PUBLIC MEMORANDUM

To: Mayor and Council

Cc: Milton Dohoney, Jr., City Administrator
Dr. Melissa Stults, Sustainability and Innovations Director

From: Atleen Kaur, City Attorney
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Date: March 3, 2025

Subject: Ann Arbor's Participation in DTE Electric and DTE Gas MPSC Cases Since 2022

As directed in Resolution R-25-023, this memo summarizes the arguments advanced in the City's participation in Michigan Public Service Commission ("MPSC" or the "Commission") proceedings since 2022, including in rate cases involving DTE Electric Company ("DTE Electric") and DTE Gas Company ("DTE Gas"), and the results achieved.

KEY ACHIEVEMENTS

The City has joined other interested parties to achieve results including:

- **Saving DTE Electric ratepayers over $850M and DTE Gas ratepayers over $150M.**
- On average over the last three rate cases, **limiting average residential electric rate increases to less than 40% of what DTE Electric requested**.
- Maintaining DTE Electric shareholders' rate of return on equity **("ROE") at 9.9%** and decreasing DTE Gas shareholders **ROE to 9.8%** despite the companies seeking ROEs up to 10.5%. Every tenth of a percentage saves ratepayers millions of dollars.
- Rejection of a proposal to pay DTE Electric a bonus for reliability even when DTE's performance violated the rules requiring minimum levels for performance.
- Rejection of a "cost-sharing" mechanism for storm expenses that would have incentivized DTE Electric to overspend and almost certainly resulted in increased costs for ratepayers.
- A directive for DTE Gas to update its Gas Delivery Plan to **consider the transition away from fossil gas, and to indicate how it will achieve emissions reduction goals**, making DTE Gas the first utility in the country required to develop such a plan without there being a statewide mandate to end methane use.

The City has been the primary or only advocate on some issues, achieving results including:

- Requirement for DTE Electric to **better coordinate** with local governments and other utilities, which should lead to **cost savings, reduced disruptions to residents, and less damage to infrastructure**.
- Requirement for DTE Electric to **provide evidence for each and every outage credit it attempts to recover from customers,** making it more likely DTE Electric's shareholders (not customers) will pay for bad reliability.

- Communities (like Ann Arbor) that paid to proactively convert to LED streetlights will receive bill credits, which should result in **thousands of dollars in credits to the City**.
- A directive for DTE Gas to consider the risk that gas assets will become obsolete due to decarbonization when setting depreciation rates in future cases, forcing the utility to choose to risk losing profits if it continues to bet that the number of gas customers won't decrease.
- Changes so customers don't pay for power that isn't being used due to non-working streetlights.
- Keeping a fixed price option for residents and elimination of unfair termination clauses for commercial and industrial MIGreenPower subscribers.

BACKGROUND

In order for DTE to raise electric or gas rates, it needs the permission of the MPSC. Utilities must also follow the MPSC's rules of service. Since 2022, the City has put great effort into participating in nine different MPSC proceedings, all to try to lower costs and improve service for customers while achieving the goals of A2ZERO. The City has focused on three kinds of proceedings: the cases that determine how much DTE Electric and DTE Gas can charge customers (rate and depreciation cases), [1] cases that determine the program offerings for MIGreenPower (because Ann Arbor residents make up more than a third of DTE Electric's residential participants), [2] and proceedings about DTE Electric's reliability.[3]

While on many issues Ann Arbor worked with other ratepayer and environmental advocates to improve customer outcomes, in some situations Ann Arbor has been the only advocate for certain positions. For instance, Ann Arbor was the only party to intervene in DTE's gas depreciation case, which determines the time-period that DTE may assume as useful life for its assets. Ann Arbor pointed out that under accounting rules, if the Company continued to assume the use of the gas system would continue unchanged for the next 60 years despite clear warnings regarding the possibility of obsolescence, then shareholders, not ratepayers, should bear the risk if DTE turned out to be wrong (e.g., if an asset becomes obsolete before it has been completely depreciated, any undepreciated portion should not be included in rates). Though the Commission did not adjust depreciation rates in that case, it directed DTE Gas to consider the possibility of obsolescence due to decarbonization when setting depreciation rates in the future.

ARGUMENTS & OUTCOMES – DTE ELECTRIC RATE CASES

Since 2022, the City has addressed numerous issues in DTE Electric general rate cases. Those issues are discussed in turn below, including each case in which they were addressed and the outcome of the City's advocacy on each issue.

