA is keenly interested in the terms and conditions of DTE Gas’ EUT and GCC programs.

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 twenty 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.

A part of this proceeding, RESA put forth expert witness testimony by John Mehling and Joseph Oliker. RESA's expert John Mehling reviewed DTE Gas' EUT tariffs and recommended that DTE Gas implement a pooling program for EUT customers. Pooling would permit EUT customers to be combined into groups or pools under each supplier. Mr. Mehling testified that pooling for EUT customers has been common industry practice for many years and should be made available to DTE Gas' EUT customers.

RESA's expert Joseph Oliker reviewed DTE Gas' notification letter to GCC customers. Mr. Oliker determined that DTE Gas' notification letter is anti-competitive and misleading and should be revised.

In his PFD, the ALJ made numerous determinations and recommendations. The ALJ correctly determined that the Commission should direct DTE Gas to implement RESA's pooling proposal. The ALJ found that RESA's witness Mehling addressed the Commission's previously stated concerns about pooling for DTE Gas and provided substantial evidence in support of how pooling would benefit DTE Gas' EUT customers.² The Commission should direct DTE Gas to implement RESA's proposed pooling program for EUT customers.

The ALJ, however, erred in failing to recommend that the Commission adopt RESA's recommendations with respect to DTE Gas' misleading and anti-competitive notification postcard to GCC customers.³ For the reasons discussed below, RESA requests that the Commission direct DTE Gas to revise its notification postcard to GCC customers to remove misleading and anti-competitive comparisons to DTE Gas' gas cost recovery ("GCR") charge.

² PFD, pp. 208-210.

³ *Id.*, pp. 218-221.

II. THE ALJ ERRED IN FAILING TO RECOMMEND THAT DTE GAS REVISE ITS GCC CUSTOMER SWITCHING NOTIFICATION TO REMOVE MISLEADING AND ANTI-COMPETITIVE STATEMENTS.

DTE Gas sends a notification postcard (“Customer Notice Letter”) to customers who switch to an AGS in its service territory. A sample Customer Notice Letter was admitted into evidence as Exhibit RES-1 (JOL-1).

RESA’s witness, Mr. Oliker, reviewed and analyzed the Customer Notice Letter that DTE Gas sends to customers switching to an AGS. Mr. Oliker determined that DTE Gas’ Customer Notice Letter contained an anti-competitive and misleading message to GCC customers and recommended that the Commission prohibit such activity as part of this rate case. Further, Mr. Oliker recommended that, to the extent the Commission wishes to include bill messages encouraging customers to explore their pricing options, the message should not include any price comparisons, but rather include a competitively neutral mention of the Commission’s choice webpage.

In his PFD, the ALJ recommends that the Commission “encourage DTE Gas to include the MPSC’s Gas Choice Comparison website on the notification postcard and include information about GCC customers’ discounted SOLR reservation charge.”⁴ In making his recommendation, the ALJ concluded that the Customer Notice Letter is not anticompetitive because the GCR rate identified in the notice is the same rate identified on the Commission’s website.⁵ The ALJ further concluded that the Customer Notice Letter is not misleading because the customer can obtain further information from the AGS or other sources to clarify or remedy misleading information provided by DTE.⁶ For the reasons explained below, the Commission

⁴ PFD, p. 221.

⁵ *Id.*, p. 220.

⁶ *Id.*

should find that DTE Gas' Customer Notice Letter is misleading and anti-competitive and should be modified as recommended by RESA.

A. *DTE Gas' Customer Notice Letter is misleading.*

DTE Gas' Customer Notice Letter to GCC customers is misleading. DTE Gas' Customer Notice Letter does not provide sufficient information to customers about their gas supply options to make an informed decision, and the information that is provided is biased against the AGS and in favor of DTE Gas. Mr. Olikier explained:

Context is crucial when comparing the different products and services received by customers. The most important contextual element is product type. The most prevalent gas products offered in the DTE Gas gas market are either a fixed price product for a specified contract term or month-to-month variable price product. DTE Gas' GCC Customer Notice Letter does not note the AGS product being provided to the customer, but implies all natural gas products are the same and readily compared based on price alone. For instance, DTE Gas' GCR is a month-to-month product that could vary every month. One of the benefits of customer Choice is that customers have the ability to choose between different products in the market, including fixed price and variable price products. Customers that choose a fixed price product do so because they value the certainty of knowing their price is fixed and that they are protected from potential future wholesale market price volatility. Of course, as the market moves over time, a particular month's GCR rate may be higher or lower than the fixed price rate; but that may be immaterial to a customer whose priorities are focused more on cost certainty than on the lowest possible price. DTE Gas' GCC Customer Notice Letter does not provide any indication of the product type and thus may mislead a customer into believing that the DTE Gas Energy and AGS prices are based on the same, or even similar products.⁷

