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August 5, 2019

Ms. Barbara Kunkel
Acting Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48917

RE: MPSC Docket No. U-20210

Dear Ms. Kunkel:

Enclosed herewith for filing in the above-referenced matter, please find the *Entry of Appearance in an Administrative Hearing, Petition of Retail Energy Supply Association for Leave to Intervene* and Certificate 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

JUH/ab
Enclosures
cc: All counsel of record

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
PUBLIC SERVICE COMMISSION

ENTRY OF APPEARANCE IN AN ADMINISTRATIVE HEARING

This form is issued as provided for by 1939 PA 3, as amended, and by 1933 PA 254, as amended. The filing of this form, or an acceptable alternative, is necessary to ensure subsequent service of any hearing notices, Commission orders, and related hearing documents.

General Instructions:

Type or print legibly in ink. For assistance or clarification, please contact the Public Service Commission at (517) 284-8090.

*Please Note: The Commission will provide **electronic** service of documents to all parties in this proceeding.*

THIS APPEARANCE TO BE ENTERED IN ASSOCIATION WITH THE ADMINISTRATIVE HEARING:

Case / Company Name: _____ Docket No. _____

Please enter my appearance in the above-entitled matter on behalf of:

1. (Name)
2. (Name)
3. (Name)
4. (Name)
5. (Name)
6. (Name)
7. (Name)

Name _____

Address _____

City _____ State _____

Zip _____ Phone (____) _____

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Date _____

I am not an attorney

I am an attorney whose:

Michigan Bar # is P- _____

_____ Bar # is: _____
(state)

Signature: _____

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
DTE GAS COMPANY for a Gas Cost)
Recovery Reconciliation proceeding for the) Case No. U-20210
12 months ending March 31, 2019.)
_____)

PETITION OF
RETAIL ENERGY SUPPLY ASSOCIATION
FOR LEAVE TO INTERVENE

NOW COMES the Retail Energy Supply Association (“RESA”), by and through its attorneys, Fraser, Trebilcock, Davis & Dunlap, P.C., and hereby submits its petition to this Honorable Commission seeking leave to intervene in the above-entitled action pursuant to Rule 410 of the Commission’s Rules of Practice and Procedure, R 792.10410. In support of this petition, RESA states as follows:

1. 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.¹

2. RESA members are licensed to sell natural gas to retail customers in Michigan: Interstate Gas Supply, Inc. (“IGS”), Just Energy Michigan Corp. (“Just Energy”), Direct Energy Services, LLC (“Direct Energy”), and Constellation NewEnergy-Gas Division, LLC, Constellation Energy Gas Choice, Inc. (“CEGC”), are licensed Alternative Gas Suppliers

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.



(“AGS”). IGS, Just Energy, Direct Energy and CEGC currently serve Gas Customer Choice (“GCC”) customers on the DTE Gas Company (“DTE Gas”) system.

3. This docket involves an application by DTE Gas for approval of a Gas Cost Recovery (“GCR”) reconciliation for the 12 months ended March 31, 2019. DTE Gas alleges a total net under-recovery of approximately \$13.2 million, inclusive of interest through March 31, 2019 for GCR customers. Under its new reconciliation methodology, the GCR and Supplier of Last Resort (“SOLR”) Reservation revenues and expenses for GCR customers are reconciled separately from the SOLR Reservation revenue and expenses for GCC customers. DTE Gas alleges a net over-recovery of \$2.2 million inclusive of interest through March 31, 2019 for the GCC SOLR Reservation revenues and expenses.

4. DTE Gas SOLR Reservation Charge in this proceeding is the same SOLR Reservation Charge at issue in prior DTE Gas GCR proceedings, Case Nos. U-20076, U-17941-R, U-17691-R, U-17941, U-17691, U-17332 & U-17131.

5. RESA members have direct and vital interests in the issues raised in this docket. RESA members are both DTE Gas’ customers and GCC suppliers participating in the DTE Gas transportation market. RESA members have direct interest in the rates, terms and conditions proposed by DTE Gas including the SOLR Reservation Charge paid by customers of RESA members. If approved, RESA members must incur costs to explain this charge to its customers. Previously, DTE Gas proposed that the SOLR Reservation Charge be levied directly to GCC suppliers.² RESA members clearly have a direct financial interest in the rates that they may pay.

² See, DTE Gas’ application dated December 20, 2013, MPSC Case No. U-17332, and DTE Gas’ application dated December 27, 2012, MPSC Case No. U-17131.

6. There are several legal bases for standing to intervene in a proceeding before the MPSC. The first is standing as of right. This Commission has repeatedly applied the two-prong test for standing as of right set forth in *Association of Data Processing Service Organizations, Inc. v Camp*, 397 US 150; 90 S. Ct. 827; 250 L.Ed. 184 (1970), which has been applied to utility matters in *Drake v The Detroit Edison Co*, 453 F Supp 1123 (WD Mich, 1978). As set forth in *Association of Data Processing*, the two-prong test consists of a showing that: (1) the petitioner would likely suffer injury in fact (i.e., its interests are endangered or at issue); and (2) the petitioner's interests that are allegedly endangered are within the zone of interests to be protected or regulated by the statute under consideration. See, e.g., *In re Michigan Consolidated Gas Co*, MPSC Case No. U-10150 (December 8, 1992).