A. Total Revenue for DTE: Denial of $850M in Requested Increases

When a utility files a general rate case for a rate increase, it has to justify that increase by showing its current level of revenue is inadequate for providing a reasonable level of service (a "revenue

[1] For electric rates, cases U-20836, U-21297, and U-21534, for gas rates, cases U-21384 and U-21291.
[2] Case U-21172.
[3] Cases U-21400, U-20147 and U-21305.

deficiency"). In a general rate case, interested parties have the opportunity to challenge a utility's projected annual revenue deficiency, so the Commission can decide the utility's need for additional revenue and set rates accordingly.

Since 2022, over the course of three general rate cases, DTE Electric had requested over $1.466 billion in additional annual revenue. After looking at the evidence and arguments (including Ann Arbor's), the Commission authorized just under $616 million. That means that ratepayer advocates (including Ann Arbor) have ***saved ratepayers over $850 million since 2022***.

<u>2022</u>. DTE Electric requested an annual revenue increase of **$388 million**, which would have resulted in an average residential **rate increase of approximately 9%**. The Commission authorized an annual revenue increase of **only $30.577 million (*less than 8% of DTE's request*)** resulting in an average residential ***rate increase of only approximately 0.4%***.

<u>2023</u>. DTE Electric requested an annual revenue increase of **$622 million**, which would have resulted in an average residential **rate increase of nearly 14%**. The Commission authorized an annual revenue increase of **$368 million (*40% less than DTE Electric's requested amount*)**, resulting in an average residential **rate increase of approximately 7.2% (*approximately half of DTE's request*)**.

<u>2024</u>. DTE Electric requested an annual revenue increase of **$456.4 million**, which would have resulted in an average residential **rate increase of 9.6%**. The Commission authorized an annual revenue increase of **$217.38 million (*less than half of DTE Electric's requested amount*)**, resulting in an average residential **rate increase of 4.7% (*less than half of DTE's request*).**

B. <u>Millions Saved by Lowering Maximum Shareholder Returns</u>

One of the inputs that goes into the calculation of rates is a utility's rate of return on equity ("ROE"). This is the rate of return that shareholders earn on the utility's capital investments. Importantly, ROE is not earned on operations and maintenance ("O&M") expenses. That means that to maximize shareholder returns, a utility will generally push to spend more on capital investments (i.e., new infrastructure) and maximize the possible returns (ROE) on that investment, while putting less effort into increasing dollars for maintenance on existing infrastructure (because there is only short-term profit potential for savings on O&M).

In the three proceedings since 2022, DTE Electric has requested that its ROE be increased from 9.9% to 10.25% twice and to 10.5% once. Each time, the Commission has opted to maintain DTE Electric's ROE at 9.9%.

<u>2022</u>. DTE Electric requested increasing the ROE from 9.9% to 10.25%, claiming DTE Electric has a higher business risk than similar companies. Ann Arbor provided evidence of ways that DTE Electric's experts had overstated the risk. **The Commission maintained an authorized ROE of 9.9%**, finding DTE Electric's requested ROE to be excessive and unsupported.

<u>2023</u>. DTE Electric requested increasing the ROE from 9.9% to 10.25%, again claiming DTE Electric has a higher business risk than similar utilities. The City argued that DTE Electric has a history of claiming that a higher ROE is necessary to address alleged risk and to maintain access to capital. The City further provided evidence that DTE was communicating to its shareholders that it provides premium returns while telling the Commission that its ROE was insufficient. **The Commission maintained an authorized ROE of 9.9%**, finding DTE Electric's requested ROE to be excessive and unsupported. Based on the City's advocacy, the MPSC said it would "continue to seek opportunities to better tie DTE Electric's financial performance to the outcomes experienced by its customers through the ongoing Financial Incentives and Disincentives Workgroup."

<u>**2024**</u>. DTE Electric requested increasing the ROE from 9.9% to 10.5%, claiming DTE Electric has a higher business risk than comparable electric utilities, in part because it has a "higher than average need for infrastructure investments." The City argued that DTE's position essentially admitted **that its failure to maintain its assets has increased its risk**. The City also argued that the lower ROE recommendations of MPSC Staff and other intervenors were more credible because DTE Electric has a pattern of overestimating the needed ROE to attract investment. **The Commission maintained an authorized ROE of 9.9%**, finding DTE's request was inflated.

