

124 West Allegan Street, Suite 1000
Lansing, Michigan 48933
T (517) 482-5800 F (517) 482-0887
www.fraserlawfirm.com

Jennifer Utter Heston
jheston@fraserlawfirm.com
(517) 377-0802

August 6, 2015

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw
Lansing, MI 48917

Re: MPSC Case No. U-17691

Dear Ms. Kunkle:

Enclosed herewith for filing in the above-referenced matter, please find Retail Energy Supply Association's Motion to Strike 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

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
DTE GAS COMPANY for approval of a)
Gas Cost Recovery Plan, 5-year Forecast) Case No. U-17691
and Monthly GCR Factor for the 12 months)
ending March 31, 2016)
_____)

MOTION TO STRIKE

NOW COMES the Retail Energy Supply Association ("RESA")¹, by and through its attorneys, Fraser, Trebilcock, Davis & Dunlap, P.C., and hereby respectfully requests that the Administrative Law Judge strike certain portions of the Rebuttal Testimony of James A. Brunell submitted on behalf of DTE Gas Company ("DTE"), as described below. In support of this motion, RESA states as follows:

On page 6, line 13 through page 7, line 4, Mr. Brunell testifies about the volumes of gas sales, associated revenues, and average billed prices of alternative gas suppliers ("AGSs") participating in DTE's gas customer choice ("GCC") program during the 2014-2015 gas year. Mr. Brunell provides this information both in the aggregate consisting of all AGSs participating in DTE's GCC program, as well as the individual supplier information of Interstate Gas Supply, Inc. ("IGS"). IGS is the employer of RESA's witness, Mr. Daniel Dishno. Mr. Brunell's testimony should be stricken for several reasons.

FRASER
TREBILCOCK
DAVIS &
DUNLAP,
P.C.
LAWYERS
LANSING,
MICHIGAN
48933

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 more than 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.

First, Mr. Brunell's statements should be stricken under Michigan Rules of Evidence ("MRE") 402 as irrelevant evidence. "Evidence which is not relevant is not admissible." MRE 402. "Relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401.

This docket involves an application by DTE for approval of a Gas Cost Recovery ("GCR") Plan, 5-year forecast and monthly GCR factor for the 12-months ending March 31, 2016. Thus, the core issue in this proceeding is DTE's projected gas costs, not the historical gas costs of AGSs. The gas supply statistics of AGSs do not make any fact of consequence in this proceeding more or less probable.

Mr. Brunell discloses the AGS supply statistics in response to RESA's witness testimony seeking an adjustment to DTE's proposed capacity reservation charge. The capacity reservation charge is a mechanism used to recover DTE's fixed pipeline capacity costs from both its GCR and GCC customers. The focus of RESA's witness testimony is DTE's capacity costs and how those capacity costs should be recovered. At no time did RESA's witness place in issue AGS sales, revenues, or commodity pricing data.

Specifically, Mr. Brunell recites the AGS volumes, revenues, and pricing statistics in response to a question about whether Mr. Brunell agrees with Mr. Dishno's testimony that GCC customers are not receiving the spread value stemming from DTE's pipeline assets. Mr. Brunell responds by stating that he agrees that GCC customers are not receiving the spread values afforded GCR customers from DTE's pipeline holdings. Rather than explain how the spread values are distributed to GCR customers, but not GCC customers, under DTE's GCR mechanism, Mr. Brunell veers off on a tangent about the average cost of gas sold

by AGSs' during the 2014-2015 gas year. Mr. Brunell's testimony is not responsive to the question asked and is not relevant to the determinations in this case.

Second, assuming for the sake of argument that Mr. Brunell's testimony is relevant, Mr. Brunell's testimony should be stricken under MRE 403 as prejudicial, confusing and a waste of time.² Mr. Brunell abused his access to confidential, proprietary AGS information to make a point in this case that is of no consequence to the relevant issues in this proceeding. At the time RESA filed its motion in this proceeding, RESA also filed a motion for a protective order. RESA explains in that motion why DTE's disclosure of IGS's information prejudices AGSs and IGS, specifically. If allowed, DTE's disclosure of IGS's confidential, commercially sensitive information will have a chilling effect on AGS experts stepping forward to provide testimony on behalf of RESA in DTE cases. DTE should not be permitted to misuse its access to such information for self-serving purposes.