7. RESA satisfies the "injury in fact" test, because the SOLR Reservation Charge imposed costs on RESA members. If charged directly to RESA member customers, RESA members will incur costs to explain the charge to customers and may lose customers as a result of the charge. If charged directly to RESA members, the proposed charge will also have a direct financial impact upon RESA as ratepayers. Ratepayer interests are endangered in rate cases.

8. The second prong of the two-pronged test for standing as a matter of right is a showing that the prospective intervenor's interest falls within the "zone of interests" to be protected or regulated in the context of the case. The rates that are of interest to RESA are to be regulated in the context of this rate case. More specifically, RESA has stated an interest in rates that DTE Gas admits are to be regulated by the Commission in the context of this case. DTE Gas' rates fall within the zone of interests to be regulated by the Commission in this case,

and RESA's interest in fair and reasonable rates fall within the zone of interests to be protected in this case.

9. Having demonstrated that its interest as a ratepayer satisfies the two-pronged test for standing as a matter of right, RESA respectfully submits that it is entitled to intervene in this case as a matter of right.

10. Even if it were determined that RESA does not have standing as a matter of right, it would be entitled to intervene under the Commission's discretionary intervention standards. "[T]he Commission's discretion to grant leave to intervene is broader than the two-prong test. As recognized in prior Commission orders, the requirements for standing before the Commission are not as strict as those applied by the courts. Unlike a court of law, an administrative agency can allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenor's participation." *In re Michigan Consolidated Gas Co*, MPSC Case No. U-10150, p 5 (December 8, 1992) (finding that discretionary intervention was appropriate, and "a detailed discussion of the two-prong test is unnecessary").

11. Indeed, the two-pronged test does not apply when granting permissive intervention. "The granting of permissive intervention without satisfying the two-pronged test is a long-established Commission practice." *In re DTE Gas Gas Co*, MPSC Case No. U-17332, p 4 (May 13, 2014).

12. Discretionary intervention is appropriate where public policy warrants a party's involvement because a prospective intervenor can provide useful information to the Commission or a unique perspective on the issues to be resolved. See, e.g., *In re Mascotech Forming Technologies, Inc.*, MPSC Case No. U-11057 (June 5, 1996); *In re MCI Metro Access Transmission, Inc.*, MPSC Case No. U-10610 (November 30, 1994); and *In the matter, on the*

Commission's own motion, to investigate the appropriateness of instituting a surcharge to assist in the funding of the Gas Technology Institute, MPSC Case No. U-14561 (October 18, 2005). The Commission has held that a proper case for permissive intervention exists when a proposed intervenor "could be expected to bring helpful information to the Commission's attention that might not otherwise be available." In re International Transmission Co, MPSC Case No. U-16200 (October 14, 2010).

13. "Permissive intervention has also been granted where a proceeding 'raises novel questions and important policy issues' and the intervenor will 'bring a unique perspective' to the case." *In re DTE Gas Electric Co, MPSC Case No. U-17319, p 10 (March 6, 2014), quoting, MPSC Case No. U-11057, pp 2-3 (June 5, 1996).*

14. RESA is a large and diverse group of retail energy suppliers operating in competitive retail energy markets. RESA has a proven track record of successful retail competition development activities and promoting vibrant and sustainable retail energy markets for residential, commercial and industrial customers. RESA's breadth of diverse retail energy market experiences makes it particularly well-suited to bring new and helpful information to the Commission that might not otherwise be available.

15. RESA participated in DTE Gas' 2017-2018 GCR reconciliation proceeding, Case No. U-20076. RESA also actively participated in DTE Gas' 2016-2017 GCR reconciliation proceeding, Case No. U-17941-R, and in DTE Gas' 2015-2016 GCR reconciliation proceeding, Case No. U-17691-R, wherein RESA presented expert witness testimony in support of a reconciliation consistent with the SOLR Reservation Charge adjustment approved by the Commission in its November 22, 2016 Order and January 31, 2017

Order Denying Rehearing in Case No. U-17691. The issues addressed by RESA in DTE Gas' two prior reconciliation cases are likewise present in this proceeding.

16. RESA also actively participated in DTE Gas' 2014-2015 GCR plan proceeding wherein RESA co-presented expert witness testimony in support of a capacity assignment program. Absent a capacity assignment plan, RESA explained that the SOLR Reservation Charge is anti-competitive, unjust and unreasonable. In that case, DTE Gas objected to RESA's intervention and appealed the presiding officer's ruling granting RESA's petition to intervene.

Rejecting DTE Gas' objection to RESA's intervention, the Commission determined:

Both RESA and IGA [sic] have indicated their unique perspective in that they each serve gas choice customers who will be impacted by DTE Gas' proposed reservation charge. They have a proposal for a capacity assignment plan that they argue may prevent unnecessary charges and inefficiencies that could result if DTE Gas' proposals are approved. It appears that these two parties would add to the development of a full and complete record by bringing the issues facing gas choice customers to light.