C. <u>Coordination of Underground Work (Dig Once)</u>

Until recently, DTE Electric did not consult the public infrastructure plans of local governments or notify other utilities (including DTE Gas) if it planned to do underground work in a right of way. The City and the Michigan Municipal Association for Utility Issues ("MAUI") (a coalition of local governments of which Ann Arbor is a member) argued that this unusual practice of not attempting to coordinate work with other projects planned for the same location drives up costs for all utilities and unnecessarily inconveniences the public. For example, the City suggested DTE Electric could plan work on its underground infrastructure to align with a city's planned work to install a sidewalk or a new sewer pipe so the street is only dug up and resurfaced once instead of multiple times in the same location. After the City repeatedly raised this in both gas and electric rate cases, the Commission recently agreed with Ann Arbor that "coordinating projects whenever possible results in cost savings while limiting utility disruption for customers**"** and **directed DTE Electric to "act to coordinate as much as feasible with local governments and other utilities**." It specifically ordered DTE Electric to inform local governments and other utilities of planned projects prior to earmarking capital for the projects and to investigate the publicly available plans of other utilities and local governments. **The Commission's order heavily cited Ann Arbor's testimony and briefing**.

D. <u>Defeat the Effort to Force Rooftop Solar Customers to Pay a Higher Rate</u>

In the 2022 general rate case, the City opposed DTE Electric's proposed separate (higher) rate for rooftop solar customers because it would have an unreasonably negative impact on such customers, and thus have a chilling effect on solar adoption. Agreeing with the City and other intervenors, **the Commission rejected the proposed separate (higher) rate**, finding that distributed generation customers are not a separate class from residential customers. **Ann Arbor witness Dr. Stults' testimony was impactful on this issue and cited by several parties**.

E. <u>Improved Outage Reporting</u>

In the 2023 general rate case, the City argued that inconsistencies among DTE Electric's outage map, the number of outages reported on other parts of its website, and in the number of outages reported in the media, led to confusion among residents and increased work for local government officials. A Commission decision was not necessary on this issue because <u>**DTE Electric acted to resolve the issue based on Ann Arbor's testimony**</u>. **DTE Electric acknowledged the inconsistencies in the reporting of outages and took steps to ensure consistency in the number of outages reported.**

F. Crisis Communication System Improvements

In the 2023 general rate case and a prior Commission workgroup, the City testified about failure of DTE Electric's communication system during storms, which resulted in the Ann Arbor Fire Department being unable to report and triage incidents (such as downed power lines). A Commission decision was not necessary on this issue because **DTE Electric acted to resolve the issue based on the City's arguments. DTE Electric apologized to Chief Kennedy for his experience being unable to report incidents during major storms, acknowledged unplanned downtime in its service channels, and committed to piloting a new mobile application in cooperation with the Ann Arbor Fire Department for storm and crisis response. Chief Kennedy reported that DTE Electric has made updates as promised.**

G. Defeat of DTE Proposal for "Cost Sharing" of Storm Expenses

In its 2024 general rate case, DTE Electric proposed a Storm Restoration Cost Sharing Mechanism ("SRCSM"). Ann Arbor, along with other intervenors, opposed the mechanism, arguing it created bad incentives for DTE Electric to overstate storm expenses and continue to under-invest in needed O&M that prevents damage during storms. The City also presented an estimate of the number of increased limbs that fell due to DTE Electric's failure to maintain its tree trimming schedule, based on data developed by City foresters from the City's experiences. **The Commission rejected the SRCSM**, stating it found persuasive the "arguments that the proposed SRCSM lessens the incentive for cost-control and that the company's storm restoration performance shows a need for improvement."

H. Pushing for Shareholders, Not Customers, to Pay for Outage Credits

In its 2024 general rate case, DTE Electric proposed an outage credit recovery proposal, under which it would put the costs of outage credits into rates paid by all customers when those outages were "outside its control" – and then suggested such a long list of things that would qualify that if accepted, shareholders would rarely if ever pay for those outage credits (for example, DTE's list included weather and animal interference). Ratepayer advocates, including the City, argued ratepayers pay for a grid that should be capable of withstanding very predictable outage risks. **The Commission sharply limited the kind of outages for which outage credits can be built into customer rates. Moreover, the MPSC agreed with Ann Arbor that DTE Electric should provide evidence for every credit it intends to recover "to eliminate the risk that DTE Electric may recover credits that were justly paid to customers." The City was the only party to argue for making DTE Electric justify itself when charging customers for outage credits**. This means DTE Electric will have to provide evidence for each and every $38 credit it tries to recover, which we believe will be sufficiently burdensome to disincentivize it from indiscriminately using this process.