Furthermore, the apparent purpose of Mr. Brunell's testimony is to malign AGSs by suggesting that their average billed price during the 2014-2015 gas year was higher than DTE's cost of gas sold during the same time period. Mr. Brunell incorrectly concludes that this information shows that AGS gas supply costs are not cost-based. Not only is the point of Mr. Brunell's testimony irrelevant to the issues in this case (i.e., the justness and reasonableness of DTE's gas costs and proposed capacity reservation charge), but Mr. Brunell's testimony is simply illogical. The relationship of AGSs' average billed price to DTE's average GCR cost does not show "that there is little to no connection between the cost of natural gas and the prices that AGSs charge." Brunell Rebuttal Testimony, p. 6, ln. 24-25. DTE's average GCR cost of gas is hardly the barometer of the cost of natural gas, and simply

² "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." MRE 403.

because the average AGS price is different than DTE's average GCR cost of gas does not mean that the AGS price is not cost-based. AGSs have different costs than DTE. Mr. Brunell's illogical and confusing testimony should not be permitted.

Furthermore, Mr. Brunell's testimony, if permitted, would be a substantial waste of time. The purpose of this case is not to compare the DTE's average GCR cost of gas to AGSs' average billed price. This proceeding should not become a forum to debate the relative merits of a customer choosing to buy gas from DTE or an AGS. The parties to this proceeding should not spend time and resources delving into the reasons why DTE's average GCR cost of gas is different than the AGS average billed price. If Mr. Brunell's testimony is permitted, RESA would be entitled to rebut his assertions. The parties, the presiding officer, and the Commission should not spend their resources evaluating the relative merits of gas competition and individual gas customer choices in this proceeding.

WHEREFORE, for the reasons set forth above, RESA respectfully requests that the above described portions of testimony submitted on behalf of DTE be stricken.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
ATTORNEYS FOR RESA



Date: August 6, 2015

By: _____

Jennifer Utter Heston (P65202)

124 W. Allegan, Ste 1000

Lansing, MI 48933

Telephone: (517) 482-5800

E-mail: jheston@fraserlawfirm.com

FRASER
TREBILCOCK
DAVIS &
DUNLAP,
P.C.
LAWYERS
LANSING,
MICHIGAN
48933

STATE OF MICHIGAN

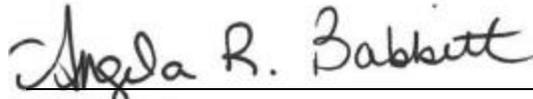
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
DTE GAS COMPANY for approval of a)
Gas Cost Recovery Plan, 5-year Forecast)
and Monthly GCR Factor for the 12 months)
ending March 31, 2016)
_____)

Case No. U-17691

CERTIFICATE OF SERVICE

Angela R. Babbitt hereby certifies that on the 6th day of August, 2015, she served Retail Energy Supply Association's Motion to Strike and this Certificate of Service on the persons identified on the attached service list via electronic mail.



Angela R. Babbitt

Service List for U-17691

Administrative Law Judge – via U.S. mail also

Honorable Mark D. Eyster
Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48917
eystem@michigan.gov

Counsel for DTE Gas Company

Richard P. Middleton
David S. Maquera
One Detroit Plaza, 688 WCB
Detroit, MI 48826
middletonr@dteenergy.com
maquerad@dteenergy.com

Counsel for Attorney General

Michael E. Moody
John A. Janiszewski
Assistant Attorney General
Environment, Natural Resources, and
Agriculture Division
6th Floor, G. Mennen Williams Bldg.
PO Box 30755
Moodym2@michigan.gov
Janiszewskij2@michigan.gov

Counsel for MPSC Staff

Spencer Sattler
Bryan A. Brandenburg
7109 W. Saginaw Hwy., 3rd Fl.
Lansing, MI 48917
sattlers@michigan.gov
brandenburgb@michigan.gov

Counsel for Interstate Gas Supply, Inc.

Brandon C. Hubbard
Dickinson Wright PLLC
350 S. Main St., Ste. 300
Ann Arbor, MI 48104-2131
bhubbard@dickinsonwright.com

Counsel for Residential Ratepayer Consortium

David L. Shaltz

Chalgian & Tripp Law Offices PLLC

1019 Trowbridge Rd.

East Lansing, MI 48823

dshaltz@sbcglobal.net

Counsel for ANR Pipeline Company

David R. Hammel

ANR Pipeline Company

700 Louisiana St., Ste. 700

Houston, TX 77002-2700

Dave_hammel@transcanada.com

Howard Lawrence Nelson

Greenberg Traurig, LLP

2101 L. Street, NW

Suite 1000

Washington, DC 20037

nelson@gtlaw.com