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May 27, 2020

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

RE: MPSC Docket No. U-20642

Dear Ms. Felice:

Attached herewith for filing, please find the *Initial Brief of Retail Energy Supply Association* and corresponding Certificate of Service.

If you have any questions or concerns with the enclosed, please do not hesitate to contact me.

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-20642

INITIAL BRIEF OF
RETAIL ENERGY SUPPLY ASSOCIATION

Dated: May 27, 2020

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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 this Initial Brief on DTE Gas Company’s (“DTE’s”) application for authority to increase its rates for the distribution of natural gas and for 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 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.

On November 26, 2019, DTE filed its application, testimony and exhibits in this proceeding requesting authority to increase its natural gas rates by approximately \$203.8 million, and to implement a decoupling mechanism and an infrastructure recovery mechanism. DTE also proposes changes to its EUT service tariff. As part of its EUT tariff amendments, DTE seeks to increase its monthly Customer Charge and its Transportation Rates, impose a new condition on gas quality, and change its terms and conditions for standby service.

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, RESA presented testimony of two expert witnesses, Ms. Bethany Allen and Mr. Geoffrey Rittimann. Ms. Allen is employed by Interstate Gas Supply, Inc. (“IGS”), a licensed AGS in Michigan, as Regulatory Counsel.² Ms. Allen earned a law degree from Capital University Law School, and began her career in utility regulation with the Public Utilities Commission of Ohio (“PUCO”) where she served as an aide to PUCO Chairman Asim Z. Haque.³ Ms. Allen is responsible for monitoring energy policy in Michigan and California and representing IGS in proceedings before the PUCO. Ms. Allen also serves as Chair of the Michigan Natural Gas Committee for RESA.⁴

Ms. Allen reviewed DTE’s filings in this proceeding and made three recommendations with respect to DTE’s new natural gas demand response (“DR”) proposals. Ms. Allen observed that DTE included \$4 million in its operations and maintenance (“O&M”) expenses in this case to fund natural gas DR pilot programs for the 2020/2021 winter season.⁵ Ms. Allen further observed that DTE did not provide any details concerning its new pilot programs, including whether GCC or EUT customers will be allowed to participate.⁶ Ms. Allen recommends that the Commission should direct DTE to do the following: 1) engage in open collaborative discussions with a wide variety of interested stakeholders, such as the MPSC Staff, customer groups, and gas suppliers, on DR program design; 2) include GCC and EUT customers in the natural gas DR pilot programs; and 3) file proposed DR program tariffs with the Commission for public comment and Commission review and approval prior to DR program implementation.⁷ Ms. Allen’s recommendations are unopposed.

² 4 Tr. 1550.

³ *Id.*

⁴ *Id.*

⁵ 4 Tr. 1551.

⁶ *Id.* pp. 1551-1552.

⁷ 4 Tr. 1553.

Mr. Rittimann is employed by Constellation NewEnergy (“Constellation”) as a Mass Markets Operations Analyst.⁸ Mr. Rittimann is currently responsible for managing the entire order to cash flow process for both Constellation’s retail power and natural gas customers, including customers in Michigan.⁹

Mr. Rittimann reviewed DTE’s rate filings and made recommendations with respect to DTE’s GCC and EUT program tariffs. Mr. Rittimann described extensive customer data issues with DTE with no viable opportunity to have those concerns be heard by the Commission. Mr. Rittimann recommends that the Commission order DTE to amend its GCC and EUT program tariffs to require DTE to provide accurate and timely customer data to suppliers on a monthly basis. With such tariff amendments, if DTE fails to provide accurate and timely customer data to suppliers in the future, then suppliers could raise data concerns and pursue remedies with the Commission as tariff violations.

For the reasons stated further below, the Commission should adopt RESA’s recommendations.

II. THE COMMISSION SHOULD ADOPT RESA’S RECOMMENDATIONS WITH RESPECT TO DTE’S PROPOSED NATURAL GAS DEMAND RESPONSE PROGRAMS.

In its Application in this proceeding, DTE includes \$4 million in O&M expenses to fund natural gas DR pilot programs that it proposes to implement for the 2020/2021 winter season. DTE’s proposal is in response to the Commission’s order issued in Case No. U-20464 directing the Commission Staff to work with the utilities to propose natural gas DR tariffs in the utilities’ next gas rate cases filed after September 11, 2019. DTE filed its Application in this case on

⁸ 4 Tr. 1556.