I. Reducing Unfair Electrical Hookup Costs for Developments in Older Communities

City staff received complaints from developers about wildly varying and very high cost estimates to connect to DTE Electric's grid, which made it difficult for developers to build all-electric buildings. Some parts of DTE Electric's grid are served by a 4.8kV system (older; less capacity), and some parts of the grid are served by a 13.2kV system (newer; greater capacity). No matter what type of grid serves an area, DTE Electric requires developers to pay the costs of increasing the capacity of the grid if it is necessary to support their development project. This has the effect of driving up costs for many older communities (e.g., Ann Arbor, Detroit, Grosse Pointes, Highland Park), because 13.2kV systems, which are largely deployed in newer communities, have 2.5

times the capacity of 4.8kV systems, and thus newer communities can usually accommodate new development with less investment.

The City argued that developers should not be charged to upgrade the grid unless a development project requires capacity greater than what would be available on a 13.2kV system, because DTE has said it intends to completely replace the 4.8kV systems with the newer 13.2kV systems. The **Commission found Ann Arbor's argument persuasive** and thus directed DTE to propose in its next rate case tariff language that includes a waiver of the charges related to the difference in costs associated with customers connected to a 4.8kV system and those connected to a 13.2kV system**. The Commission's order cited Ann Arbor's testimony and briefing regarding its concern with older communities subsidizing newer communities and the resulting encouragement of sprawl over infill. Ann Arbor was the only party to address this issue**.

J. Pushing for More Inspections of Poles and Pole Tops

DTE is far behind in the recommended standard for pole-top maintenance, not laying eyes on some pole-tops for more than 12 years. DTE asked for permission to fall behind even further because it was not keeping up with repairing or replacing all the pole equipment that failed inspection and did not want to keep identifying more failing equipment and adding to the backlog. The City argued that DTE Electric should not be permitted to continue to fall behind in order to reduce its perceived backlog of maintenance work because it will create a situation in which DTE Electric is unaware of the condition of a large portion of its equipment and will thus be unable to identify and fix issues that might be a higher priority before other failures occur. The Commission did not directly address the City's concerns, but it authorized DTE Electric's projected expense for its pole and pole-top maintenance program and noted that it expects to see progress on DTE Electric's goal of reaching a cycle frequency that matches industry standards.

K. Reduced Incentive Compensation

In its 2024 general rate case, DTE Electric included in its projected employee incentive compensation program $39.232 million for expenses tied to the achievement of financial measures, despite the Commission making it clear in previous rulings that such expenses are not recoverable from ratepayers. The City, along with other intervenors, argued that DTE Electric's proposed incentive compensation expense should be reduced by $39.232 million because ratepayers should not fund such expenses. **In response, the Commission reduced DTE Electric's employee incentive compensation program expense by the full amount sought by DTE for achievement of financial measures ($39.232 million)**.

L. Advocating for Lower Income Threshold for Electric Vehicle Charger Rebates

In its 2024 general rate case, DTE Electric proposed the income-qualified threshold for Home Charger Rebates be set at 200% of the federal poverty limit because that is the threshold for its other low-income programs. The City argued that the income-qualified threshold for Home Charger Rebates (which cover the cost of an electric vehicle ("EV") charger and installation) should be increased to 400% of the federal poverty limit to ensure households likely to buy an EV could take advantage of this program. The Commission approved DTE's proposal to set the income eligibility threshold at 200% of the federal poverty limit so that it is aligned with DTE's other low-income programs. However, the Commission left the door open to increase this threshold in the future, directing DTE Electric to provide evidence supporting an adjustment "[i]f the company determines that it would be beneficial to deviate from this threshold in a future general rate case."

M. Defeated Bad Battery Pilot Proposal

In the 2022 general rate case, the City opposed DTE Electric's proposed residential battery pilot as much less customer-favorable than other utilities' offerings and because it would not allow customers with existing batteries to participate. The Commission agreed and rejected DTE's proposed residential battery pilot. It **disallowed the associated $4.2 million expense**, finding the arguments advanced by intervenors (including Ann Arbor) persuasive.

N. Supporting Veridian Pilot

In the 2022 general rate case, the City supported the Veridian non-wires alternative pilot project that had been opposed by some other intervenors. This pilot would help DTE Electric to innovatively interconnect the all-electric neighborhood, Veridian at County Farm in Ann Arbor. **Citing Ann Arbor's support, the Commission approved the Veridian pilot and its associated expenses, contributing to the continued momentum toward making Veridian one of the first fully solar-powered, fossil fuel free communities**.

