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October 12, 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 *Petition for Rehearing and Reconsideration 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	)	Case No. U-18999
and rules governing the distribution and	)	
supply of natural gas, and for miscellaneous	)	
accounting authority	)	
_____	)	

PETITION FOR REHEARING AND RECONSIDERATION OF  
RETAIL ENERGY SUPPLY ASSOCIATION

NOW COMES the Retail Energy Supply Association (“RESA”)<sup>1</sup>, by and through its attorneys, Fraser Trebilcock Davis & Dunlap, P.C., and pursuant to 1923 PA 94, MCL 460.351 et seq., and Rule 437 of the Commission’s Rules of Practice and Procedure, R 792.10437, hereby respectfully requests that the Michigan Public Service Commission (“Commission” or “MPSC”) rehear and reconsider certain rulings in its order issued September 13, 2018 (“September 13 Order”) in DTE Gas Company’s (“DTE Gas”) proceeding for authority to increase rates for the distribution of natural gas and other relief.

**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

<sup>1</sup> 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](http://www.resausa.org).



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.

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 sought 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 intervened in the proceeding and filed expert witness testimony.

On September 13, 2018, the Commission issued an order in this proceeding addressing many issues. Two issues addressed by the Commission were put forth by RESA. First, RESA requested that the Commission direct DTE Gas to implement a pooling program for its EUT customers. Second, RESA requested that the Commission direct DTE Gas to revise its notification postcard to GCC customers to remove anti-competitive and misleading comparisons to DTE Gas’ gas cost recovery (“GCR”) charge. The Commission, however, did not approve RESA’s recommendations.

RESA requests that the Commission rehear and reconsider its rulings with respect to RESA’s two issues. First, RESA requests that the Commission reconsider its directive that DTE Gas must only attend a meeting hosted by Consumers Energy Company (“Consumers”) to establish a pooling program for Consumers’ gas transportation customers as full and complete compliance with the Commission’s order issued in this case on pooling. Second, RESA requests that the Commission reconsider its ruling with respect to DTE Gas’ postcard notice sent to GCC customers.

## II. STANDARDS FOR GRANTING REHEARING.

The Commission has the authority to alter, amend or modify any of its findings and orders. Section 1 of Public Act 94 of 1923, MCL 460.351, states, as follows:

The Michigan public utilities commission, in any proceeding which may now be pending before it or which shall hereafter be brought before it, shall have full power and authority to grant rehearings and to alter, amend or modify its findings and orders.<sup>2</sup>

Consistent with its statutory authority, the Commission has adopted administrative rules for practice and procedure before the Commission. Rule 437(1) of the Commission's Rules of Practice and Procedure, R 792.10437(1), pertains to rehearings and states, as follows:

A petition for rehearing after a decision or order of the commission shall be filed with the commission within 30 days after service of the decision or order of the commission unless otherwise specified by statute. A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on 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 shall specifically set forth the matters relied upon. The petition shall be accompanied by proof of service on all other parties to the proceeding.

The Commission's standards for considering petitions for rehearing have been repeatedly stated in the following terms:

Rule 437 of the Commission's Rules of Practice and Procedure provides that an application 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. An application 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

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<sup>2</sup> The public utilities commission, referred to in this section, was abolished and its power and duties were transferred to the public service commission by MCL 460.4. "The Michigan public service commission shall have and exercise all rights, privileges, and the jurisdiction in all respects as has been conferred by law and exercised by the Michigan public utilities commission." MCL 460.4.

errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

*In re DTE Gas Co*, MPSC Case No. U-17691, p. 8 (Order Denying Rehearing dated January 31, 2017). For the reasons discussed below, certain aspects of the Commission's September 13 Order were based on legal and factual errors and will lead to unintended consequences. This petition meets the standard for granting rehearing.

**III. THE COMMISSION SHOULD REHEAR AND RECONSIDER ITS SEPTEMBER 13 ORDER AND DIRECT DTE GAS TO PRESENT A POOLING PROGRAM FOR THE COMMISSION'S CONSIDERATION IN DTE GAS' NEXT GAS RATE CASE.**

In its September 13 Order, the Commission was receptive to RESA's EUT pooling proposals. RESA provided extensive testimony on the issue, and RESA's pooling proposals were recommended by the administrative law judge ("ALJ") for approval. The ALJ found that RESA's witness addressed the Commission's previously stated concerns about pooling for DTE Gs and provided substantial evidence in support of how pooling would benefit DTE Gas' EUT customers.<sup>3</sup> After review of the record, the Commission stated that it "finds merit in pursuing planning for a voluntary program that could be approved in a future case."<sup>4</sup> Despite reaching this conclusion, the Commission only directed that DTE Gas participate in a collaborative for Consumers wherein Consumers is preparing to propose a pooling program for its gas transportation customers. RESA requests that the Commission rehearing and reconsider its September 13 Order and direct DTE Gas to host its own EUT pooling collaborative and direct DTE Gas to present a EUT pooling proposal that could be implemented for DTE Gas' system for the Commission's consideration in DTE Gas' next rate case.

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<sup>3</sup> Proposal for Decision, MPSC Case No. U-18999, pp 208-210.

<sup>4</sup> September 13, 2018 Order, p. 121.