⁹ *Id.*, 1448-1449.

November 26, 2019. Due to the timing of DTE's filing in this proceeding, DTE did not include any DR program details. DTE states that it will work with "MPSC Staff and other key stakeholders" on its DR pilot program implementation.¹⁰

RESA's witness Ms. Allen has several concerns with DTE's DR program proposals.

Ms. Allen testified:

DTE is seeking recovery of an estimated \$4 million in demand response O&M expense without providing any proposed program information. Absent program details, it is not possible to determine whether the proposed programs are prudent and proposed costs are reasonable.

Additionally, DTE states that it is working with "the MPSC Staff and other key stakeholders" on demand response program design. To date, RESA has not been consulted on any demand response program proposals nor invited to provide input on any program designs. RESA's members serve a substantial number of DTE's customers both in terms of numbers of customers and throughput. RESA should be afforded an opportunity to provide input on any demand response program proposals before being approved for implementation.

Further, it is important that any demand response programs do not discriminate against gas customer choice ("GCC") customers and end use transportation ("EUT") customers. If GCC and EUT customers are paying for DTE's demand response programs, then they should be able to participate. Conversely, if GCC and EUT customer cannot participate in DTE's demand response programs, then they should not be required to pay for the costs of the programs.¹¹

Because the Commission specifically directed natural gas utilities to propose DR programs, RESA is not opposing the implementation of DR pilot programs for DTE. Any such programs, however, should be designed to accommodate GCC and EUT customers and coordination with gas suppliers is essential.

¹⁰ 4 Tr. 1016, ln. 3-4.

¹¹ 4 Tr. 1552, ln 11 – 1553, ln. 12 (internal citations omitted).

To address RESA's concerns, Ms. Allen made three recommendations. First, she recommends that the Commission direct DTE to engage in collaborative discussions on DR program design with a wide variety of interested stakeholders, including MPSC Staff, customer groups, and gas suppliers who will be impacted by any DR programs. Second, Ms. Allen recommends that the Commission direct DTE to make the DR pilot programs available to GCC and EUT customers. As proposed GCC and EUT customers will contribute towards the cost recovery of such programs, so they should be able to participate on a non-discriminatory basis. Third, Ms. Allen recommends that the Commission direct DTE to submit DR program tariffs to the Commission for review and approval. Interested parties should be afforded an opportunity to comment on any proposed DR programs prior to approval and implementation. Successful DR program implementation will require good communication with customers and the suppliers who serve them.

In its rebuttal testimony, the MPSC Staff concurred that DR programs should be offered to all customers.¹² The MPSC Staff also concurred that good communication between the utility, the customers, and gas suppliers for GCC and EUT customers "is vital to the success of DR programs for those customers."¹³ The MPSC Staff did not disagree with any of RESA's recommendations.¹⁴ In fact, no party opposed RESA's DR recommendations. RESA's DR recommendations should be approved.

¹² 4 Tr. 1101-1102.

¹³ 4 Tr 1102, ln. 2-3.

¹⁴ Staff did take exception with Ms. Allen's comment that if GCC and EUT customers cannot participate in the DR programs, then they should not have to pay for the programs. 4 Tr. 1102. Because no party opposes GCC and EUT customer participation in DTE's DR programs, the issue of cost recovery from GCC and EUT customers appears moot.

III. THE COMMISSION SHOULD ADOPT RESA'S RECOMMENDATIONS WITH RESPECT TO DTE'S GCC AND EUT TARIFF AMENDMENTS.

RESA's witness Mr. Rittimann filed testimony recommending tariff changes to DTE's GCC and EUT programs that would ensure the provision of accurate, timely and reliable usage data by DTE to gas suppliers. Mr. Rittimann described the protracted difficulties gas suppliers experienced over the past several years obtaining from DTE customer consumption data needed to serve GCC and EUT customers. The tariff amendments would provide suppliers with an opportunity to have their concerns be heard by the Commission if data access issues arise again in the future. Only DTE opposes RESA's tariff proposals, and DTE's reasons for its stated opposition are without merit. The Commission should adopt RESA's proposals.

