
STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

RD Michigan Property Owner I LLC, a
Delaware limited liability company, Feldkamp
Siblings, LLC, a Michigan limited liability
company, Dennis Finkbeiner, an individual, Lynn
Ellen Finkbeiner, an individual, Wilkin Farm
Properties I, LLC, a Michigan limited liability
company, Dennis C. Wilkin, an individual,
and Alice M. Wilkin, an individual,

Plaintiffs,

v.

Saline Township, a Michigan municipal
corporation,

Defendant,

Kathryn Elizabeth Haushalter
Proposed Intervening Co-
Defendant/Cross-Claimant

v.

Saline Township, a Michigan municipal
corporation,

Proposed Cross-Claim Defendant

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Civil Action No. 25-001577-CZ
Hon JULIA B. OWDZIEJ
Date filed: 9-12-25

**CORRECTED
PROPOSED INTERVENING CO-
DEFENDANT AND CROSS-
CLAIMANT'S REPLY BRIEF TO
DEFENDANT SALINE TOWNSHIP
IN SUPPORT OF MOTION TO
INTERVENE**

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FACTS¹

The Consent Judgment was never validly approved by Saline Township. As evidenced by their minutes, the Township Board entered into a closed session and voted to approve negotiations for the Consent Judgment: “A MOTION was made by Mr. Hammond and supported by Ms. Marion to move forward with *trying to* settle the lawsuit.” (Ex. A - October 1, 2025 Special Meeting Minutes (emphasis supplied)) Again, as evidenced by the minutes, they entered into an open session and “Attorney David Landry then went over many of the point[s] of the proposed consent agreement with the residents.” (*Id.*) The minutes never state a vote was taken in a public meeting. The Township approved the minutes reflecting this reality on October 15, 2025. (October 15, 2025 Special Meeting Minutes) There was never a final vote to approve the final terms of the Consent Judgment, nor a vote to authorize the Supervisor and Clerk to execute a Consent Judgment. Despite this, the Consent Judgment was executed by the Supervisor and Clerk before October 7, 2025—prior to when the October 1, 2025 minutes were approved. (*See Consent Judgment*) This Court accepted the Consent Judgment on October 15, 2025, without a hearing. (*Id.*) On December 15, 2025, sixty days after the October 15, 2025 meeting approving the minutes for the October 1, 2025 meeting, Haushalter filed her Motion to Intervene with accompanying pleading. (*See Motion to Intervene and Proposed Answer and Cross-Claim*)

Saline Township now attempts to introduce video of the October 1, 2025, meeting to show that a vote to approve the Consent Judgment occurred in an open meeting. (Township Br at 3 (“Motion to approve the Consent Judgment as outlined by the attorneys”)) Further, despite claiming that Attorney Landry “presented to the public *in detail* all of the material terms” (Saline Township Br. at 4,) at no point in the discussion did Attorney Landry explain that the Consent Judgment would override conflicting or inconsistent terms of the current or any future Zoning

¹ Saline Township counsel has agreed to Haushalter filing a 6-page reply brief rather than a 5 page.

Ordinance.² (See generally Vimeo video attached to Township Br; Ex. F (Transcript of October 1, 2025 Meeting)) Further, Attorney Landry specifically stated “this may not be done” after the vote was taken, and that “all you have done is said that you were willing to settle for the [pro]visions that we have spoken about.” (Vimeo Video at 31:00-32:10; Transcript at 29:9-20)

ARGUMENT

I. Parol Evidence Cannot be Used to Change the Minutes.

The Saline Township Board “speak[s] only through [its] actions and resolutions.” *Toan v McGinn*, 271 Mich 28, 33, 260 NW 108, 110 (1935). Official meeting minutes evidencing those actions and resolutions cannot be overturned by parol evidence. *Tavener v Elk Rapids Rural Agr Sch Dis*, 67 NW2d 136, 139 (Mich 1954) (“[W]here records are required to be kept” by a local government board, “their import cannot be altered or supplemented by parol testimony.”) *Burtchville Twp v Buckner* put it most clearly:

When the law requires municipal bodies to keep records of their official action in the legislative business conducted at their meetings, the whole policy of the law would be defeated in they could rest partly in writing and partly in parol, and the true official history of their acts would perish with the living witnesses, or fluctuate with their conflicting memories. No authority was found, and we think none ought to be, which would permit official records to be received as either partial or uncertain memorials. That which is not established by the written records, fairly construed, cannot be shown to vary them. They are intended to serve as perpetual evidence, and no unwritten proofs can have this permanence.

No. 209178, unpublished decision of the Court of Appeals issued March 10, 2000, (citing *Ferrario v Escanaba Bd of Ed*, 426 Mich 353, 371 (1986); *Tavener*, 341 Mich at 251-252; *Alcona Co v Alcona Probate Judge*, 311 Mich 131, 142 (Mich 1945); *Derosia v Loree*, 158 Mich 64, 73 (1909); *Stevenson v Bay City*, 26 Mich 44, 45 (1872)).

² Saline Township also argues the Data Center has received approval from the Michigan Public Service Commission. [Township Br. at 5-6.] That approval is currently being challenged by the Michigan Attorney General’s Office, partially on the basis that the Data Center refused to accept the MPSC’s conditions. (See Exhibit B (Petition for Rehearing, Intervention and Motion, and Motion to Reopen Proceedings.)

There is no dispute that official Saline Township Board minutes, voted on and approved by the Township Board, unequivocally state that the votes regarding the Consent Judgment were taken in a closed session, with nothing in the minutes reflecting a public vote. (October 1, 2025 Meeting Minutes) Unable to rebut this, Saline Township attempts to introduce parol evidence showing that a vote was in fact taken at a public meeting. (Township Br. at 3) The law simply does not permit Saline Township to contradict its official, approved meeting minutes. *Tavener*, 341 Mich at 251-252; *see also Jon Jon's Inc v City of Warren*, 162 F Supp 3d 592, 599-600 (ED Mich 2016) (stating that Michigan's "official minutes" limitation applies "in the context of contract law."), *aff'd*, 700 F App'x 436 (6th Cir 2017).

II. The Video Does Not Establish the Township Approved the Consent Judgment in an Open Meeting.

Assuming, *arguendo*, that this Court could consider parol evidence, the evidence submitted by Saline Township *confirms* Haushalter's contention: there was never a public vote to approve the final consent judgment. Rather, there was a vote to *negotiate* the Consent Judgment with RD, which Attorney Lucas specifically said "this may not be done." (October 1, 2025 Meeting Minutes; Vimeo video at 31:00 – 32:00) A vote to negotiate is not a vote on the actual final terms of the Consent Judgment, especially when the consent judgment "may not be done." This is evidenced by Saline Township's own historical minutes, wherein it voted to approve a Consent Judgment in 2007, followed by a second vote authorizing officials to sign. (Ex. C - Saline Board Meeting Minutes for September 25, 2007 ("Motion by Mr. R. Marion, supported by Mrs. Gordon, to accept the Consent Judgment as prepared and reviewed by the Saline Township Board"); Ex. D - Saline Board Meeting Minutes for October 1, 2007 ("Mrs. Baldus moved, supported by Mr. Bohnett, to approve the consent judgment as provided and authorize to execute.")) This same process repeated in 2023 with *another* Consent Judgment. (Ex. E - Saline

Board Meeting Minutes for June 14, 2023)³ Unlike in 2007 and 2023, the Saline Township Board here only voted to approve negotiating the Consent Judgment, it never voted to approve the final consent judgment, never reviewed the final in an open meeting, and never voted to authorize the Supervisor and Clerk to sign it.⁴

Further, the Supervisor and Clerk had no authority to execute the Consent Judgment without further board approval, because supervisors and clerks have no inherent authority to execute contracts without a vote authorizing the same. MCL § 41.60 *et seq.*; *Marathon Oil Co. v. Plymouth Township*, 181 NW2d 668 (Mich Ct App 1970). Their signatures are therefore *ultra vires* and, as such, void. *Id.* And, assuming *arguendo* the Consent Judgment is a contract, it cannot be a final binding contract without a public vote approving the same. *Cape v Howell Bd of Educ*, 378 NW2d 506, 510 (Mich Ct App 1985) (a contract is a “decision” of a public body under MCL § 15.262). Because the final Consent Judgment never received a public vote approving its terms or authorizing execution, it is not a valid, binding contract.

III. Haushalter’s OMA Claim is Timely and Regardless a Determination of the Same is Inappropriate at this Procedural Point.

Saline Township asserts that Haushalter’s OMA claim is untimely under MCL § 15.270, Sec. 10(3)(b) because it was not brought within 30 days of the October 15, 2025 approval of the October 1, 2025 meeting minutes.⁵ (Township Br. at 9-10) But this misses the point of

³ Trustee Marion, moved to approve the consent judgment prepared and presented by the Township attorney in the matter Mooreville Road 10489, LLC v the Township of Saline, a matter pending in Washtenaw County Circuit Court, File No. 23-000728 CZ and to authorize the Supervisor and Clerk to sign the consent judgment on behalf of the Township. Ayes 3 Nays 1 Treasurer Zink was absent.”

⁴ To the extent the Board may have voted to approve the final consent judgment in a closed meeting, such an action violates the OMA. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 228 (Mich 1993) (holding deliberations in a closed meeting resulting in only the final step being taken in a public meeting violates the OMA).

⁵ The OMA requires only that Haushalter “commence a civil action to compel compliance[,]” MCL § 15.271, it does not require that the form of that action be a complaint. A cross-claim is a civil action and is the equivalent of a separate complaint. See MCR 2.101(A) (“There is one form of action – the civil action.”); see *Popovich v*

Haushalter's OMA claim: *there was no vote to approve a contract or execute the same*. The minutes reflect only a vote to negotiate the terms of a consent judgment with RD. Without a vote to approve and execute a contract, there is no 30-day clock that can be ticking. Even the language Saline Township now seeks to introduce "Motion to approve the Consent Judgment as outlined by the attorneys" does not show the Consent Judgment was approved. First, the attorneys did not "outline" that the property would be used industrially regardless of zoning meaning a material term was simply never presented. Second, Saline Township has not shown that the Consent Judgment was the same on October 1, 2025, as the one submitted and approved to the Court. Any material change would require a new vote of the Township Board. *Chrysler Corp v Ford Motor Co*, 972 F Supp 1097, 1110 (ED Mich 1997) ("It is a fundamental principle of contract law that the parties must have a meeting of the minds on all material facts, *i.e.*, there must be mutual assent in order for the contract to be valid.") (internal citation omitted). Because Saline Township's did not hold an open vote to authorize the Consent Judgment or executing the same, Haushalter is, at most, subject to MCL § 15.270, Sec. 10(3)(a)'s 60-day time limit arising from the vote to approve negotiations for the Consent Judgment. She met that burden.