O. Supporting Strategic Undergrounding Pilots for More Areas

In the 2024 general rate case, the City argued that the Commission should require a more transparent process for the selection of communities for DTE Electric's strategic undergrounding pilot projects and that it should expand such projects to locations outside the City of Detroit. However, the City expressed its general support for these pilots because there are many benefits to undergrounding power lines and the feasibility and cost-effectiveness of doing so should be explored, especially with improved coordination with cities. The Commission authorized recovery for spending on undergrounding pilots, but disallowed future expenditures, finding that DTE Electric had not provided a complete enough cost-benefit analysis to justify continuing. However, the Commission indicated that it may approve funding for such pilots in the future if DTE Electric demonstrates that undergrounding has potential to be scalable and determines a way to quantify its significant safety and resiliency benefits. The Commission did not address the City's concerns regarding the lack of transparency in the pilot selection process.

P. Reducing Costs and Improving Reliability for Streetlighting (Especially LEDs)

Since 2022, the City and MAUI have been fighting for fairer streetlighting rates. Without their advocacy, many poor practices would have continued and DTE Electric would be able to continue charging local governments unfair and inequitable streetlighting rates without consequence.

Excessive LED Washing. The City and MAUI argued that DTE Electric washes LED streetlights more often than necessary, driving up costs. The Commission agreed, requiring a **50% reduction in projected LED streetlight washing expenses ($135,322)**.

No More Paying for Electricity During Outages. Until the City and MAUI raised the issue in recent cases, it was common to charge streetlights for electricity usage even when they were experiencing an outage. The Commission agreed that this is improper and now DTE regularly reduces the costs the streetlights pay for electricity to take into account streetlight outage rates.

Streetlight Outage Reporting. Until recently, Ann Arbor was the only community to receive streetlight outage report data that allowed it to track where lights were out and how long it took to repair them. Due to the City and MAUI's advocacy, DTE Electric must now allow all streetlighting customers to request and receive streetlight outage report data.

Excessive LED Replacement Costs. The City and MAUI have argued DTE Electric's default LED streetlights are brighter and more expensive than necessary to get the right level of lighting. The Commission has agreed and ordered a **$5.8 million reduction in LED streetlight costs**. The MPSC has also ordered a workgroup to allow intervenors to agree on a more appropriate standard replacement to avoid re-litigation of this issue.

Fairness for Early LED Adopters. After DTE' Electric was informed by its supplier that it would no longer supply non-LED streetlights, DTE announced it would now allow reactive conversions to LEDs for free. The City and MAUI argued that communities that proactively converted to LED streetlights should get a bill credit now that LEDs are the standard, so they do not have to pay for the full cost of their conversion plus part of the cost of other communities' conversions in their rates. The Commission agreed with Ann Arbor and MAUI, ordering DTE Electric to develop bill credits for communities that opted to proactively convert to LEDs so that such early adopters are not subsidizing other communities that waited to convert reactively. **This result should lead to several thousands of dollars in bill credits for Ann Arbor**, as well as other early adopters.

IMPROVEMENTS TO MIGREENPOWER FOR CUSTOMERS

Pursuant to Michigan law, DTE Electric is required to offer its customers a voluntary green pricing ("VGP") program – which DTE calls MIGreenPower – under which its customers may choose the amount of their electricity that will be attributable to renewable energy.[4] Under a VGP program, a customer is responsible for any additional costs incurred by the utility, but is also entitled to any additional savings the utility receives, as a result of the customer's participation in the program. Ann Arbor's advocacy in proceedings has led to several improvements in the program.

Fairer Default and Termination Provisions for Big Subscribers. DTE Electric contracts had required default and termination provisions under which large customers that terminated would be required to pay 100% of their subscription charges for the remainder of their contract term, but receiving none of the credits for the energy produced by the project. The City opposed these proposed provisions because they could result in significant overcollection by DTE Electric (i.e., **DTE Electric could make a lot more money from a customer who defaulted than from a customer who fulfilled its contract**). **The Commission agreed DTE should adopt alternative termination clauses that were fair to customers, citing Ann Arbor's illustrations of termination scenarios in which DTE Electric would make twice or five times as much money from defaulting customers than continuing customers**.