Timely access to customer consumption data is necessary for gas suppliers to provide quality service to customers, yet gas suppliers have experienced protracted problems obtaining such data from DTE over the past few years. RESA's witness Mr. Rittimann explained why access to customer data is necessary for the GCC and EUT programs to function:

Suppliers with customers in the GCC and EUT programs are reliant on DTE to read those customer meters, bill supplier commodity charges on the DTE invoices of GCC customers, and provide usage information to the supplier so that it can put invoice transaction information into its systems consistent with what was billed by the utility. When usage data is not sent to suppliers in an accurate, timely and reliable manner, suppliers have an extremely difficult job providing excellent customer service to their GCC and EUT customers. When usage data is delayed to a supplier, if any of the supplier's customers have a question related to their invoice, the supplier's customer care representatives are unable to view the information that appears on the customer invoice that has generated the customer's question. In these scenarios, the supplier must request that the customer provide to it a copy of the invoice so that it is able to research and resolve the customer inquiry. This not only delays quick resolution of the matter for the customer, as the supplier must wait until it receives a copy of the invoice from the customer, but for customers without readily available access to technology or resources to provide an invoice copy, this may not be

an easy task. There are times the customer's copy of the invoice is not received and the investigation is stymied, without the issue getting resolved on the account.

While ebill, or electronic billing, has the potential to mitigate this concern, ebill requires special authorization and individual access setup on a customer by customer basis. For a supplier, it becomes administratively burdensome to login separately to review each customer invoice. When a supplier's customer care team does not have the information needed to service a customer, it results in an inferior customer experience.

In addition, the receipt of late usage data can also create tracking and performance issues for a supplier. Downstream functions such as accounting and supply are adversely impacted when suppliers do not have the needed information from DTE in order to run accounting, gas procurement, load forecasting and other business processes.

At any given time, I can have dozens and dozens of residential or small business GCC customers or whom I am missing usage or their usage data is highly suspicious.¹⁵

Not only is timely receipt of customer data important, it is important that the customer usage data be accurate. Mr. Rittimann also testified about problems obtaining accurate data from DTE since DTE implemented a new billing system in 2017:

[S]uppliers also struggle to provide satisfactory customer service when inaccurate data is sent by DTE. The process of correcting prior inaccurate data is referred to as Cancel/Rebill transactions. The first part of the process is to cancel the information that was inaccurate, and then issue a rebill based upon the correct data. When Cancel/Rebill transactions are sent for lengthy periods of time between the initial incorrect invoice and the corrected one, suppliers inevitably provide incorrect information on a customer account until the utility provides the correction. Cancel/Rebill transactions create duplicative actions when processing that strain supplier resources. Since early 2019, Constellation has received over 400 GCC cancel transactions. One of our GCC accounts received 69 cancel transactions alone. In May 2019 we received cancel transactions for certain GCC customers that went back over two years to DTE's system conversion in April 2017. For 20 of those accounts, more than one cancel transaction occurred. For prospective customers

¹⁵ 4 Tr. 1557, ln. 9 – 1558, ln. 11 (internal citations omitted).

there may also be financial impacts. When incorrect usage data is sent, a supplier may not be correctly pricing with the most competitive offer price available to that customer.

...

In my role as a mass market analyst it is not uncommon for a customer account to be missing usage data for several consecutive months, to have a single month of missing data for a prior month occurring several months earlier, or in cases of new enrollments, for the supplier to not receive usage information for several months after the customer has first enrolled. While typically it takes several weeks to obtain the usage data when Constellation contacts DTE to initiate a GCC investigation, I am aware of customer accounts that took nearly two years for us to obtain the GCC customer usage information. This delay of information makes it virtually impossible to effectively serve our customers in a timely manner.¹⁶

Mr. Rittmann also testified to similar, protracted data problems with commercial and industrial transportation customers.¹⁷ Not only do the data issues adversely affect the suppliers, but they adversely affect the customers, as well.¹⁸

The Commission is well aware of DTE's recent information technology problems. In 2017, DTE implemented its SAP Customer 360 customer billing system.¹⁹ Shortly after, the MPSC began receiving numerous customer complaints about improper shut offs and billing errors.²⁰ On December 20, 2017, the MPSC opened an investigation in MPSC Case No. U-18486, followed by a show cause order issued on February 5, 2018 in Case No. U-20084. On December 20, 2018, the MPSC issued an order in Case Nos. U-18486 and U-20084 approving a settlement that fined DTE \$840,000 for violating the Commission's billing rules. In its final report filed in those same dockets on February 18, 2019, DTE acknowledged billing-

¹⁶ 4 Tr. 1558, ln. 15 – 1559, ln. 17.