RD argues that because Haushalter seeks to intervene 60 days after the Consent Judgment was entered, her Motion is untimely. Not so. In *Inverness*, the Court vacated portions of a consent judgment even though MCR 2.612's one year time bar had passed because the consent judgment contracted away the board's future legislative powers, just as the Consent Judgment did here by ordering conditional rezoning. *Inverness Mobile Home Cnty, Ltd v Bedford Twp*, 263 Mich App 241, 248 (Mich App 2004). Further, Haushalter brought her motion within the 60 days allowed for by the Open Meetings Act; she cannot have been untimely if she brought her motion

McDonald's Corp, 189 F Supp 2d 772, 778 (ND Ill 2002) ("Case No. 01 C 8121 is, for all practical purposes, the equivalent of a cross-claim in the present case[.]"). If intervention is permitted, the cross-claim will relate back to the filed Motion to Intervene and be timely.

within the statutory deadline for doing so. Regardless, at this procedural point, this Court is only considering whether Haushalter has established her right to intervene, or that she should be permitted to intervene. Any dispute as to the merits of Haushalter's OMA claim are properly addressed through a motion to dismiss the cross-claim once intervention is granted. *Id.*

Finally, intervention is not moot just because the Data Center has begun development. The Michigan Supreme Court succinctly handled such an argument in *MGM Grand Detroit v Cnty Coal for Empowerment Inc*: “[A]fter defendant has been notified of the pendency of a suit seeking an injunction against him, even though a temporary injunction be not granted, *he acts at his peril* and subject to the power of the court to restore the status . . .” 465 Mich 303, 308 (2001) (emphasis in original) (quoting *Jones v Securities and Exchange Comm*, 298 US 1, 15–18 (1936)). Haushalter's filing made clear she would seek to set aside the Consent Judgment, and the Zoning Board of Appeals appeal she filed by law should have stayed construction but for Saline Township's refusal to enforce its own laws. (Saline Township ZO § 17.03(6) and MCL 125.3604(3)). The Data Center advances at its own peril; its doing so does not make Haushalter's motion moot. *Id.*

CONCLUSION

Saline Township cannot alter its meeting minutes with parol evidence. But even the parol evidence it submitted does not show that the Consent Judgment submitted to this Court was voted and approved by the Township Board and authorized for signature. Because of that, Haushalter's OMA cross-claim, filed within 60 days, is timely. Regardless, any discussion of the merits of Haushalter's OMA claim is premature at this procedural stage, the Motion to Intervene should be granted. That the Data Center has continued development does not render Haushalter's claim moot, it only means the Data Center is proceeding at its own peril.

Respectfully submitted,

Dated: February 11, 2026

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Counsel for Proposed Intervening Defendant and
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REPLY BRIEF TO
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Civil Action No. 25-001577-CZ
Hon JULIA B. OWDZIEJ
Date filed: 9-12-25

**EXHIBITS A-E TO
PROPOSED INTERVENING CO-
DEFENDANT AND CROSS-
CLAIMANT'S REPLY BRIEF TO
DEFENDANT SALINE TOWNSHIP IN
SUPPORT OF MOTION TO
INTERVENE**

EXHIBIT A

TOWNSHIP OF SALINE

COUNTY OF WASHTENAW
SALINE, MICHIGAN 48176

JAMES C. MARION * SUPERVISOR
KELLY L. MARION * CLERK
JENNIFER M. ZINK * TREASURER

TOM P. HAMMOND * TRUSTEE
DEAN R. MARION * TRUSTEE

Special Meeting
October 1, 2025
Page 1 of 1

1. The Special Meeting of the Saline Township Board and Planning Commission was called to order by Gary Luckhardt on October 1, 2025, at 7:00 PM at the Saline Town Hall, 5731 Braun Road, Saline, MI 48176.
2. Members present: Supervisor Marion, Treasurer Zink, Clerk Marion, Trustee Hammond, Trustee D. Marion, Steven Rothfuss, Gary Luckhardt, Darryl Zink, Levi Smith and Ronald Kohler. Twenty-Two other citizens attended that signed in however there were many more in attendance.
3. Mr. Hammond led the Pledge of Allegiance.
4. Mr. Hammond moved, supported by Mr. D. Marion that the agenda be approved.
5. Data Center Lawsuit/Proposed Consent Agreement Related Digital/Finkbeiner/Feldkamp/Wilkin- a MOTION was made by Mr. Hammond and supported by Mrs. Zink to enter into a closed meeting. Attorney's Fred Lucas & David Landry addressed the Board regarding the lawsuit and the proposed consent agreement. Both Boards had many questions and concerns that were addressed in the proposed settlement. A MOTION was made by Mr. Hammond and supported by Ms. Marion to move forward with trying to settle the lawsuit. Ayes 4 Nays 1. A MOTION was made by Mr. Hammond and supported by Mr. D. Marion to open the special meeting back up. Attorney David Landry then went over many of the point of the proposed consent agreement with the residents.
6. Citizen Comments- Attorney David Landry answered questions about the proposed consent agreement regarding wells potentially going dry, decommissioning, DTE power, traffic and water usage during construction were among items discussed.
7. No Board Member Comments
8. The meeting adjourned at 10:07 pm.

Kelly L. Marion
Saline Township Clerk

James C. Marion
Saline Township Supervisor

CERTIFICATION

I, the undersigned, Kelly L. Marion, the duly qualified and elected Clerk for the Township of Saline, Washtenaw County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of the proceedings taken by the Township Board of said Township at a regular board meeting held on the 1st day of October 2025.

Kelly L. Marion
Saline Township Clerk

EXHIBIT B

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of DTE Electric
Company for Approval of Special Contracts.

/

MPSC No. U-21990

The Attorney General's
Petition for Rehearing and Clarification

Respectfully submitted,

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Dated: January 8, 2025

I. Introduction.

The Attorney General, under Rule 437 of the Rules of Practice and Procedure of the Michigan Public Service Commission (“MPSC” or “Commission”), Michigan Administrative Code R 792.10437, and MCL 460.352, files this Petition for Rehearing (“Petition”) relative to the Commission’s December 18, 2025, Order (“MPSC Order” or the “Order”) in this proceeding. In its Order, the Commission conditionally approved DTE Electric’s (DTE) request for *ex parte* approval of two special contracts to provide electric service to a 1.383 gigawatt (“GW”) data center facility to be built in Saline Township, Michigan.

In this Petition, the Attorney General requests points of clarification, identifies points of error, raises concerns about unintended consequences, and challenges the statutory basis for the Commission’s December 18th Order. Because the Commission proposes the conditions of its approval for the first time in its Order and because the Commission gave DTE 30 days to accept these conditions or seek a contested case hearing, a rehearing request is necessary for parties to respond to the new conditions and to review DTE’s response while still preserving their ability to take further challenges. The Petition addresses the following points for rehearing and clarification:

- The Order provides vague and potentially unenforceable terms for a condition letter that DTE is required to submit on the docket. The

Attorney General thus seeks clarity on those terms as described in Section III.A below.

- The Order's conditions for approval, if requiring DTE to serve as a credit backstop to Oracle, present several errors and unintended consequences. Key among these is the risk that allowing such a backstop might threaten the solvency of Michigan utilities or present an illusory protection for ratepayers. The Attorney General thus requests that on rehearing the Commission order this matter to proceed as a contested case.
- The Order fails to meaningfully engage with the standards the Commission set forth in case U-21859 for special contract approvals. The Attorney General thus requests that the Commission apply those standards on rehearing.
- The Order fails to identify record evidence that would allow DTE's application to succeed under the U-21859 standards. The Attorney General thus requests that on rehearing the Commission order this matter to proceed as a contested case.
- The Commission erred in relying upon Section 6a(3) to approve the special contracts and its use of Section 6a(3) in this case expands the limited exception to the detriment of ratepayers.¹

¹ While not all of the Attorney General's prior positions in this matter are repeated in the present Petition for Rehearing and Clarification, the Attorney General maintains all of her prior positions and reserves all of her rights to appeal the December 18 Order and any subsequent orders the Commission may issue in this docket.

II. Standard for Rehearing.

MPSC Rule 437(1) provides that “[a] petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error.” Rule 437(1) further states that “[a] petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon.”²

III. Argument.

A. The Attorney General seeks clarification as to conditions described in the Commission’s Order and how the conditions might be enforced.

The Commission’s Order purports to pose a “conditional” requirement for DTE to receive approval of its special contracts. To that point, the “ordered” section of the Order, which begins on page 43, sets forth the following language:

The approval of the special contracts is conditioned upon the representations made by DTE Electric Company that payments made by Green Chile Ventures LLC under Rate Schedule D11 and the special contracts will cover the costs to serve Green Chile Ventures LLC such that the costs of serving Green Chile Ventures LLC (including generation, transmission, distribution, or other costs) are not covered by other customers. Within 30 days of the date of this order, DTE Electric Company shall file a letter in this docket expressly accepting these conditions, as described in this order.³

² Mich Admin Code r. 792.10437(1).

³ December 18, 2025, Commission Order at 43.

This language on its own does not obligate DTE to cover any portion of costs incurred to serve Green Chile Ventures, LLC (“GCV” or “the Customer”), nor does it create any obligations for GCV beyond the terms of DTE’s application. Thus, as described here, the “condition” does not appear to have any effect beyond DTE’s prior assertions in its pleadings that it believes the contracts are adequate.⁴ And as discussed at length in this matter,⁵ there are myriad examples where DTE has failed to show how the GCV contracts will in fact cover the costs to serve the Customer. The Commission’s Order further fails to shore up those underlying deficiencies.

Similar language to the block-quote above is also presented on page 40 of the Commission’s Order.⁶ This section reinforces a reading of the Order that no additional protections arise from the “condition,” and the Commission explicitly acknowledges that the same assurances it seeks in a condition letter were already “represented by DTE Electric in its application, testimony, and subsequent filings....”⁷

⁴ See, e.g., DTE’s November 18, 2025, Response at 1 (arguing that it had demonstrated in its application materials that “approval of the Special Contracts ‘will not result in an increase in the cost of service’ to existing customers.”).