In re DTE Gas Gas Co, MPSC Case No. U-17332, p 4 (May 13, 2014).

17. RESA members are AGSs serving customers on the DTE Gas system. They have direct knowledge of the impact of the proposed tariff changes on AGS entities operating on the DTE Gas system and on the customers they serve. Thus, RESA has significant interests in this case, offers a unique perspective, and is capable of providing information useful to the Commission.

18. RESA's intervention will not cause delay. RESA will abide by the case schedule adopted by the presiding officer.

19. Moreover, RESA's intervention should be granted now to avoid the possibility of future delay. The proper reconciliation of the SOLR Reservation Charge is an issue in this proceeding. In order to protect its right to be heard with respect to the SOLR Reservation

Charge reconciliation and any future unknown proposals, whether put forth by DTE Gas or other intervenors, RESA's Petition to Intervene should be granted now.

20. Thus, RESA has demonstrated that it warrants intervention in this case both as of right and on a permissive basis.

21. Notice should be taken of the fact that this same RESA has previously participated as an intervenor in five previous DTE Gas GCR plan proceedings, Case Nos. U-18412, U-17941, U-17691, U-17332 and U-17131 (all involving GCC capacity reservation charges). It was in Case No. U-17131 where DTE Gas first presented a capacity reservation charge and suppliers first presented an alternative capacity assignment plan. In that case, the MPSC adopted the judge's recommendation that the Commission consider the potential for a capacity assignment plan in a future GCR plan case.

22. Further, RESA was granted intervention as a party in in cases involving Consumers Energy Company's natural gas rates and tariffs, including general rate cases in Case Nos. U-18424, U-17882, U-17643 and U-16418, a GCC and EUT proceeding in Case No. U-17900, and GCR cases in Case Nos. U-17693 and U-17133-R. Case No. U-17693 was Consumers Energy Company's 2015-2016 GCR plan proceeding wherein the Attorney General recommended that the Commission order a capacity reservation charge applicable to GCC customers. Case No. U-17133-R was Consumers Energy Company's 2013-2014 GCR reconciliation case wherein the Attorney General recommended changes to Consumers' daily delivery obligation tariff provision.

23. Further, RESA was granted intervention as a party in numerous other proceedings involving EUT and GCC issues, such as Michigan Gas Utilities Corporation's general rate case, Case No. U-17880 (daily balancing requirement on gas transportation

customers and GCC tariff changes), SEMCO's transportation balancing tariff case, MPSC Case No. U-15953, SEMCO's general rate cases MPSC Case Nos. U-20479 and U-16169, and in Michigan Consolidated Gas Company's general rate case, MPSC Case No. U-16400.

24. It is the position of RESA that DTE Gas' proposals should be carefully examined and revised as necessary to assure that the terms and conditions are just and reasonable, as required by law. DTE Gas' proposals should be carefully scrutinized and any unjustified, unsubstantiated, or imprudently incurred costs should be disallowed. RESA intends to take the position that the proposed SOLR reservation charge reconciliation must be consistent with the Commission's January 31, 2017 Order Denying Rehearing in Case No. U-17691 and the Commission's May 30, 2018 Order in Case No. U-17691-R.

25. RESA reserves the right to raise new and different positions if, and when, this case proceeds to full hearings and following a full review of the utility testimony filed in this case and responses to discovery, as may be relevant and appropriate. RESA further reserves the right to take other positions and/or seek other relief based on any proposals that may be submitted by other parties in this case.

26. The relief that RESA seeks in this proceeding is an order approving only those rates, terms and conditions of service that are just, reasonable and lawful. RESA reserves the right to seek other relief based on a review of the filings and/or discovery responses in this proceeding.

27. RESA's interests, as set forth above, are not adequately represented by the present parties and, therefore, it would be detrimental to the public interest to deny this Petition to Intervene.

28. Because the issues set forth above are of great significance to RESA and to the public, a denial of this Petition would result in a miscarriage of justice.

WHEREFORE, RESA hereby respectfully requests that this Honorable Commission grant it Leave to Intervene in the above-entitled proceedings as a full party of record.

Respectfully submitted,

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



Date: August 5, 2019

By: _____

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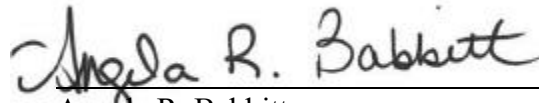


STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
DTE GAS COMPANY for a Gas Cost)
Recovery Reconciliation proceeding for the) Case No. U-20210
12 months ending March 31, 2019.)
_____)

CERTIFICATE OF SERVICE

Angela R. Babbitt hereby certifies that on the 5th day of August, 2019, she served the *Entry of Appearance in an Administrative Hearing, Petition of Retail Energy Supply Association for Leave to Intervene* and this Certificate of Service on the persons identified on the attached service list via electronic mail.



Angela R. Babbitt

Service List for U-20210

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