



Legislation Text

File #: 25-0319, **Version:** 1

Resolution to Authorize City Staff to Perform the Preliminary Work Necessary to Put the Question of the Acquisition of DTE Electric Company's Assets to a Vote of the People and Prepare for Litigation Should the Voters Authorize Such Acquisition

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Reviewed by: Atleen Kaur, City Attorney

Approved by: Milton Dohoney Jr., City Administrator

Whereas, DTE Electric Company ("DTE Electric") holds a Foote Act franchise to provide electric utility services in the City of Ann Arbor, which is not revocable by the City and has no stated termination date;

Whereas, In January 2022, City Council requested that the City Administrator commission a study regarding the technical, legal, and financial viability of multiple potential pathways for the City to meet its A²ZERO energy-related goals, and that such study include an analysis of the feasibility of creating a traditional municipal electric utility ("MEU") to replace DTE Electric and become the sole electric utility provider in the City ("Phase 1 Feasibility Study");

Whereas, In September 2022, the City retained the team of 5 Lakes Energy, LLC; SunStore Energy, LLC; Potomac Law Group, PLLC; and NewGen Strategies and Solutions, LLC ("5 Lakes Team") to complete such study;

Whereas, In October 2023, the City made publicly available the report produced by the 5 Lakes Team, "100% Renewable Energy Options Analysis Technical Report," which included the findings of its Phase 1 Feasibility Study ("Phase 1 Report");

Whereas, The Phase 1 Report indicated that the book value of DTE Electric's assets within the City could be estimated with "rough accuracy," but "the methodology that would be used by a court or regulatory body for setting an acquisition price is less clear, because municipalization processes are uncommon nationally and have no recent precedent in Michigan;"

Whereas, Due in large part to the uncertainty regarding the methodology for setting an acquisition price, the Phase 1 Report estimated a broad range for the cost of acquiring DTE's distribution assets and business in Ann Arbor;

Whereas, The Phase 1 Report recommended the City authorize an expanded Phase 2 Feasibility Study "to characterize more precisely the costs and risks of the MEU approach;"

Whereas, City Council allocated \$1,200,000.00 from the General Fund in the FY25 budget to support a Phase 2 Feasibility Study (R-24-176), and on December 16, 2024, City Council appropriated an additional \$1,000,000.00 to support a Phase 2 Feasibility Study (R-24-449), such that the total amount appropriated for a Phase 2 Feasibility Study is \$2,200,000.00;

Whereas, In the summer of 2024, City staff issued a Request for Proposals for a Phase 2 Feasibility Study (RFP 24-48), to which NewGen Strategies and Solutions, LLC (“NewGen”) was the sole respondent;

Whereas, Upon review of NewGen’s proposal, as well as interviews and follow-up conversations, an internal staff committee unanimously recommended that any Phase 2 Feasibility Study be prepared under a professional services agreement with NewGen;

Whereas, Under Michigan’s Acquisition of Property by State Agencies and Public Corporations Act (MCL 213.21 *et seq.*) (“the Acquisition Act”), in order to acquire DTE Assets without DTE Electric’s consent, the City must make just compensation for any of DTE Electric’s property that is taken;

Whereas, Pursuant to the proposed scope of services under the recommended professional services agreement, as part of a Phase 2 Feasibility Study, NewGen would deliver valuations for DTE Electric’s tangible and intangible assets necessary to serve the City (“DTE Assets”) based on the application of three different valuation methodologies;

Whereas, Obtaining estimates under the three proposed valuation methodologies rather than obtaining an estimate under only one methodology will better prepare the City for potential litigation should the City pursue formal municipalization because having NewGen’s opinion regarding alternative valuation methodologies will prepare the City to effectively respond in court to DTE Electric should DTE Electric argue for an amount of just compensation for its assets under a different valuation methodology than the City;

Whereas, Should a professional services agreement with NewGen for a Phase 2 Feasibility Study be approved, City staff, including the City Attorney’s Office, as well as outside legal counsel, will undertake their own work in parallel, including but not limited to: (1) legal evaluation of valuation methodologies for purposes of recommending an appropriate methodology and valuation should the City initiate the acquisition of DTE Assets; (2) preparing recommended ballot language sufficient to allow the required voter approval to initiate such acquisition; and (3) performing other work to prepare for the possibility of other future ballot proposals and litigation in connection with the acquisition of DTE Assets;

Whereas, Following publication of a final report resulting from a Phase 2 Feasibility Study, City Council expects to be advised on City staff’s recommended valuation methodology and the resulting estimated cost of acquiring DTE Assets;

Whereas, The City Attorney advises that provided a Phase 2 Feasibility Study is complete no later than February 15, 2026, the City Attorney’s Office, with outside counsel assistance, will be prepared by March 15, 2026 to advise City Council regarding a recommended amount of just compensation offer for acquiring DTE Assets;

Whereas, The City Attorney advises that if City Council has passed a Resolution by April 15, 2026 directing staff to pursue municipalization of the City’s electric services, the City Attorney’s Office, with the assistance of outside counsel, will be prepared to advise regarding the recommended ballot proposals necessary to begin the municipalization process in sufficient time for City Council to authorize the ballot questions to be put to voters in the general election held in November 2026;

Whereas, Should City Council pass a Resolution directing staff to prepare for the pursuit of formal municipalization of all electric utility services in the City and should the voters authorize the pursuit of formal municipalization, the City Attorney's Office advises that it would not be able to support the resulting necessary legal proceedings without significant additional funding;

Whereas, The City Attorney's Office has conducted research on the expenditure in legal fees incurred by other municipalities seeking to acquire the assets of their electric utilities and has found that Winter Park, Florida spent \$10 million between 2001 and 2004 and Boulder, Colorado spent \$30 million between 2011 and 2020, suggesting the City would need resources of not less than \$3 million per year to carry out the necessary legal proceedings; and

Whereas, Should City Council request the pursuit of formal municipalization, City staff will be prepared to advise regarding both the appropriate ballot language to authorize funding sufficient to support proceedings under the Acquisition Act, as well as for the additional studies necessary to evaluate infrastructure improvement needs and cost and capacity expansion needs and cost, should the voters ultimately authorize acquisition ("Adequate Funding");

RESOLVED, That the City Administrator is directed to identify a funding source, which may be in the form of a millage, to support the significant expense the City would incur in connection with legal proceedings to acquire the necessary DTE Assets should the voters authorize the initiation of such acquisition;

RESOLVED, That the City Attorney, as supported by appropriate staff and outside legal counsel, is directed to perform the preliminary work necessary, in parallel with any Phase 2 Feasibility Study, to (1) evaluate the Phase 2 Feasibility Study valuation methodologies for purposes of recommending an appropriate methodology and valuation should the City proceed with the acquisition DTE Assets; (2) prepare recommended ballot language sufficient to allow the required voter authorization to initiate such acquisition under the Acquisition Act and to secure Adequate Funding; and (3) prepare for the possibility of future ballot proposals and litigation related to the acquisition of DTE Assets; and

RESOLVED, That any ballot measure to authorize the initiation of the acquisition of DTE Assets shall be tie-barred to securing Adequate Funding.

Sponsored by: Mayor Taylor