⁵ See for example as identified in the Attorney General’s December 3, 2025, Reply.

⁶ December 18, 2025, Commission Order at 40 – 41: “Moreover, the approval in the instant case is conditioned upon the assumption, as represented by DTE Electric in its application, testimony, and subsequent filings, and in the materials provided pursuant to the Staff’s audit, that the Customer’s obligations under Rate D11 and the special contracts will at least cover the costs to serve the Customer (including generation, transmission, distribution, or other costs). These are conditions that do not require amendment of the special contracts. The Commission directs DTE Electric to file, within 30 days of the date of this order, a letter in the instant docket accepting these conditions.”

⁷ *Id.*

Other pieces of the December Order include different findings as to what the Commission’s intent might be for a condition letter. Page 32 of the Order sets forth what could be interpreted as a stricter requirement than that referenced in the other two points cited above, stating that:

As described below, the Commission is conditioning its approval on the requirement that, at the very least, all current and future costs caused by the Customer shall be covered by the Customer or by DTE Electric and not existing customers.⁸

This language on its own would present a stricter requirement, because it might entail actual cost coverage rather than a mere statement of assurance as described on page 43 of the Order. However, this language is not included anywhere else in the Order, such as in the “ordered” section that provides direction to DTE. Further, its reference to “as described below,” suggests that the less stringent language from the “ordered” section (see, e.g., from page 43 as block-quoted and addressed above) is in fact controlling.

Page 41 of the Order also presents a less-restrictive finding for what DTE might actually be obligated to do under such a “condition,” at best tying DTE’s obligation to the same collateral requirements of GCV under the primary supply agreement (“PSA”) and energy storage agreement (“ESA”).⁹ So

⁸ *Id.* at 32.

⁹ *Id.* at 41: “In addition, in the event of a failure to pay the MBD under the PSA, or in the event of a termination, default, or other event whereby DTE Electric is required to draw on the letter of credit or parental guaranty, if the company determines that the specified collateral is not sufficient to cover the full amount of the remaining financial exposure associated with the ESA or the PSA (minus the value to customers), the Commission specifically cautions DTE Electric that any unrecovered costs shall not be borne by ratepayers and that DTE Electric bears responsibility for any remaining liability. All risk associated with the sufficiency of the collateral shall be borne by DTE Electric.”

if GCV's incremental costs exceed revenues or fees collectible under the contracts' language, this requirement would not entail an obligation for DTE to cover those costs. Likewise, if GCV has no near-term exit-fee obligations under the ESA or PSA—an issue raised by the Attorney General in her pleadings¹⁰—DTE would also not be obligated to cover those costs under the language set forth on page 41. Thus, once again, the Commission's "condition" on this point does not in fact appear to provide additional protection for other ratepayers.

In addition to the lack of clarity for how the condition letter might provide additional ratepayer protections, the Order further fails to identify the processes or enforcement mechanisms for holding DTE to any such agreement. Though not included in the "ordered" section of the Order, on page 42 the Commission finds as follows:

DTE Electric is further directed to file a quarterly report in this docket detailing the following: (1) the Customer's load profile for the previous quarter; (2) the amount of storage that is operational as of the end of that quarter; (3) the Customer's total demand for the preceding 12 months, compared to expected contract capacity and MBD; (4) any changes to the Customer's credit rating that trigger a change to the credit and collateral terms; and (5) DTE Electric's assessment of the financial state of the Customer. On an annual basis, in every report filed on December 31, DTE Electric shall also include any other information related to the realization of the projected affordability benefit. Such reports may be filed on a confidential basis as necessary to protect sensitive information. The Commission directs DTE Electric to file

¹⁰ See, e.g., Attorney General's December 3, 2025, Response at 6 – 8.

the first of these quarterly reports no later than December 31, 2026.¹¹

Nothing here specifically requires a full accounting of costs incurred versus costs covered by the Company, as might be used to assess DTE's liability under any reading of the letter conditions. As will be discussed below, for example, DTE presently exhibits cost-allocation inequities that would result in cost increases to its existing customers if not affirmatively addressed.¹² The reporting requirements in the Order also provide no process or mechanism to actually compel DTE to cover otherwise un-covered costs. This language further makes it unclear whether such reporting will necessarily be accessible or reviewable by the Attorney General given its description of "fil[ing] on a confidential basis...."¹³

In light of the above, the Commission's Order appears to circumvent an actual accounting of GCV's incremental cost-coverage by imposing vague, and possibly unenforceable, conditions. In the process, the Commission has failed to adequately address or engage with many points, identified by intervenors in pleadings, where DTE did not prove sufficient cost-coverage or the avoidance of rate-increases.¹⁴ The terms of a condition letter as proposed in the language of the Order do not adequately address those concerns, nor has the Commission identified record evidence to support such a conclusion.

¹¹ *Id.* at 42.

¹² See, e.g., as addressed in the Attorney General's December 3, 2025, Reply at 9 – 12.

¹³ December 18, 2025, Commission Order at 42.

¹⁴ See for example as identified in the Attorney General's December 3, 2025, Reply.

An unintended consequence of the Commission's findings on this point is a lack of clarity as to what additional protection, if any, that DTE might be providing with the letter, as well as to what form and processes a credit backstop might take. The Attorney General thus seeks clarification on the following questions concerning the condition letter:

- a) Whether the Commission intends to require DTE, and not its pre-existing ratepayers, to guarantee all costs it incurs to provide service to GCV, including all PA 235 compliance costs incurred as a result of added retail demand from the Customer;
- b) Whether the Commission intends to require, as part of its reporting requirements, an assessment of costs-incurred to serve GCV compared to costs-covered, including an assessment of any near-term rate-increases for other customers caused by GCV's incremental costs (such as might occur through DTE's existing cost allocation methodologies);
- c) Whether the Commission intends there to be processes for the Attorney General to seek payment or reimbursement from DTE to ratepayers for un-covered costs, tracking with the timing of the reporting requirements, and if so to specify what such processes are;
- d) Whether the Commission intends that DTE's reporting will be accessible and reviewable in unredacted form by the Attorney General; and

e) Whether the Commission expects that DTE’s investments to serve GCV won’t begin accruing until the end of 2026, or whether it would consider instead requiring that DTE begin its reporting in the first quarter following the quarter in which it begins incurring costs to serve GCV.

Further, given that the prescribed letter deadline coincides with the deadline for filing a Petition for Rehearing and with taking a possible challenge on appeal,¹⁵ the Attorney General is compelled to seek rehearing for clarity on this issue if for no other reason than to preserve arguments concerning the issues surrounding the Commission’s unclear conditions.

B. The Commission’s “conditional” approach presents further unintended consequences.

Even if the Commission intends the condition letter as requiring a full credit backstop by DTE, allowing such a condition in lieu of cost-coverage by GCV presents a series of errors and unintended consequences. For one, the Commission has not provided any analysis or explanation for why DTE itself is a reasonable and prudent credit backstop to Oracle, which has been described as the “canary in the coal-mine” for debt-financed AI spending.¹⁶

¹⁵ See, December 18, 2025, Commission Order at 40 – 41 (“The Commission directs DTE Electric to file, within 30 days of the date of this order, a letter in the instant docket accepting these conditions.”).

¹⁶ Christine Ji, *Oracle is the canary in the coal mine for Big Tech’s debt-fueled AI spending spree*, MORNINGSTAR, December 9, 2025, accessible at <https://www.morningstar.com/news/marketwatch/2025120949/oracle-is-the-canary-in-the-coal-mine-for-big-techs-debt-fueled-ai-spending-spree>.

Indeed, the Commission’s Order fails to acknowledge or engage with material presented by intervenors describing Oracle’s unique credit risks.¹⁷

Nor does the Commission’s Order address the potential unintended consequences of such a policy as it relates to a solvency risk for Michigan utilities. For example, the Order presents no analysis as to DTE’s ability to absorb any given portion of GCV’s incremental costs. The Order asserts a case-by-case assessment of new data center customers,¹⁸ but provides no clear explanation for why it is applying a “conditional” solution for this case in particular; if this paucity of reasoning is allowed, the Commission could just as well make the same exception for any new data center customer. The problems with this policy are amplified when considering that Michigan utilities appear to be looking to add well over a dozen gigawatts of data center customers to their system.¹⁹

Also at issue here, which the Commission has not addressed, is the underlying path to profitability for OpenAI. Oracle has projected a large amount of future revenues relying on commitments from OpenAI for a return on Oracle’s data-center investments (through use of Oracle’s cloud

¹⁷ See, e.g., GLREA’s Petition at 10 – 11 (citing Peter Rudgeair, Nate Rattner, and Sebastian Herrera, *Oracle was an AI Darling on Wall Street. Then Reality Set In*, THE WALL STREET JOURNAL, November 19, 2025, accessible at: <https://www.wsj.com/tech/oracle-was-an-ai-darling-on-wall-street-then-reality-set-in0d173758>) (behind paywall).

¹⁸ See, U-21990, December 18, 2025, Order at 39 (“In the meantime, the Commission will consider any subsequent applications for approval of special contracts on a case-by-case basis.”).

¹⁹ See, e.g., Case U-21859, Application Testimony of Consumers Energy’s witness Connolly at 4:7 – 8 (Consumers Energy’s witness testifying that “the Company has data center inquiries that total over 15 gigawatts of electric load in the economic development pipeline.”).

infrastructure).²⁰ This relationship with OpenAI represents at least \$300 billion of Oracle’s recently reported \$500+ billion in “remaining performance obligations.”²¹ As noted in the Attorney General’s Notice of Intervention, the data center at issue in this case appears to be part of OpenAI’s “stargate” initiative.²²

To date, there is no apparent evidence that OpenAI is profitable in its operations. For example, last year CNBC reported that the OpenAI had expected to lose about \$5 billion dollars on \$3.7 billion in revenue for 2024,²³ with the company’s CEO stating that “I think the rational thing to do is to just be willing to run the loss for quite a while.”²⁴ Subsequent reporting reflects the

²⁰ See, e.g., Cade Metz, *OpenAI Signs \$300 Billion Data Center Pact With Tech Giant Oracle*, THE NEW YORK TIMES, September 10, 2025, accessible at <https://www.nytimes.com/2025/09/10/technology/openai-oracle-data-centers-deal.html> (behind paywall).