Furthermore, the Customer Notice Letter fails to disclose that while the GCR is just a commodity product, the product that the customer purchased from an AGS might have other attributes beyond just the commodity. Perhaps the product the customer receives is a renewable

⁷ 2 Tr. 29, ln. 5-23.

product or is supported by carbon off-sets. Perhaps the customer was interested in a product that offers airline miles or hotel rewards points after remaining on the product for a period of time. Perhaps they have contracted for a product which offers a free or subsidized home services contract for the duration of their tenure with their supplier. There are numerous ways in which a simplistic comparison of DTE Gas' GCR price to the AGS billed price is misleading. Mr. Oliker testified, "DTE's prominent, misleading Apples-to-Oranges comparison runs the risk of having GCC customers lose the benefits that prompted them to choose an AGS."⁸

DTE Gas' bill message is also misleading in its comparison of the GCR price with the AGS billed price because DTE Gas' GCR is not a market price. DTE Gas' GCR clause is a regulatory mechanism designed to mitigate fluctuations in market prices.

Additionally, there are reconciliations built into DTE Gas' GCR factor. Thus, there are instances when DTE Gas may over-recover from the previous gas year, and that over-recovery is passed-through to the GCR the following year, lowering the GCR factor below the current market price. There are also instances when reconciliations work to raise the GCR factor when there were under-recoveries from the previous year. Regardless, reconciliations cause the GCR factor to not be reflective of market-based pricing; thus, comparing a reconciled GCR factor with a competitive AGS product also creates an Apples-to-Oranges price comparison for customers.

Furthermore, DTE Gas' Customer Notice Letter also inaccurately conveys the relationship between DTE Gas' GCR price and the AGS billed price. GCC customers have a Supplier of Last Resort ("SOLR") discount of 30 percent applied to the reservation charge on

⁸ 2 Tr. 30, ln. 9-11.

their bills as adopted in MPSC Case No. U-17691,⁹ which is not mentioned when DTE simply lists the GCR price comparison. GCR customers will have to pay a SOLR charge that includes the intrinsic costs of DTE's extensive capacity assets. This represents another factor that displays how the GCR factor represents an Apples-to-Oranges price comparison and is inherently misleading to the GCC customer. Both the Commission Staff and the ALJ recognized this inaccuracy in DTE's Customer Notice Letter.¹⁰

The customer's ability to conduct further research and obtain additional information from other sources does not cure the defects in DTE Gas' Customer Notice Letter. The utility should not be permitted to mislead customers by providing incomplete and inaccurate information. Trusting that the utility is regulated by the Commission, customers may not choose to conduct the further research necessary to remedy DTE Gas' incomplete and inaccurate statements. DTE Gas' Customer Notice Letter must be modified.

B. DTE Gas' Customer Notice Letter is anti-competitive.

In addition to DTE Gas' Customer Notice Letter being misleading, it is also anti-competitive. The Customer Notice Letter states that the customer has enrolled with a specific AGS and then goes on to state the current GCR price. As noted above, the Customer Notice Letter fails to mention the reduced SOLR charges applicable to customers taking service from an AGS. The first GCR price comparison contained within the Customer Notice Letter Mr. Olikier saw was on a customer's notification letter in January 2018.

Mr. Olikier explained that DTE Gas' Customer Notice Letter is anti-competitive.

Mr. Olikier testified, as follows:

The GCR offered by DTE is an alternative to an AGS product. The inclusion by DTE of its GCR price comparison on GCC customer's

⁹ Order dated November 22, 2016, MPSC Case No. U-17691, p. 24.