Keeping a Fixed Price Option. DTE Electric proposed postponing its fixed price offering, under which customers could pay a fixed amount (e.g. $1/month) toward renewable energy, rather than a percentage of their electricity usage, which was introduced to provide predictability and simplicity to residential customers. DTE, arguing the minimum $1/month was now too high due to the low cost of renewable energy, asked to suspend this option altogether. The City opposed DTE Electric's proposal to suspend its fixed price option and suggested it consider a lower price (e.g. $0.25/month). The City argued that customers who prefer the stability of a consistent monthly price should not be denied access to the MIGreenPower program. The **Commission agreed with the City that the fixed price option should not be suspended or delayed because DTE Electric had not considered all viable alternatives – including the $0.25/month subscription**

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[4] MCL 460.1061

suggested by Ann Arbor. Thus, a fixed price option is currently available as part of the MIGreenPower program as long as the cost of renewable energy can support a monthly enrollment of at least $0.25 per month.

<u>Increased Size for Sponsored Enrollment Pilot</u>. DTE Electric proposed a pilot program under which a large customer could cover the subscription charges of designated residential customers (e.g., an employer could sponsor its employees' participation in MIGreenPower). DTE Electric proposed a limit of 500 customers per sponsor. The City urged the Commission to require DTE Electric to either remove the cap or raise it to 1,000 customers per sponsor, so that large employers would not be discouraged from participating in the pilot. **In response to the City's arguments, the Commission required the cap be raised to 1,000 customers per sponsor.**

ARGUMENTS MADE IN COMMENTS (NOT ACTIVE INTERVENTION)

A. Distribution Grid Plan Case: Emphasizing Key Themes

In 2023, DTE Electric filed a distribution grid plan. Ann Arbor filed comments with three points that were also put forward by the City in rate cases: the failure to coordinate with local governments and other utilities missed opportunities for cost-saving; the disadvantage customers in Ann Arbor and other older communities face in installing solar panels, etc. that feed back to the grid, because the grid in such locations tends to be older and thus DTE Electric could potentially impose greater upgrade costs; and that DTE Electric's management practices were driving up capital needs and overall costs. Specifically, the City argued that deliberately underspending on operations and maintenance, failing to maintain a proper tree trimming cycle, and failing to account for climate change in distribution planning have all contributed to the state of the grid and increased costs. **In response to Ann Arbor and other commenters, the Commission directed DTE Electric to provide more details supporting proposed investments and to specifically address climate risks in scenario planning in its next round of distribution planning**.

B. Ensuring DTE Does Not Receive Bonuses for Below-Standard Reliability

In April 2023, the Commission opened a docket directing MPSC Staff to convene a Financial Incentives and Disincentives workgroup to explore performance-based ratemaking ("PBR") in an effort to better align utility financial performance with customer value. The initial focus of this workgroup was on developing metrics related to the reliability and resilience of the electric grid. As a result of this workgroup, MPSC Staff presented several versions of proposed PBR metrics, and the Commission gave interested parties opportunities to provide comments on the proposals.

The City submitted three sets of comments in response to MPSC Staff's proposals throughout 2024, each time **strongly opposing MPSC Staff's proposals to reward DTE Electric for reliability levels that fall short of the MPSC's minimum reliability requirements** and urging the Commission to take DTE's poor performance into consideration when setting its ROE. The City cited the applicable service standards,[5] which state that the Commission may only authorize an electric utility to receive a financial incentive "if it exceeds all of the service quality and reliability standards."[6] Thus, the City argued that providing any financial incentive to a utility that has not exceeded the service standards is in direct violation of the rules set by the Commission.

[5] R 460.701 *et seq.*
[6] R 460.741(1)

In response to push back from Ann Arbor, other municipalities, and certain other intervenors, the MPSC Staff's latest proposal would not allow a utility to receive a *net* incentive unless it met all the service standards. However, a utility could earn a penalty offset for reaching a target on one of the proposed metrics even if it failed to meet all the service standards. Such an offset would reduce the total penalty amount owed by the utility. **The City argued that permitting a utility to offset the total amount it owed is a form of financial incentive and is thus not allowed unless all the service standards have been met**.

Comments submitted by DTE Electric in this docket opposed many of the metrics in MPSC Staff's proposals because they lacked "symmetry." DTE Electric argued that the incentives and disincentives on all metrics should be symmetrical (i.e., there should be equal opportunity for utilities to be rewarded and penalized). The City responded by stating that DTE Electric does not face symmetrical risks to its customers who suffer from its poor performance (e.g., loss of food, medication, power for medical devices, etc.). Moreover, DTE Electric already earns an above average ROE for which there is no symmetrical benefit to customers and is in the position it is in due to poor management decisions. **Ann Arbor argued customers should not pay more to incentivize DTE to comply with the law**.