²¹ See, e.g., *Oracle Announces Fiscal Year 2026 Second Quarter Financial Results*, Oracle.com, December 10, 2025, accessible at <https://investor.oracle.com/investor-news/news-details/2025/Oracle-Announces-Fiscal-Year-2026-Second-Quarter-Financial-Results/default.aspx>.

²² As noted in the Attorney General’s Notice of Intervention at 4: “[f]rom news reports and other public statements, it appears that the Customer will be related to “Stargate” AI data center operations involving Oracle and OpenAI Group PBC.” See, e.g., *Expanding Stargate to Michigan*, OPENAI.COM, October 30, 2025 (accessible at <https://openai.com/index/expanding-stargate-to-michigan/>).

²³ Ashley Capoot, *OpenAI’s Altman is still looking to spend after GPT-5 launch and is ‘willing to run the loss’*, CNBC.COM, August 8, 2025, accessible at <https://www.cnbc.com/2025/08/08/chatgpt-gpt-5-openai-altman-loss.html>.

²⁴ *Id.*

same perspective, with OpenAI appearing to have projected \$9 billion in net losses for 2025.²⁵

It is further worth noting that some analysts have been critical of the speculative characteristics of the AI software industry writ-large,²⁶ suggesting that profitability concerns might exist for at least some other companies similar to OpenAI.²⁷ MPSC Staff likewise provided testimony as to potential issues surrounding the AI software industry in Case U-21859, as noted in the Attorney General’s Notice of Intervention here.²⁸

²⁵ Berber Jin, *Anthropic Is on Track to Turn a Profit Much Faster Than OpenAI*, THE WALL STREET JOURNAL, November 12, 2025, accessible at https://www.wsj.com/tech/ai/openai-anthropic-profitability-e9f5bcd6?gaa_at=eafs&gaa_n=AWEtsqfMGSOaEH_azJZ5ys96rYL22U5U7L3BJEPO5dnsDjqvewkhSM1MBvYy&gaa_ts=695fbfab&gaa_sig=SR19HGQT_FdxdV4Q8bSQKtVgb-KjuAfR8kduk6VXeAqxVwrXqZXMLU6_Wf9y6_gG-vKdaN29Z1uJr12edJkWQ%3D%3D (behind paywall).

²⁶ See, e.g. Francisco Velasquez, *AI mania is worse than 1999's tech bubble, Apollo's top economist warns*, YAHOO!FINANCE, July 19, 2025, accessible at <https://finance.yahoo.com/news/ai-mania-is-worse-than-1999s-tech-bubble-apollos-top-economist-warns-161530505.html?guccounter=1>; See also, e.g., *AI boom is in early bubble phase, Bridgewater founder Ray Dalio says*, Reuters, January 5, 2026, accessible at <https://www.reuters.com/business/ai-boom-is-early-bubble-phase-bridgewater-founder-ray-dalio-says-2026-01-05/>; See also, e.g., Yun Li, *Michael Burry launches newsletter to lay out his AI bubble views after deregistering hedge fund*, CNBC.COM, November 24, 2025, accessible at <https://www.cnbc.com/2025/11/24/michael-burry-launches-newsletter-to-lay-out-his-ai-bubble-views-after-deregistering-hedge-fund.html>; See also, e.g., Laura Bratton, *How Oracle became a 'poster child' for AI bubble fears*, YAHOO!FINANCE, December 26, 2025, accessible at <https://finance.yahoo.com/news/how-oracle-became-a-poster-child-for-ai-bubble-fears-150039511.html>.

²⁷ See, also, e.g., Christopher Mims, *Cutting-Edge AI Was Supposed to Get Cheaper. It's More Expensive Than Ever*, THE WALL STREET JOURNAL, August 29, 2025, accessible at <https://www.wsj.com/tech/ai/ai-costs-expensive-startups-4c214f59> (behind paywall).

²⁸ Case U-21990, Attorney General's Notice of Intervention at 5 - 6 (noting, for example, Staff's testimony that "if the market for artificial intelligence in products and services never matures into a viable, sustainable business model, then a data center customer may exit service and create a stranded asset due to forces beyond the large load customer, the Company, and especially all other customers," citing U-21859, 4 TR, Isakson Direct at 300:9 - 12).

However, the Order’s discussion of a “conditional” approval here does not engage with any assessment or analysis of financial risks posed by Oracle and OpenAI, or how related industry-wide risk might imperil a policy of conditional approvals for data center customers. Allowing Michigan utilities to backstop the risks of the AI software industry also contradicts the standard from U-21859 that the customers would cover their own caused costs.²⁹ The Commission thus erred in its decisionmaking here.

A credit backstop approach further reflects a risk, born out historically, that Michigan utilities might eventually seek ratepayer coverage for backstopped costs despite any conditions on approval. In the case of the Midland Nuclear Power Plant, the Commission permitted Consumers energy to seek a “financial stabilization” rate increase on the premise that debt incurred to finance a stalled and converted project would otherwise present a solvency risk to the utility. *See, Att'y Gen v Pub Serv Comm'n*, 189 Mich App 138 (1991). Allowing DTE to act as a credit backstop to billions of dollars in costs thus presents a tremendous risk that any such condition might not protect ratepayers from such costs in the long-term, even if the Commission’s intentions here are good.

The Commission’s conditional approval presents additional unintended consequences, such as an overall uncertainty for how different utilities and

²⁹ See, e.g., Case U-21859, November 6, 2025, Order at 117 (including that an adequate showing for special contracts would include “how that interconnecting customer will cover the costs of such resources.” (emphasis added)).

customers will be treated under the Commission’s now-fractured framework. Departing from the U-21859 standard, which required a detailing of all necessary resources, also appears to run head-first into the capacity cost issues driven by data center demand in PJM.³⁰ Neither DTE nor the Commission’s Order addresses the concern repeatedly raised by the Attorney General here that DTE’s application does not make clear the total generation build-out required to bring GCV to full service. Approving data center contracts despite that gap in analysis contradicts the requirement for a “detail” of all resources under the U-21859 standard, and presents a risk that Michigan utilities might not adequately plan to meet demand from new data center load.

Given the several unintended consequences of allowing DTE to serve as a credit backstop to Oracle, the Attorney General requests that on rehearing the Commission order this matter to proceed as a contested case.

C. The Commission’s findings for approval of the GCV contracts contradicts its requirements for special contract approvals set forth in Case U-21859.

- i. *The Commission fails to engage with its own standard of review from Case U-21859.*

As discussed at length in the Attorney General’s December 3, 2025, Reply, DTE’s pleadings in this matter fall short of the Commission’s requirements for special contract approvals in Case U-21859, including that:

³⁰ See as referenced in the Attorney General’s December 3, 2025, Reply at FN41 (citing Monitoring Analytics, Analysis of the 2026/2027 RPM Base Residual Auction Part A, October 1, 2025, at 3, (accessible at https://www.monitoringanalytics.com/reports/Reports/2025/IMM_Analysis_of_the_20262027_RPM_Base_Residual_Auction_Part_A_20251001.pdf).

[T]he filing should detail the generation, storage, and other resources (including, potentially, VPPs and demandside resources) that will be required to serve that large load customer and how that interconnecting customer will cover the costs of such resources.³¹

The U-21859 Order also specified that an adequate showing would include “that costs caused by the interconnecting large load customer to be served under this tariff are not being paid for by other customers”³² and likewise that for special contracts “that the full costs of serving the large load customer are paid for by that customer under the provisions of the special contract.”³³ The Commission further elaborated on the policy bases for these requirements, finding that:

[I]n order to ensure that other customers are not effectively subsidizing these new large load customers, it is critical to understand the resources being used or constructed to serve these customers and the costs associated with doing so.³⁴

The intervenors in this matter identified a litany of points where DTE failed to “detail” the resources required to serve GCV and corresponding cost-coverage, as required under the standard set forth in U-21859, including the following:

- A. DTE failed to detail all generation resources required to bring the customer to full service under DTE’s projected load ramp.³⁵

³¹ See the Attorney General’s Response at pages 12 – 16 (quoting here from the Commission’s November 6, 2025, Order in Case U-21859 at 117).

³² Case U-21859, November 6, 2025, Commission Order at 117.

³³ *Id.*

³⁴ *Id.* at 118.

³⁵ See, e.g., Attorney General’s December 3, 2025, Reply at 13 – 14.

B. DTE failed to detail all renewable resources required to accommodate the customers' additional sales pursuant to PA 235,³⁶ such as by failing to explain how the customer will cover costs for all such required resources and leaving open a huge range of potential compliance costs that it explicitly did not include in its purported "affordability modeling."³⁷ Because REC requirements are calculated based on retail sales,³⁸ the additional retail sales for the Customer directly drive an increase in renewable resources that must be developed for compliance with the statute.³⁹ This means that requisite renewable resource development (and corresponding cost coverage) for the added load falls squarely within the "detail" standard of Case U-21859.

C. DTE failed to detail all required transmission resources, such as by failing to explain how the customer will cover the cost of transmission upgrades associated with required generation resources or even

³⁶ See, e.g., *Id.* at 15.

³⁷ See, e.g., *Id.* (noting this point in FN52).

³⁸ See MCL 460.1028.

³⁹ For further reference, DTE does not appear to have accounted for added data center sales in its forecasts for its most recent Renewable Energy Plan Case. See, e.g., Case U-21662, MEC's Initial Brief at 24 ("Although the Company has been anticipating the emergence of data centers and internally preparing for the expected impact on load, DTE did not incorporate potential data center load into any of the Company's forecasts for the Amended REP filing."). DTE appears to have conceded this point in briefing in Case U-21662, instead arguing that the issue should be punted to its next IRP: "[a]lthough the impacts of data centers were too uncertain at the time DTE Electric filed its Amended REP, Michigan law permits utilities to file expedited cases if significant changes occur." Case U-21662, DTE's Reply Brief at 27.

explaining what portion of such resources are included within its \$200 million in estimated transmission investments.⁴⁰

D. DTE failed to detail costs for any other distribution assets that may be necessary to supply power to the Customer.⁴¹

E. DTE failed to detail how its PSA termination fee provisions will provide cost coverage in the near-term or how the ESA termination fee provisions will provide cost coverage during the pre-COD period of company-owned ESA project development.⁴²

F. DTE's Attachment A failed to detail whether the Company is accurately accounting for generation resource costs such that it will in fact be covering the costs of all required resources.⁴³

G. DTE failed to detail how its proposals address latent inequities in the Company's cost allocation processes,⁴⁴ such as how it will account for cost-allocation inequities due to transmission upgrade costs passed through the PSCR.⁴⁵

The Commission's Order here does not directly address or meaningfully engage with the standard from its November 16, 2025, Order that a utility "detail" all required resources and corresponding cost-coverage, demonstrating

⁴⁰ See, e.g., Attorney General's December 3, 2025, Reply at 15 – 16.