¹⁰ See, PFD, p. 218.

switching notice letters creates an anti-competitive environment in Michigan. What DTE is doing is analogous to Target notifying customers of their price—a price that may no longer be accurate and without including the entire price—as a customer is in the process of purchasing products at a Walmart store. DTE is using its role as the delivery mechanism to target GCC customers and direct them to DTE’s GCR offer.¹¹

Mr. Oliker further explained that DTE Gas’ Customer Notice Letter contains other anti-competitive aspects:

The Customer Notice Letter directs customers to the *DTE* gas choice webpage at dteenergy.com/gasoption. A copy of DTE’s webpage is attached as Exhibit RES-2 (JOL-2). The inclusion of the webpage link is related to a DTE specific program called “Lock-In Your Natural Gas Account,” which as a standalone webpage could represent a positive market improvement if the program were the focus of the webpage. However, DTE’s webpage contains a number of warnings about shopping with an AGS which appear to attempt to dissuade customers from enrolling with an AGS. In fact, finding information related to the program “Lock-In Your Natural Gas Account” requires that a customer scroll past a significant amount of information warning of shopping with an AGS prior to finding the information at the bottom of the webpage. The inclusion of the webpage in the Customer Notice Letter is an example of DTE utilizing a clever tactic in order to direct GCC customers away from AGS and to the GCR price.¹²

Importantly, the content of DTE Gas’ gas choice page is not competitively neutral and there is a bias against the GCC program. Mr. Oliker recommends that all customers (both GCC and GCR) should be directed to the Commission’s choice information page and not DTE Gas’ choice webpage.¹³ The Commission and Commission Staff spent a lot of time and resources developing a gas choice webpage that explains gas choice in a competitively neutral manner and gives competitively neutral price comparisons.

¹¹ 2 Tr. 27, ln 15-22.

¹² 2 Tr. 28, ln. 2-13.

¹³ The MPSC’s gas price comparison webpage can be found at: <https://w2.lara.state.mi.us/GasChoice/>

Because the GCR price contained in the Customer Notice letter is also available on the Commission's website does not support the ALJ's conclusion that the Customer Notice Letter is not anticompetitive. The Commission's website contains much more information and context about the utility's GCR price and how that price compares to AGS prices. The GCR price provided by DTE Gas on a standalone basis does not convey sufficient information for a customer to make an informed decision about their gas choice. RESA recommends that the Commission's GCC price comparison website should be the only webpage listed in the Customer Notice Letter.

C. DTE Gas' Customer Notice Letter should be competitively neutral and accurate.

DTE Gas' Customer Notice Letter should be competitively neutral and accurate. To the extent that DTE Gas or the Commission wishes to encourage all customers to take advantage of the choices in the marketplace, the messaging to customers should be competitively neutral and not favor GCC or GCR prices. Thus, all messages should be the same for both GCC and GCR customers unless there is a valid cause for a difference – not simply because DTE Gas as the monopoly provider wants to provide a competitive solicitation to customers.

RESA supports encouraging customers to take advantage of the different pricing alternatives available to them in the marketplace. However, any call-out to customer choice should be competitively neutral and not implicitly or explicitly favor the GCR price or any product over another. The Customer Notice Letter provided by DTE Gas clearly encourages customers to return to the GCR rather than shop for their natural gas with an AGS. To ensure that the Customer Notice Letter is competitively neutral and not misleading, the Commission should adopt the following policies:

- The customer notice letter *should not* single out the GCR price as a comparison, but simply should direct these GCC customers to the Commission's gas price comparison website;
- The customer notice letter should not include a link to the DTE webpage for gas choice;
- The Customer Notice Letter should not include a GCR price comparison, but, if any such comparison is permitted, then, at a minimum, any price comparison should reflect the SOLR rate that DTE customers pay which is higher than the GCC SOLR rate.

III. CONCLUSION AND PRAYER FOR RELIEF.

For all the reasons explained in the preceding sections of these exceptions, RESA respectfully requests that the Commission issue an order: 1) adopting the ALJ's recommendation to direct DTE Gas to implement a pooling program for its EUT customers; and 2) directing DTE Gas to revise its postcard-format Customer Notice Letter to gas customer choice customers to remove misleading and anti-competitive comparisons to DTE Gas' GCR charge.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
ATTORNEYS FOR RETAIL ENERGY SUPPLY ASSOCIATION



Date: August 3, 2018

By: _____

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STATE OF MICHIGAN

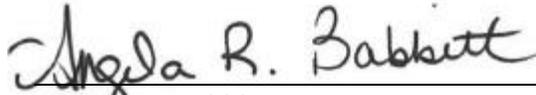
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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_____)

Case No. U-18999

CERTIFICATE OF SERVICE

Angela R. Babbitt hereby certifies that on the 3rd day of August, 2018, she served the *Exceptions of Retail Energy Supply Association* and this Certificate of Service on the persons identified on the attached service list via electronic mail.



Angela R. Babbitt

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