There was no activity in this docket from August 2024 until last week, when, on February 27, 2025, the Commission issued an order directing DTE Electric to file an application by April 15, 2025 to implement a PBR mechanism. The Commission directed that the mechanism must be consistent with the Commission's guidance, which was mostly aligned with the MPSC Staff's latest proposal (i.e., no net incentive for performance that falls below the required standards, which means that **the Commission listened to the vehement opposition to proposals that would allow such bonuses**). The Commission also included an initial cap of $10 million for incentives and penalties for the 2026 calendar year. Because DTE Electric is required to file this as a contested case, the City will have a chance to intervene if it deems doing so beneficial.

C. <u>Challenging DTE Electric's Framing of Audit Findings</u>

In September 2024, an independent, third-party audit of DTE Electric's distribution system (equipment and operations) was filed with the MPSC. In November 2024, DTE Electric filed its Implementation Plan for the DTE Electric Audit Report ("Implementation Plan"), and in that filing, as well as public statements, DTE repeatedly claimed the audit had validated DTE Electric's plans.

In December 2024, the City filed its comments on the Audit and DTE's Implementation Plan. The City foremost argued that the Audit <u>did not</u> endorse DTE Electric's investment plan, as DTE Electric claimed in its Implementation Plan. **The City noted that the overarching theme of the Audit was that DTE Electric is promising unrealistic reliability improvements for an unrealistic cost in an unrealistically short amount of time.** The Audit pointed out numerous ways in which DTE Electric has much older and outdated equipment than most utilities, fails to follow standard utility inspection and maintenance practices, relies on uncertain and/or inaccurate predictions, and underestimates the timing, staffing needs, and price impact of achieving acceptable levels of reliability.

The City noted that the Audit's findings were consistent with the concerns Ann Arbor has repeatedly expressed in rate cases regarding DTE Electric underspending on operations and maintenance ("O&M") and argued that customers should not have to pay higher rates because DTE Electric's strategy of minimizing O&M costs backfired. The City shared the lack of customer satisfaction with DTE Electric's service that was apparent in surveys conducted by the City, as well as the importance of improving resilience, reliability, and affordability in winning back customer favor.

The City expressed opposition to DTE Electric being able to recover from ratepayers its investments in a “smarter” grid based on the Audit’s conclusion that investments in a “smarter” grid would not be cost effective if less-lucrative preventative measures can be substituted as the Audit recommended.

The City also expressed opposition to DTE Electric’s plan to implement a risk-based tree trimming cycle, under which trees would be trimmed every 4 to 7 years. The Audit was clear about the importance of regular tree trimming to achieving reliability improvements and concluded a 5-year cycle is consistent with good practice. The City advocated for the imposition of financial consequences if DTE Electric does not maintain the recommended 5-year cycle (such as the inability to recover storm restoration costs on circuits that have not been trimmed in over 5 years).

Finally, the City called for transparency on the part of both the Commission and DTE Electric. It recommended the Commission and DTE Electric provide estimates of the anticipated investment amount and the resulting impact on rates for a variety of scenarios, including achieving varying levels of reliability on varying timelines to make the public aware of the rate impact of getting to even an average level of reliability.

On January 17, 2025, DTE Electric filed reply comments, in which it responded to two issues addressed by the City. Regarding the City’s opposition to DTE Electric recovering its investments in a “smarter” grid from ratepayers, DTE Electric stated that its “investment plan balances an array of grid needs, including both maintaining the current grid, and updating the grid with new technology to prepare for the future.” This response does not address the City’s concern that investments in these new technologies would not be necessary for improved reliability if DTE Electric had better preventive maintenance practices. Regarding the City’s claim that DTE Electric’s maintenance practices have been imprudent, DTE Electric stated this claim was “both unsupported and inaccurate.” However, the state of the grid speaks for itself.

There has been no further action in this proceeding since reply comments were due in January 2025. Thus, it is unknown at this time what action, if any, the Commission may take in response to the comments filed by the City and other interested parties.

ARGUMENTS & OUTCOMES – DTE GAS CASES

The City began participating in DTE Gas cases in 2023. The Office of the City Attorney, along with the Office of Sustainability and Innovations, determined it was appropriate to intervene in both the DTE Gas depreciation case[7] and the DTE Gas general rate case[8] to advocate for the interests of Ann Arbor and its residents, particularly considering the changing energy landscape (i.e., decarbonization and electrification). The heart of the City’s position in these two cases was that DTE Gas should not be continuing with a business-as-usual approach and assuming its gas assets will remain similarly useful for 50+ years when customers have indicated their intention to discontinue reliance on fossil gas.