⁴¹ *Id.* at 16.

⁴² *Id.* at 6 – 8.

⁴³ *Id.* at 9 – 12.

⁴⁴ *Id.*

⁴⁵ *Id.*

an error in its decisionmaking. The Attorney General thus requests that the Commission apply that standard from Case U-21859 on rehearing.

ii. *The Commission’s Order fails to identify record evidence for DTE to pass a review under the standards set forth in Case U-21859.*

The Commission further fails to identify record evidence on which an approval under its U-21859 standard might be gleaned, providing only generalized references to Commission staff having privately reviewed DTE’s materials such as “the Commission notes that the Staff was able to perform an investigation in order to substantiate the validity of the request for *ex parte* treatment.”⁴⁶ And even then, the Commission’s Order only addresses a handful of items from the long list of deficiencies, as discussed in the following paragraphs below. For these reasons, the Attorney General requests that on rehearing the Commission order this matter to proceed as a contested case.

Termination fees. On the topic of termination fee sufficiency, the Commission provides no detail or analysis on the issue that there are no public provisions clearly requiring near-term exit fee obligations under the PSA or ESA.⁴⁷ Instead, the Commission asserts that:

Additionally, addressing the Attorney General’s concern that the termination fee may not be adequate to protect other customers, the Commission finds that the credit and collateral requirements in the unredacted PSA and ESA, along with the Commission’s conditions, ensure that any risk that the Attorney General’s concern materializes is

⁴⁶ U-21990, December 18, 2025, Commission Order at 32.

⁴⁷ See the Attorney General’s December 3, 2025, Reply at 6 – 8 (noting, for example, that the PSA’s “sample termination payment calculation” is completely redacted prior to the month and year of the load ramp completion).

either covered by the substantial collateral collected or is borne by DTE Electric and not by other customers.⁴⁸

Notably, this paragraph conflates exit fee obligations with a collateral requirement that might ensure payment of any such obligation. It further mixes in a reference to the Commission’s own “condition” term such that it is impossible to tell how much protection is in fact provided under the GCV contracts themselves.

Assuming the Commission has conducted its own investigation into the unredacted GCV contracts, it has made no confirmation that exit fees might apply in the near-term. For example, it’s possible that the Commission’s reasoning presented above is premised on a belief that the contractual relationship will enter into a later stage where the exit fee provisions do apply; it’s impossible to know what the Commission meant because it has not identified any supporting facts, or even explanatory reasoning, behind its finding here. Nor does the Order identify any analyses or calculations that might explain how the exit fee, even if applied in full, would be sufficient to cover incremental costs.

PA 235 compliance. Yet another example of the Order’s flawed reasoning can be seen in the context of DTE’s RPS-requirements driven by the addition of GCV to its retail sales. For background, DTE had stated in its pleadings that it only included a portion of its forecasted RPS compliance costs in its “affordability modelling;” the utility indicated that it had left about

⁴⁸ U-21990, December 18, 2025, Commission Order at 33 – 34.

1.4GW in RPS obligations, required by 2035, unincluded in that modelling.⁴⁹

This amount of RPS obligations could easily equate to hundreds of millions of dollars in compliance costs.

The Commission does not appear to contest the clear shortfall for RPS obligations in DTE’s modelling, which represents a failure to “detail” necessary resource under the U-21859 standard. Instead, the Order merely notes that Staff “confirmed that... the company needs only 445 MW of new renewable resources... by 2033.”⁵⁰ Without explaining how DTE’s application will provide coverage for the remaining 2.8 GW (3.247 GW minus 445 MW) in eventual RPS obligations, the Commission instead pivots to assert that “Staff confirmed that this 445 MW will allow DTE Electric to meet the 20-year RPS target through 2045 based on the REP approved in Case No. U21662.”⁵¹ Notably, however, DTE’s Case U-21662 RE Plan case did not include modelling for the new data center load.⁵² And while the Commission later includes some generalized

⁴⁹ See U-21990, Foley Direct at 28, FN 6 (asserting that, “[f]or affordability modeling purposes, the Company assumed ~1,800 MW of incremental solar generation deployment which is the midpoint of the two buildout scenarios discussed by Company Witness Bilyeu (i.e., 443 MW of solar generation deployment and 3,247 MW of solar generation deployment”). The Company elsewhere noted that “incremental renewable energy capacity required to meet the increased RPS could technically reach up to 3.2 GW, but may be as low as 443 MW by 2032 if the Company fully leverages its estimated REC bank.” U-21990, Bilyeu Direct at 13:1 – 3.

⁵⁰ U-21990, December 18, 2025, Commission Order at 34.

⁵¹ *Id.*

⁵² See, e.g., Case U-21662, MEC’s Initial Brief at 24 (“Although the Company has been anticipating the emergence of data centers and internally preparing for the expected impact on load, DTE did not incorporate potential data center load into any of the Company’s forecasts for the Amended REP filing.”). DTE appears to have conceded this point in briefing in Case U-21662, instead arguing that the issue should be punted to its next IRP: “[a]lthough the impacts of data centers were too uncertain at the time DTE Electric filed its Amended REP, Michigan law permits utilities to file expedited cases if significant changes occur.” Case U-21662, DTE’s Reply Brief at 27.

provisions for modelling to occur in the next REP case,⁵³ nowhere does it actually impose an obligation that GCV be directly-assigned its caused PA-235 compliance costs. The Commission’s Order further ignores the likely transmission upgrade costs associated with renewable resource build-out to meet the PA 235 standards.

It thus appears that the Commission’s Order is punting the question of full PA 235 cost coverage, addressing only near-term costs and ignoring more than a gigawatt of additional obligations for which no cost-coverage has been explained. If that is not the case, then the Commission erred by failing to provide a clear explanation and analysis in its Order as to how it accounted for such cost-coverage.

Cost allocation. The Commission’s Order identifies no facts to explain how DTE will overcome cross-subsidization inherent in its existing cost allocation methods. In fact, the Commission appears to confirm that it did not review any COSS modelling beyond the meager production DTE eventually included in its November 26, 2025, Response: “these COSSs were also made publicly available as Attachment A to DTE Electric’s second response.”⁵⁴ Multiple intervenors have identified issues with this limited production, such

⁵³ See U-21990, December 18, 2025, Commission Order at 35 (including, e.g., that “The amended REP application shall also include options for recovery of any incremental costs of compliance that may result in a surcharge such that the surcharge is not collected on a per meter basis. The options should include equitable ways to recover the incremental costs of compliance which ensure that costs and benefits are distributed among rate classes appropriately”).

⁵⁴ U-21990, December 18, 2025, Commission Order at 38.

as the failure to identify generation-cost assumptions.⁵⁵ ABATE further identified that even this limited production showed a clear rate increase for a customer class.⁵⁶ The Commission’s Order does not resolve the intervenors’ concerns on this issues.

Further telling here is the Commission’s treatment of certain cost allocation inequities in the context of Case U-21859. In reference to concerns there about Consumers’ production cost allocation methodology—the same method used by DTE⁵⁷—the Commission found that:

This is unacceptable. A core tenet of ratemaking is that customers are responsible for the costs they impose on the system and the costs required to serve them. Residential, commercial, and other industrial customers should not have to pay for investments driven solely by large load additions.⁵⁸

And while the Commission’s Order directs DTE to perform a review of its cost allocation methods in the future, it does not require that GCV ever be held to any new rate or methodology resulting therefrom. In short, the Commission appears to be indicating the “unacceptable” is in fact “acceptable” for this customer. It has not provided any reasoning for this different treatment.

The Commission’s Order further does not reference any review of PSCR modelling. Thus, neither the Commission nor DTE has identified any evidence

⁵⁵ See, e.g., the Attorney General’s December 3, 2025, Reply at 11 – 12.

⁵⁶ See, ABATE’s Reply at 2 – 4.

⁵⁷ See, as explained in the Attorney General’s December 3, 2025, Reply at 9 – 12.

⁵⁸ U-21859, November 6, 2025, Commission Order at 116 (and citing to MNSC’s Initial Brief at 33).

that might explain how the Company would avoid near-term subsidization of transmission upgrade costs passed through the PSCR and, under DTE’s current practices, borne evenly by all PSCR customers. This is particularly concerning given that DTE’s application affirmatively states that “[t]he Company is not proposing to change the way in which transmission costs are recovered from its customers” further noting that transmission upgrade costs “are recovered through the PSCR mechanism.”⁵⁹ And neither DTE nor the Commission has made any attempt to address whether DTE is accounting for transmission upgrade costs associated with generation build-out.⁶⁰

Once again, the Commission’s Order fails to grapple with, and identifies no evidence to support, a departure from the caused-cost framework it touted in Case U-21859. If DTE’s proposed solution is that deferred cost accounting will occur and/or that eventually enough revenue will be collected to offset rate increases, neither the Company nor the Commission has identified record evidence to support or explain how and when such a process might act to avoid otherwise inherent subsidization. In contrast, the Commission is approving an application wherein DTE has explicitly stated it seeks no change to its PSCR cost-allocation. Both DTE and the Commission have thus again failed to

⁵⁹ U-21990, Foley Direct at 31:22 – 32:3.

⁶⁰ See, e.g., Attorney General’s December 3, 2025, Reply at 15 – 16 (“To provide an example of “other resources” the Company has not identified, DTE’s application and responsive pleadings do not explicitly identify the total transmission investments required to serve the Customer, such as the total transmission required for any additional generation resources, or whether the Company’s \$200 million transmission estimate includes such costs associated with renewable resources development.”).

demonstrate how GCV will cover its caused-costs as required per the standard set forth in U-21859.