As explained in RESA’s Initial Brief, there are numerous reasons to adopt pooling, yet DTE Gas continues to resist. DTE Gas’ arguments against pooling for transportation customers are without merit, and the record shows that DTE Gas will not propose a pooling program for its EUT customers for the Commission’s consideration on its own initiative. Thus, for this program enhancement to occur, the Commission must direct DTE Gas to present a proposal for review.

Pooling is an industry standard practice. Numerous other utilities offer pooling for their gas transportation programs, including SEMCO Energy Gas Company and Michigan Gas Utilities Corporation in Michigan. Consumers is moving forward with plans to propose a program for its gas transportation customers.

Directing DTE Gas to attend a meeting on pooling for Consumers will not result in a “a voluntary program that could be approved in a future case”<sup>5</sup> for DTE Gas. Consumers’ collaborative is for addressing the issues with implementing a pooling program for Consumers. It is not a collaborative for developing pooling programs in Michigan generally. At Consumers’ first collaborative meeting held on September 19, 2018, representatives from DTE Gas were openly critical of any pooling proposal and expressly conveyed that they believe that they fulfilled the terms of the Commission’s September 13 Order by merely being present. The Commission should consider this new information available after the close of the record in this case to reconsider its ruling. Absent further direction of the Commission, DTE Gas will not plan for a voluntary program that could be approved in a future case, as the Commission indicated that it was interested in seeing.

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<sup>5</sup> September 13, 2018 Order, p. 121.

Absent reconsideration, the Commission's order will have the unintended consequence of DTE Gas being the only major gas utility in Michigan without pooling. The Commission should ensure that it has a pooling program for its consideration in a future DTE Gas rate by directing DTE Gas to hold a collaborative of its own to consider issues related to DTE Gas' system, not Consumers' system, and to file a pooling proposal that could be implemented and approved for DTE Gas its next gas rate case. Without this clear directive, DTE Gas will not comply with the Commission's desire to receive a program for its review.

**IV. THE COMMISSION SHOULD REHEAR AND RECONSIDER ITS SEPTEMBER 13 ORDER AND DIRECT DTE GAS TO REVISE ITS GCC CUSTOMER SWITCHING NOTIFICATION TO DISCLOSE THE SOLR RESERVATION CHARGE COMPONENT OF ITS GCR PRICE.**

RESA reviewed and analyzed the postcard that DTE Gas sends to customers switching to an AGS. RESA determined that DTE Gas' postcard contained an anti-competitive and misleading message to GCC customers and recommended that the Commission prohibit such activity as part of this rate case.

In its September 13 Order, the Commission concluded that RESA did not provide convincing evidence to support its claims that DTE Gas' postcard to GCC customers is false, deceptive, or misleading.<sup>6</sup> The Commission's conclusion is in error. Of particular concern to RESA is that DTE Gas' postcard fails to accurately convey to GCC customers the appropriate DTE Gas price to compare when communicating with GCC customers about DTE Gas' commodity price because DTE Gas fails to notify the customer of the Supplier of Last Resort ("SOLR") differential between taking service from an AGS and taking service from DTE Gas.

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

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<sup>6</sup> September 13 Order, p. 124.

postcard states that the customer has enrolled with a specific AGS and then goes on to state the current GCR price. The postcard fails to mention that DTE Gas' GCR price contains SOLR component and the reduced SOLR charges applicable to customers taking service from an AGS.

DTE Gas' postcard inaccurately conveys the relationship between DTE Gas' GCR price and the GCC customer's AGS billed price. GCC customers have a SOLR discount of 30 percent applied to the reservation charge on their bills as adopted in MPSC Case No. U-17691,<sup>7</sup> which is not mentioned when DTE Gas simply lists the GCR price for comparison. GCR customers will have to pay a SOLR charge that includes the intrinsic costs of DTE Gas' extensive capacity assets. The GCR factor alone represents an Apples-to-Oranges price comparison to the AGS billed price and is inherently misleading to the GCC customer. DTE Gas' postcard should not include a GCR price when communicating with the AGS's customer, but, if any such price is permitted, then, at a minimum, the Commission should reconsider its September 13 Order and direct DTE Gas to disclose the Commission-approved SOLR rate adjustment to GCC customers when providing the GCR price. Failure to include this information will have the unintended consequence of GCC customers not understanding the relationship of their AGS billed price to DTE Gas' GCR price and making an uninformed and mistaken decision about the relative prices of their supply options.

**V. CONCLUSION AND PRAYER FOR RELIEF.**

For all the reasons explained in the preceding sections of this Petition for Rehearing and Reconsideration, RESA respectfully requests that the Commission grant rehearing and

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<sup>7</sup> Order dated November 22, 2016, MPSC Case No. U-17691, p. 24.

reconsideration with respect to its rulings on an EUT pooling program for DTE Gas and DTE Gas' GCC customer notification postcard, as discussed herein.

*Respectfully submitted,*

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



Date: October 12, 2018

By: \_\_\_\_\_

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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

**CERTIFICATE OF SERVICE**

Angela R. Babbitt hereby certifies that on the 12<sup>th</sup> day of October, 2018, she served the *Petition for Rehearing and Reconsideration 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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