Ann Arbor was the only party to intervene in the depreciation case for the purpose of bringing to the Commission’s attention the fact that current rules require DTE shareholders to take increased

[7] Case No. U-21384.
[8] Case No. U-21291.

risks on investments when it is foreseeable those investments will become obsolete, and noting that is the case with current gas investments.

A. <u>DTE Required to Examine Potential Climate Change Impacts on Gas System</u>

<u>Revenue Deficiency/Return on Equity</u>. Ann Arbor joined with other intervenors in arguing for lower revenue and ROE, and the Commission approved a **9.8% ROE (thus decreasing it)**, and denied the majority of cost increase proposals, **saving ratepayers more than $150M** (and meaning a 2.28% rate increase instead of the requested 9% increase).

<u>Gas Renewal Program</u>. DTE has an extensive Gas Renewal Program ("GRP"), under which gas pipelines are completely replaced, rather than repaired. The City opposed certain GRP projects in Ann Abor totaling $20.4 million. The City argued that it would be much less expensive and more efficient to focus on repairing pipes with known leaks, rather than entirely replacing pipes no matter their leak history. Additionally, citing the work of its expert witness, Bob Ackley, the City argued that current leaks are killing street trees and thus deserved prioritization. The Commission found that DTE Gas had "adequately demonstrated that the pipelines at issue should be replaced, as opposed to the repairs proposed by Ann Arbor," and thus rejected the City's proposed $20.4 million disallowance. But, improvements were made in coordination and in requirement for DTE to consider obsolescence as described below.

<u>Coordination</u>. The City argued that the Commission should require DTE Gas to provide evidence in future cases of efforts to improve coordination with local governments to save costs. **The Commission encouraged DTE Gas to coordinate its pipeline repair and replacement projects with local governments and choose cost saving measures when safe and appropriate**.

<u>Risk of Obsolescence</u>. The City urged the Commission to make a legal finding that the risk of obsolescence of gas assets due to decarbonization should not be considered when setting a utility's ROE because such risk is appropriately handled through accelerated depreciation rates (which reduce long-term utility earnings). Rather than directly ruling on this issue, **the Commission ordered DTE Gas to update its Gas Delivery Plan ("GDP") to consider the transition away from fossil gas and declining fossil gas demand**. As part of its updated GDP, **DTE Gas must evaluate the impact of decarbonization pathways and alternatives to capital investment** (e.g., Ann Arbor's recommendation to repair pipes instead of completely replacing them), as well as indicate how it will achieve emissions reduction goals.

B. <u>Advocating for Placing Climate Risks on Shareholders</u>

<u>Risk of Obsolescence</u>. In addition to its advocacy in the rate case on how to allocate risk for gas assets that we can already foresee becoming obsolete before they wear out, the City was the only entity to intervene in the DTE Gas depreciation case to address this issue. The City argued, among other things, that today's rates should assume that between now and 2050, DTE Gas would lose at least 4% of its customers due to climate impacts. The City also urged the Commission to make a legal finding that if the Company would not forgo certain profit by raising depreciation rates, that the Commission signal it will apply existing laws to put the risk of those assets becoming obsolete on shareholders rather than ratepayers. Finally, the City proposed the Commission require DTE Gas to perform a Climate Policy Impact Study to study various decarbonization and electrification scenarios and their impact on customer rates.

Though the Commission agreed with the City that obsolescence and a future reduction in customer demand due to decarbonization goals are appropriate considerations when setting depreciation rates, it found that it was “premature” to adjust depreciation rates for expected obsolescence because it was “radical” for the City to assume that 4% of DTE Gas’s current customers would stop using gas by 2050. However**, the Commission stated its expectation that DTE Gas consider the impact of changing customer demand, policy objectives, and other changes in the energy sector in future depreciation cases**. The Commission concluded it would be premature to order the City’s proposed Climate Policy Impact Study, but indicated that its order in the general rate case requiring DTE Gas to update its GDP to consider the transition away from fossil gas addressed the City’s concerns.

CONCLUSION

The City’s participation in DTE Electric and DTE Gas cases before the MPSC has been impactful, but it often takes advocating for an issue in more than one case to see progress on that issue. Ann Arbor is an effective and important voice before the Commission because the City represents both customer and local government interests in the areas of power quality and performance, affordability, and pathways to achieving carbon neutrality.

The City’s filings in the cases discussed above are publicly available, along with all other public filings in MPSC dockets, at https://mi-psc.my.site.com/s/