D. The Commission erred in relying on MCL 460.6a(3) to approve the special contracts.

DTE provided the following language in its application for approval of the GCV contracts:

MCL 460.6a(3) states, in part: “An alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the cost of service to its customers may be authorized and approved without notice or hearing.” The approvals requested in this Application will not result in an alteration or amendment in rates or rate schedules and will not increase the cost of services to the Company’s customers.⁶¹

After reviewing the statute and prior case law, the Commission found in its Order that DTE’s “application meets the standard for *ex parte* treatment authorized by MCL 460.6a(3) because conditional approval of the special contracts will not result in an increase to the rates, rate schedules, or costs of service for any customers.”⁶²

The problem with DTE’s application and the Commission’s finding is that both fail to take into account the entire sentence of Section 6a(3). This section requires both that: a) the utility is seeking an alteration or amendment in rates or rate schedules; and b) that the result of that alteration or amendment in rates or rate schedules will not result in an increase in the cost

⁶¹ U-21990, DTE’s Application, p 4.

⁶² *In the matter of the application of DTE Electric Company for approval of special contracts*, MPSC’s December 18, 2025, Order, p 31.

of service to its customers. But as described above, DTE expressly asserts that its application “will not result in an alteration or amendment in rates or rate schedules,” the first component of Section 6a(3).

All the cases that the Commission references to support its order involve a utility seeking to alter or amend a rate or rate schedule along with a claim that the action to alter or amend the rate or rate schedule will not result in an increase in the cost of service to its customers. In *Attorney General v Pub Serv Comm*, 227 Mich App 148 (1997), Consumers Energy sought *ex parte* approval of a contract it had negotiated with The Upjohn Company to provide Upjohn with discounted electric rates.⁶³ The issue of whether the contract altered or amended Upjohn’s rates was not an issue on appeal. Rather, the issue on appeal was whether the discounted rates would result in an increase in the cost of service to other customers. See also *Attorney General v Pub Serv Comm*, 206 Mich App 290, 295-296 (1994) (involving a potential refund that alters the rate to customers and will not result in an increase in rates) and *Attorney General v Pub Ser Comm*, unpublished opinion per curiam of the Court of Appeals, issued June 11, 1999 (Docket No. 207993), p 4 (involving a change in rates that had the effect of increasing the cost of service to customers).

The Commission has no common law powers, possesses only that authority granted by the legislature, and must follow the plain meaning of the statute.⁶⁴ Here, DTE expressly claims in its application that it is not seeking

⁶³ *Id.* at 150.

⁶⁴ *Consumers Energy Co v Pub Serv Comm*, 460 Mich 148, 155 (1999).

to alter or amend a rate for a customer, and the Commission similarly claims that DTE is not altering or amending a rate with its application. Again, the clear and unmistakable language of Section 6a(3) requires both that the utility is seeking an alteration or amendment in rates or rate schedules and the result of that alteration or amendment in rates or rate schedules will not result in an increase in the cost of service to its customers. Because both DTE and the Commission appear to be arguing that the first portion of the statute is not applicable here, the Commission erroneously concluded that Section 6a(3) grants it the authority to approve DTE's application without a contested case hearing.

The Commission's application of this exception in MCL 460.6a(3) would further create the unintended effect of allowing a utility to file an application for a general rate increase and claim that a hearing is not required. Under the reasoning provided in the Commission's order, a utility could file an application seeking to alter or amend a rate or rate schedules, such as a general rate case, and claim that it "will not result in an increase in the cost of service to its customers." In fact, the Commission's decisionmaking here indicates that such a utility could file an application with the critical information redacted from the record and prevent any interested party from reviewing that information. In the redacted information, the utility could claim that the commodity price of natural gas or some other factor reduces costs to customers over time so that it offsets the rate increase request. Even though no other party could review

or contest the utility's claims, the Commission could then approve the application with no contested case hearing and deprive the public and interested parties of the opportunity to challenge the utility's claims.

The above hypothetical illustrates the absurd extension of the Commission's reasoning here. Section 6a(1) requires the Commission to hold a contested case hearing for utility requested rate increases, yet the Commission's expansive reading of the exception to a hearing in Section 6a(3) for this case eviscerates the protections that the legislature intended. Such an outcome should not be allowed; as a matter of long-established law, statutes should be construed to avoid absurd or unreasonable consequences, the Commission must reconsider its decision in the case.⁶⁵ The Attorney General accordingly requests that on rehearing the Commission order this matter to proceed as a contested case.

⁶⁵ *McAuley v General Motors Corp*, 457 Mich 513, 518 (1998).

IV. Conclusion.

For the reasons set forth above, the Commission should grant this Petition and issue an Order granting the Attorney General's requests and providing clarity as described herein and summarized in Section I.

Respectfully submitted,

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Lansing, Michigan 48909
517-335-7627

Dated: January 8, 2025

PROOF OF SERVICE - U-21990

The undersigned certifies that a copy of the *Attorney General's Petition for Rehearing* was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 8th day of January 2026.

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of DTE Electric
Company for Approval of Special Contracts

MPSC No. U-21990

/

**Attorney General's Notice of Intervention and Motion Requesting a
Contested Proceeding as to DTE's Battery Contracts**

Attorney General Dana Nessel hereby intervenes¹ and requests a contested proceeding under MCL 24.271 et seq. as to DTE's request for approval of six contracts for three battery storage facilities (the "Battery Contracts").² Such a contested case could proceed as part of a re-opened contested proceeding for the underlying special contracts in this Case U-21990, as separately requested by the Attorney General.³

I. Argument.

A. DTE has not identified statutory authority permitting *ex parte* relief for the purpose of its Battery Contracts application.

DTE has failed to meet its burden of proof for showing why *ex parte* relief is appropriate here. MCL 460.6a(3), which sets forth the applicable *ex parte* standard under which DTE seeks relief,⁴ states in relevant part that:

An alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the cost of

¹ See MCL 14.28 ("The attorney general . . . may, when in [her] own judgment the interests of the state require it, intervene in and appear for the people of this state in any other court or tribunal, in any cause or matter, civil or criminal, in which the people of this state may be a party or interested."). See also, *In re Certified Question*, 465 Mich 537, 543-545, 638 NW2d 409 (2002); See also, *Gremore v Peoples Community Hospital Authority*, 8 Mich App 56, 153 NW2d 377 (1967); See also, *People v O'Hara*, 278 Mich 281, 270 NW2d 298 (1936).

² See, DTE's January 16, 2026, Application.

³ See, the Attorney General's Motion to Reopen Proceeding, U-21990-0036.

⁴ See, DTE's January 16, 2026, Application at 4.

service to its customers may be authorized and approved without notice or hearing.

Crucially however, DTE’s own application explicitly asserts that its requests here “will not cause alteration or amendment in DTE Electric rates or rate schedules....”⁵ Thus by its own description, DTE has identified that it does not qualify for the relief requested per the language of MCL 460.6a(3); the statute refers only to “an alteration or amendment in rates or rate schedules.” The Commission has no common law powers, possesses only that authority granted by the legislature, and must follow the plain meaning of the statute.⁶ As DTE has not identified any legal basis for the Commission to afford *ex parte* relief here, its request must be denied. As addressed further below, DTE similarly cannot satisfy the second part of the exception because the contracts are heavily redacted and it is impossible to determine whether there would be any increase in the cost of service to DTE’s customers.

B. The Commission should exercise its explicit authority to direct a contested proceeding given the dearth of evidence supporting DTE’s requested relief.

In contrast to the lack of authority identified by DTE for *ex parte* relief, the Commission has explicit authority under Mich. Admin. Code R 792.10415 “to set any matter for a contested case where not prohibited by law.”⁷ Several bases for a contested case exist here. Crucially, every single page of the Battery Contracts included in Attachment A in DTE’s application is subject to some form of redaction,

⁵ *Id.*

⁶ *Consumers Energy Co v Pub Serv Comm*, 460 Mich 148, 155 (1999); See also, the Attorney General’s Petition for Rehearing and Clarification at 24 – 27.

⁷ Case No. U-20763, Order, June 30, 2020, p 69.

with a large portion of pages redacted in their entirety.⁸ Given these extensive redactions, it is impossible to glean whether the contracts might in fact accomplish any “affordability benefit” as claimed by DTE in its underlying case, or otherwise prove to be reasonable, prudent, or in the public interest,⁹ even assuming final approval of DTE’s underlying U-21990 application (which the Attorney General continues to challenge).¹⁰

To provide additional examples of the many problems with DTE’s Battery Contract application, it fails to present any information as to the cost of the contracts in part or in total, or whether the Company conducted a competitive bidding process for the three “master service agreements for engineering, procurement, and construction”¹¹ (the “EPC” contracts).¹² And because the three “equipment supply agreements for battery modules”¹³ (the “Battery ESAs”) were apparently selected from a list of bids previously picked through for IRP selections, the present contracts are presumably second-tier bids – less financially advantageous for DTE’s ratepayers than those the Company selected per its IRP.¹⁴ Given the many issues caused by the lack of information in DTEs Battery Contract application, accentuated by the extensive redactions to the Battery Contracts, the Commission should exercise its authority to direct a contested case proceeding.

⁸ See, e.g., Attachment A, Affidavit of Sebastian Coppola, at 1, paragraph 1.

⁹ See, e.g., Attachment A, Affidavit of Sebastian Coppola (the Attorney General hereby incorporates by reference the points identified in the Affidavit).

¹⁰ See, the Attorney General’s Motion to Reopen Proceeding, U-21990-0036.

¹¹ As described in DTE’s January 16, 2026, Application at 2.

¹² See, Attachment A, Affidavit of Sebastian Coppola at 2, ¶6.

¹³ As described in DTE’s January 16, 2026, Application at 2.

¹⁴ See, Attachment A, Affidavit of Sebastian Coppola at 2, ¶7.

Further, the Attorney General has identified and sought rehearing on numerous material errors in the Commission’s December 18, 2025, Order that would warrant the setting of a contested case, many of which persist in the context of DTE’s Battery Contracts application.¹⁵ For example, neither DTE nor the Commission has identified whether or how an early exit fee would apply to the costs of company-owned battery storage development prior to those projects’ commercial operation dates (“CODs”).¹⁶ Thus neither DTE nor the Commission has shown how Green Chile Ventures, LLC (“GCV”) will cover its costs for build-out of the battery storage at issue in DTE’s Battery Contract application, should GCV leave service prior to the projects’ completion, failing to meet the Commission’s caused-cost standards from Case U-21859.¹⁷ This goes to the *ex parte* standard of MCL 460.6a(3) as well. Even if DTE were to assert it is avoiding cost-increases through deferred cost-accounting—which it has generally failed to adequately articulate or explain¹⁸—it has further not shown how it would avoid a rate increase should GCV leave prior to CODs of these battery projects.¹⁹

The location of the Battery Contract projects raises additional questions about GCV’s incremental costs to serve. DTE’s Battery Contract application presents

¹⁵ The Attorney General hereby incorporates by reference the arguments raised in her January 8, 2026, Petition for Rehearing and Clarification.