¹⁷ 4 Tr. 1559-1560.

¹⁸ 4 Tr. 1561-1563.

¹⁹ See, Order dated February 5, 2018, MPSC Case No. U-20084, p. 1.

²⁰ *Id.*, pp. 1-2.

system problems that included erroneous shut-offs, delayed or incorrect billings, and inappropriate consecutive estimated bills. Not only did DTE's billing system problems affect DTE's relationship with its customers, but it also affected DTE's provision of customer usage information to gas suppliers.

While the Commission's billing rules protect customers from billing data problems, they do not protect gas suppliers who also depend upon that same data to serve customers. At present there is no affirmative requirement obligating DTE to provide timely and accurate customer consumption data to suppliers. "Neither DTE's GCC or EUT tariffs, the Commission's rules, nor state statute requires DTE to provide suppliers with accurate, timely and reliable customers usage information."²¹ Over the course of developing these programs, DTE agreed to provide such information to suppliers and, more often than not, does provide such information. When the GCC and EUT programs are functioning as intended and designed, RESA's members are provided the necessary information. RESA's concern, however, is that when the programs are not functioning well and access to necessary information is stymied, RESA does not have a clear legal recourse to pursue its concerns with the Commission.

To remedy this issue, RESA's witness Mr. Rittimann recommends that the Commission direct DTE to amend its GCC and EUT program tariffs to include a requirement that would require DTE to provide suppliers with timely and accurate customer usage information. For DTE's EUT program, Mr. Rittimann recommends the following for Part I, Section E2 Records, Accounting and Control:

E2.3 Customer Data.

The Company will provide the Customer, or its designated agent, with accurate individual customer consumption data no later than 6 business days after the conclusion of the month.

²¹ 4 Tr. 1563, ln. 11-13.

For Part II, Section E16. Records, Accounting and Control, of DTE's EUT program tariffs, RESA recommends the following provision:

E16.2 Customer Data.

The Company will provide the Customer, or its designated agent, with accurate individual customer usage data no later than 6 business days after the conclusion of the month.

For DTE's GCC program tariffs, RESA recommends the following provision be inserted:

F.1.23 The Company will provide the Supplier with accurate individual customer consumption data on a monthly basis no later than 5 business days after the conclusion of the customer's billing month.

With these new tariff provision, if DTE fails to provide accurately, timely or reliable information going forward, then suppliers would have a basis for sustaining a complaint with the Commission. The Commission would have an opportunity to review DTE's conduct and order appropriate remedies where warranted.

Importantly, RESA is not seeking more information than what DTE typically provides, nor is RESA seeking the information any faster than the timeline DTE aspires to provide the information. In his testimony, Mr. Rittimann described the timelines under which DTE currently provides customer consumption reports.²² RESA's tariff proposals simply reduce to writing access to data on the timeline that DTE provides the information when DTE's business processes are functioning according to DTE's own prescribed timelines.

In its rebuttal testimony, DTE opposes RESA's GCC and EUT data access tariff recommendations for several reasons.²³ DTE is the only party who opposes RESA's

²² 4 Tr. 1559-1560.

²³ See, Rebuttal Testimony of Henry J. Decker, pp. 16-22, 4 Tr. 692-698.

recommendations. DTE's reasons for opposing the tariff proposals are without merit and should be rejected.

To begin, DTE opposes RESA's tariff recommendation to Part II of its EUT tariff related to off-system sales.²⁴ DTE states that it is in daily communication with its off-system sales customers, those customers have not complained, and so the tariff provision is unnecessary.²⁵ As noted above, customers are protected from DTE's billing data issues under the Commission's billing rules. What RESA seeks to address is supplier access to such information.

Next, DTE asserts that it aspires to provide accurate consumption information, from its perspective its data is highly accurate, and the proposed tariff provision would not be effective.²⁶ DTE also makes a semantics argument asserting that RESA's testimony is not correct because DTE does not send usage data to EUT customers or their suppliers because DTE maintains a website where customers and suppliers can access usage information.²⁷ DTE's remarks do not undermine or address RESA's fundamental concerns – that, in many cases since 2017, DTE did not provide timely, accurate and reliable information and RESA wants an opportunity going forward to seek redress at the Commission for similar such failures. RESA has no objection to DTE providing the information via a website and there is nothing in RESA's tariff proposals that would prohibit DTE from providing the usage data via DTE's website going forward.