¹⁶ See, e.g., the Attorney General’s Petition for Rehearing and Clarification at 17, 18 – 19 (noting, for example, on page 17 that “DTE failed to detail... how the ESA termination fee provisions will provide cost coverage during the pre-COD period of company-owned ESA project development”).

¹⁷ *Id.*

¹⁸ See, e.g., Attachment A, Affidavit of Sebastian Coppola at 3, ¶8; See also, e.g., the Attorney General’s Petition for Rehearing and Clarification at 21 – 24; See also, e.g., the Attorney General’s Motion to Reopen Proceeding at 3 – 4.

¹⁹ See, e.g., the Attorney General’s Petition for Rehearing and Clarification at 17, 18 – 19.

project locations that are from 70 to 150 miles from the proposed data center location, facts that DTE failed to include in its underlying U-21990 application.²⁰ It remains unknown whether or how the cost for the three substations and the transmission of power from the battery projects to the data center were incorporated into any analyses by either DTE or the Commission as set forth in this matter.²¹

Finally, as raised in the Attorney General's Motion to Reopen Proceeding, DTE has not accepted the conditions set forth in the Commission's December 18, 2025, Order within the time frame required therein.²² DTE thus does not have a basis to argue that any approval of its underlying special contracts provides support for *ex parte* relief here, because it failed to meet the Commission's required conditions for approval. Further, the secretive manner in which DTE seeks approval on withheld information—reflective of its approach in the underlying matter—is contrary to principles of transparency, accountability, and evidence-based procedure fundamental to sound administrative decisionmaking.²³ The same goes for DTE's repeated attempts to hold the MPSC to arbitrary and self-imposed contractual deadlines for approval of these contracts.²⁴

In light of the above and as set forth in the Affidavit of Attorney General witness Sebastian Coppola, myriad compelling reasons exist for the Commission to

²⁰ See, Attachment A, Affidavit of Sebastian Coppola at 2, ¶4.

²¹ See, *id.*

²² See, the Attorney General's Motion to Reopen Proceeding, U-21990-0036.

²³ See, Attachment A, Affidavit of Sebastian Coppola at 2 – 3, ¶¶2 – 3.

²⁴ *Id.* at 3, ¶9.

Order a contested proceeding here as it is authorized to do under Mich. Admin. Code R 792.10415.

II. Relief Requested.

Given the arguments set forth above, the Attorney General hereby requests a contested proceeding under MCL 24.271 et seq. as to DTE's request for approval of the Battery Contracts. Such a contested case could proceed as part of a re-opened contested proceeding for the underlying special contracts in this case U-21990, as separately requested by the Attorney General.²⁵

Respectfully submitted,

Dana Nessel
Attorney General

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Dated: January 27, 2026

²⁵ See, the Attorney General's Motion to Reopen Proceeding, U-21990-0036.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of
DTE ELECTRIC COMPANY
for Approval of Special Contracts/

MPSC Case No. U-21990

AFFIDAVIT OF SEBASTIAN COPPOLA

My name is Sebastian Coppola and I am the expert witness retained by the Michigan Department of Attorney General (Attorney General) to assess the adequacy of the request by DTE Electric Company (“DTE” or “Company”) for ex parte approval by the Michigan Public Service Commission (Commission) of three battery energy storage system (BESS) contracts and related Engineering, Procurement, and Construction (EPC) contracts pertaining to electric service to a large computer center.

I have more than forty years of experience in public utility and related energy work, both as a consultant and utility company executive. I have testified in many regulatory proceedings before the Commission and other regulatory jurisdictions. I have prepared and/or filed testimony in rate case proceedings, Power Supply Cost Recovery (PSCR) cases, and other proceedings, including several such cases pertaining to DTE. In that regard, I am very familiar with the Company’s electric operations, its assets, and Michigan regulatory practices.

My assessment is that the application and related affidavit and exhibit filed on January 16, 2026 (Application) do not provide sufficient information for the Commission to make an adequate and informed, ex parte decision, without further detailed analysis, complete disclosure of redacted information in the contracts, appropriate discovery of facts and assumptions, and input from other interested parties wishing to participate in this proceeding, including the Attorney General, to protect the interest of all customers.

I base my assessment on the following major issues and concerns:

1. The contracts are highly redacted and undecipherable as filed in the Application. Every page of the 252 pages of documents filed in Attachment A, consisting of three EPC contracts and three BESS contracts, is redacted and often entire pages of the contracts are fully redacted. Due to the extensive redactions, it is not possible for the Commission, the Commission Staff (Staff), or other parties to draw any conclusions that the contracts are reasonable, are in the best interest of customers, and should be approved by the Commission.
2. Although DTE has offered to show the unredacted contracts to the Commission and Staff for visual review, it stated in the Affidavit of Luisa M. Dunlap (DTE Affidavit) that the contracts must remain undisclosed. The lack of disclosure prevents the creation of a record in this case for any future reference to the contracts and specific terms and conditions that the Commission actually approved. This presents an untenable situation for all parties, including the

Commission, Staff, and intervenors to validate future requests for cost recoveries, cost reconciliations, and support any potential cost disallowances.

3. The secretive process of disclosing information to only the Commission and Staff, while hiding key terms from other parties who have a vested interest in protecting their constituencies, bodes poorly for an open and transparent process. With the three BESS contracts representing only 332 MW of the 1,400 MW of storage assets planned by DTE, which is less than a quarter of the total, DTE will certainly file other contracts in a similar manner if the Commission permits this practice to continue. This practice establishes a bad precedent for future proceedings, whereby utilities can file heavily redacted and secretive contracts for approval under expedited ex parte applications without the public and interested parties having the opportunity to fully assess the full financial implications of those contracts on the utility's customers and the public in general.
4. The DTE Affidavit states that three locations have been chosen to hold the BESS units: at the Cold Creek Energy Center substation being constructed in Branch County, the Fish Creek Energy Center substation being constructed in Montcalm County, and the Pine River Energy Center substation being constructed in Gratiot County. These locations are from 70 to 150 miles from the Saline data center. The construction of the new substations at the three locations is new information that DTE had not previously disclosed in the Energy Storage Agreement (ESA) filed with the October 31, 2025 ex parte application. It is unknown whether the cost for the three substations and the transmission of power from the BESS units to the data center are part of the ESA and paid by the data center customer or not.
5. The DTE Affidavit states that each BESS unit will provide four hours of power if called upon. Computer centers run 24 hours by seven days throughout the year and need constant power. In this case, the data center will require up to 1,400 MW at any point in time. It is not clear how DTE would supplement generation capacity after four hours if the battery storage is called upon for a period longer than four hours.
6. DTE presented three EPC contracts with the Application, which it has already signed. However, no information was presented that the company conducted a competitive bidding process before selecting the three contractors. No information has been presented about the cost of each contract or the total cost of the three contracts.
7. The three BESS contracts apparently were selected from a list of bids received from an IRP solicitation conducted in the second quarter of 2025. In Attachment B, DTE shows a list of storage bids received in the IRP solicitation but no information as to which of the listed bids were selected. The DTE Affidavit states that the company selected the most advantageous bids for the IRP. Therefore, by default the three bids selected for the ESA are second-tier bids that are less financially advantageous. The DTE Affidavit presents some costs per kW installed and a levelized cost but no comparison to market benchmarks to establish that the costs are reasonable.

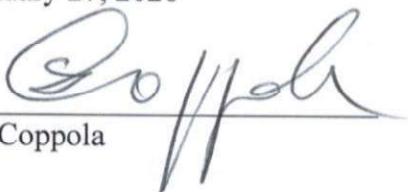
8. The DTE Affidavit states that the three BESS projects will be owned by the company and will be included in a rate case for cost recovery. The company also states that payments from the data center customer will offset the rate base costs. However, no information has been presented to show how costs and reimbursements will match and what time lag between those two events will occur.
9. DTE is requesting ex parte approval of the contracts filed with this Application by March 12, 2026, arguing that if the MPSC fails to grant approval of the Application on or before March 22, 2026, then the Battery ESA will terminate and cease to be of any force or effect. This is another case of DTE holding the Commission and other parties hostage to a deadline it arbitrarily established and by default preventing an open and transparent review process. The Commission should reject this demand.

I recommend that the Commission take a more deliberate approach through a contested case to carefully review the Application with input from other parties to such a proceeding.

I affirm that I have expert knowledge of the concerns raised in this affidavit and if sworn as a witness I can testify competently to the information stated in the affidavit.

Dated: January 27, 2026

Sebastian Coppola



Sworn before me this 27 day of January 27, 2026:

Sebastian Coppola

Notary Public Paul H. Hampel

State of Michigan, County of Oakland

My Commission Expires: 2/14/2032

Acting in the County of Oakland

PAUL HAMPEL
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF MACOMB
My Commission Expires Feb. 14, 2032
Acting in the County of <u>Oakland</u>



PROOF OF SERVICE - U-21990

The undersigned certifies that a copy of the *Attorney General's Notice of Intervention and Motion Requesting a Contested Proceeding* was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 27th day of January 2026.

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of DTE Electric
Company for Approval of Special Contracts MPSC No. U-21990

Attorney General's Motion to Reopen Proceeding

Attorney General Dana Nessel hereby moves pursuant to Mich. Admin. Code 792.10436 to reopen a proceeding in this matter. DTE Electric Company's ("DTE's" or "the Company's") "letter," filed in the present docket on January 15, 2026 (the "DTE Letter"), does not reflect the requirements of the Commission's December 18, Order in this matter (the "Order"). The DTE Letter further attempts to impose an additional condition for DTE's agreement beyond those set forth in the Order, acting as a counter-proposal rather than an acceptance. For those reasons, as discussed and elaborated further below, the Commission should reopen this proceeding and grant a contested case.