²⁴ 4 Tr. 693.

²⁵ *Id.*, ln. 10-14.

²⁶ *Id.*, 693 – 695.

²⁷ 4 Tr. 694.

DTE states that it fails to provide customer usage data primarily because of metering issues and that its metering and billing problems are within the Commission's standards.²⁸ Even if DTE's claim is true, that is not a basis for rejecting RESA's tariff recommendations. If a gas supplier were to file a complaint allegedly a tariff violation for failure to provide timely access to customer consumption data, and the reason for DTE's failure to provide such information is due to metering issues and DTE's metering and billing issues are within acceptable standards, then DTE would have a basis for a defense to the complaint. Having a potential defense to a future complaint is not a reasonable basis for prohibiting suppliers from being able to file a complaint seeking redress from the Commission in the first instance. The Commission should not pre-judge the merit of DTE's potential defense as a basis for denying RESA's recommendations.

Further, DTE asserts that RESA's tariff proposals should be rejected because DTE's existing tariffs require that any GCC supplier complaints must first be taken to the utility pursuant to Section F5.²⁹ In other words, DTE claims that RESA's GCC recommendations in this rate case should be barred because RESA did not first submit a complaint to the utility. To begin, RESA's members have repeatedly expressed their concerns about missing and inaccurate data to DTE. DTE's claim that this rate proceeding is the first time that it received a complaint about data issues³⁰ is disingenuous. DTE's witness himself testified as to working to resolve data issues once contacted by the customer or its agent.³¹ RESA members are continually in communication with DTE to resolve problems.

²⁸ 4 Tr. 695 & 697.

²⁹ 4 Tr. 698.

³⁰ 4 Tr. 696.

³¹ 4 Tr. 695, ln. 7-10.

Further, even if RESA's members were obligated to first pursue a complaint with the utility before taking their concerns to the Commission, which they were not, this tariff proposal is not a complaint. This proceeding is a general rate case. All of DTE's rates, terms and conditions of service are properly within the scope of a general rate case. DTE's GCC and EUT programs are tariffed programs. A rate case is an appropriate forum for proposing tariff changes. RESA is not obligated to lodge a complaint with DTE as a pre-condition to participating in a general rate case. RESA's proposals are properly within the scope of this case and not improper.

Finally, rejecting RESA's tariff proposals would send a terrible message to DTE to the detriment of DTE's GCC and EUT programs. Rejecting RESA's tariff proposals would suggest that DTE is not obligated to provide timely, accurate and reliable customer usage information to suppliers. If true, and DTE were to altogether fail to voluntarily provide such information going forward, DTE's GCC and EUT programs could not function. Customer usage information is necessary to ensure the safe and reliable delivery of natural gas and to ensure that gas costs and volumes are appropriately reconciled and accounted for.

RESA's tariff proposals were not intended to be controversial. In fact, they were meant to simply codify the status quo. DTE's opposition to being required to provide information that it provides today is simply an effort to avoid accountability for future failures. If the Commission does not approve RESA's tariff proposals, then the Commission should expressly state in its order in this case that DTE is required to timely provide monthly GCC and EUT customer usage information to gas suppliers thereby providing a clear basis for complaints to be filed at the Commission for violating the Commission's order in this case when DTE fails to provide such information.

IV. CONCLUSION AND PRAYER FOR RELIEF.

For all the reasons explained in the preceding sections of this Initial Brief, RESA respectfully requests that the Honorable Administrative Law Judge issue a proposal for decision recommending that the Commission adopt RESA's demand response recommendations and GCC and EUT tariff proposals.

Respectfully submitted,

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



Date: May 27, 2020

By: _____

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STATE OF MICHIGAN

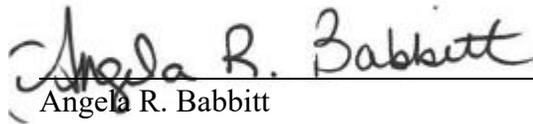
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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DTE GAS COMPANY for authority to)
increase its rates, amend its rate schedules)
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supply of natural gas, and for miscellaneous)
accounting authority)
_____)

Case No. U-20642

CERTIFICATE OF SERVICE

Angela R. Babbitt hereby certifies that on the 27th day of May, 2020, she served the *Initial Brief 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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