I. Standard of Review.

Mich. Admin. Code R. 792.10436 provides as follows:

- (1) A proceeding may be reopened for the purpose of receiving further evidence when a reopening is necessary for the development of a full and complete record or there has been a change in conditions of fact or law such that the public interest requires the reopening of the proceeding.
- (2) After providing due notice and an opportunity for the parties to be heard, the presiding officer, upon his or her own motion or upon motion of any party, may reopen the proceeding at any time before the date for the filing of exceptions to a proposal for

decision or, if provided for, replies to exceptions. After the date for filing exceptions or replies to exceptions and until the expiration of the statutory time period for filing a petition for rehearing, the commission may reopen a proceeding. The commission may reopen a proceeding after the time period for filing a petition for rehearing for good cause.

- (3) Within 21 days after service of a motion to reopen a proceeding, any party may file an answer. Any party failing to do so is considered to have waived objection to the granting of the motion. As soon as practicable after the time for filing answers to a motion to reopen, the presiding officer or the commission shall, in writing, grant or deny the motion. The presiding officer or the commission may provide for hearing and oral argument on a motion to reopen.

II. Argument.

As explained below, DTE's failure to accept the terms of the Commission's Order for the DTE Letter materially changes the condition of this case. The Order provided as follows concerning the process for accepting the conditions of the Order:

The Commission directs DTE Electric to file, within 30 days of the date of this order, a letter in the instant docket accepting these conditions. If the company is unwilling to accept these conditions, it may file an application for a contested case.¹

As DTE has not accepted the conditions of the Order, the Commission should, "as soon as practicable," Order that the proceeding be reopened as a contested proceeding pursuant to Mich. Admin. Code R. 792.10436. The public interest further requires reopening under that rule; the substance of DTE's changes to a conditional approval undermine any arguments that its agreement might actually present additional safeguards against rate increases or cross-subsidizations of Green Chile Ventures (GCV's) incremental costs.

¹ December 18, 2025, Commission Order at 41.

A. The DTE Letter fails to accept the specific cost-coverage language included in the Order.

The conditions of the Order explicitly includes representations from DTE “that payments made by Green Chile Ventures LLC under Rate Schedule D11 and the special contracts will cover the costs to serve Green Chile Ventures LLC such that the costs of serving Green Chile Ventures LLC (including generation, transmission, distribution, or other costs) are not covered by other customers.”²

The DTE Letter instead includes language that alters the conditions set forth in the above-quoted section of the Order, asserting that “the aggregate revenues generated by [GCV] will cover the costs to serve them.”³ This modification of the Commission’s language that costs not be “covered by other customers” describes an even less stringent requirement to prevent against cost-subsidization. Crucially, as described in the Attorney General’s January 8, 2026, Petition for Rehearing, DTE has to date operated under cost-allocation methodologies that would entail subsidization by other customers.⁴ Maybe most concerning here, DTE’s application affirmatively describes that the Company is not proposing to change its methodology for allocating transmission upgrade costs, which would entail subsidization through the PSCR process.⁵

Under the DTE Letter’s “aggregate revenue” language, the Company might thus attempt to circumvent the Order’s requirement of no costs “covered by other

² December 18, 2025, Commission Order at 43.

³ DTE’s January 15, 2026, Letter.

⁴ Attorney General’s Petition for Rehearing and Clarification at 21 – 24.

⁵ *Id.*

customer,” permitting near-term subsidization under a theory that, over a long period of time, “aggregate revenue” might offset such subsidization. But as further identified in the Attorney General’s Petition for Rehearing and Clarification, neither DTE nor the Commission has identified any record evidence to explain how and when such a theory might operate to actually avoid otherwise inherent subsidization.⁶ The DTE Letter’s alternative language thus further runs afoul of the Commission’s findings in its Case U-21859 Order, which described inherent cost allocation inequities of Consumers Energy—and shared by DTE here—as “unacceptable.”⁷

For these reasons, the language of DTE’s letter is not consistent with, and does not accept, the “conditions” required in the Order. Because DTE has failed to accept those conditions within the time required under the Order, the Commission should issue an order directing that this case be reopened as a contested proceeding. This relief is further in the public interests as the defects in the DTE Letter directly correspond with the concerns of inadequate cost coverage and rate increases central to this matter and the Commission’s regulation of such special contracts writ large.

B. The DTE Letter attempts to impose additional conditions, invalidating any purported acceptance of the Order’s terms.

Not only does the DTE Letter appear to modify the Order’s conditions, it also seeks to impose additional conditions that operate as a counter-proposal rather than an acceptance of those conditions. Specifically, the DTE Letter states that

DTE Electric expressly reserves all rights, remedies, and defenses, including the right to contest, appeal, or otherwise challenge any and all future determinations, findings, or

⁶ *Id.*

⁷ *See, id.*

decisions of the Commission in any appropriate forum, or to alter or withdraw its acceptance if the conditions of the Order change following the Commission’s disposition of petitions for rehearing on the Order.⁸

In petitions for rehearing, the Attorney General and MNSC have sought clarification on key points in the Order where the Commission provides unclear and inconsistent findings as to what exact obligations it would purport to impose on DTE under the “conditions” of the Order, as well as to the processes for enforcing any such obligations. For example, the Order fails to make clear the degree to which such conditions might require DTE to cover GCV’s incremental costs,⁹ and the DTE Letter does nothing to resolve those inconsistencies. Nor does the Order make clear how an enforcement process for effecting the terms of the conditions might operate.¹⁰

The first part of the above-quoted sentence from the DTE Letter expressly reserves a right to challenge the Commission’s application of the currently ordered conditions in future proceedings, which is again a qualifying statement to the conditions. Assuming, arguendo, that the conditions are clear, then DTE should not be qualifying its acceptance of the conditions with this reservation. Moreover, the second part of the sentence appears to be saying that the Company reserves the right to withdraw its acceptance of the Commission’s conditions should the Commission afford clarification of its Order on rehearing. The Company’s reservation of a right of withdrawal exceeds and asserts an alteration to the terms of the Order’s conditions, representing a counter-proposal rather than an acceptance. DTE thus once again has

⁸ DTE’s January 15, 2026, Letter.

⁹ See, the Attorney General’s Petition for Review and Clarification at 3 – 9.

¹⁰ See, *id.*

failed to accept the conditions set forth by the Order under the 30-day timeline as required.

This in turn presents a change in condition such that a reopening of this matter as a contested case should be granted under Mich. Admin. Code 792.10436. The Company's counter-proposal further presents issues of cost-coverage and enforceability that require reopening the proceeding as a matter of public interest; the Company should not be allowed to condition any ratepayer protections here on, for example, an acknowledgement by the Commission on rehearing of an enforcement mechanism to ensure any such protections are in fact implemented.

III. Conclusion.

For the reasons described above, the Attorney General requests that, pursuant to Mich. Admin. Code 792.10436, the Commission "as soon as practicable" issue an order directing this matter be reopened as a contested proceeding.

Respectfully submitted,

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Attorney General

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517-335-7627

Dated: January 20, 2026

PROOF OF SERVICE - U-21990

The undersigned certifies that a copy of the *Attorney General's Motion to Reopen Proceeding* was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 20th day of January 2026.

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EXHIBIT C

Special Meeting

September 25, 2007

1. Motion by Mr. R. Marion, supported by Mrs. Gordon, to reconvene the Special Meeting of the Saline Township Board September 25, 2007 at 7:05 a.m. at the Saline Town Hall, 5731 Braun Road, Saline, MI 48176. Roll call was taken. Ayes: 3. Nays: 0. Absent: 2. Motion carried.
2. Members present: Supervisor Marion, Treasurer Gordon, Trustee R. Marion; absent were Clerk Baldus and Trustee Bohnett. Others present: Attorney Lucas, City of Saline Attorney Barr, and Saline City Manager Larry Stoever.
3. Citizens were offered an opportunity to comment concerns regarding the Consent Agreement with Biltmore.
4. Attorney Barr addressed the public with the City of Saline's view of the discussions held on a possible Act 425 agreement.
5. Motion by Mr. R. Marion, supported by Mrs. Gordon, to recess the meeting to the Washtenaw County Court House at 8:00 a.m. Motion carried.
6. Motion by Mr. R. Marion, supported by Mrs. Gordon, to reconvene the meeting at 9:05 a.m. Motion carried.
7. Motion by Mr. R. Marion, supported by Mrs. Gordon, to go into Closed Session to further discuss pending Biltmore litigation with counsel. Roll call was taken. Ayes: 3. Nays: 0. Absent: 2. Motion carried.
8. Motion by Mr. R. Marion, supported by Mrs. Gordon, to come back to the special meeting at 10:15 a.m. Roll call was taken. Ayes: 3. Nays: 0. Absent: 2. Motion carried.
9. Attorney Lucas reported on the current changes in the Consent Judgment with Biltmore. Discussion closed.

10. Motion by Mr. R. Marion, supported by Mrs. Gordon, to accept the Consent Judgment as prepared and reviewed by the Saline Township Board. Roll call was taken. Ayes: 3. Nays: 0. Absent: 2. Motion carried.
11. Meeting adjourned at 10:45 a.m.

EXHIBIT D

Special Meeting

October 1, 2007

1. The Special Meeting of the Saline Township Board was called to order by Supervisor Marion October 1, 2007 at 10:03 a.m. at the Saline Town Hall, 5731 Braun Road, Saline, MI 48176.
2. Members present: Supervisor Marion, Clerk Baldus, Treasurer Gordon, Trustees Bohnett and R. Marion. Others present: Attorney Lucas, and Saline City Manager Larry Stoever. One other citizen was present.
3. Mr. Bohnett led the Pledge of Allegiance.
4. Attorney Lucas briefly discussed the properties H and I. Area will be changed to incorporate a minimum 200 foot buffer. May be detention areas outside of the buffer zone. Construction on either side will not be likely due to the fact of wetlands. No further additions or deletions from City manager Stoever.
5. Mrs. Baldus moved, supported by Mr. Bohnett, to approve the consent judgment as provided and authorize to execute. Roll call was taken.
Ayes: 5. Nays: 0. Motion carried.
6. Brief discussion regarding the need of by-laws for the individual Boards within the Township. These would help explain the internal working and procedures for each Boards operation of duties.
7. No further discussion from Pennington regarding the horse acre issue for the proposed General Development Plan.
8. Meeting adjourned at 10:20 a.m.

EXHIBIT E

TOWNSHIP OF SALINE
COUNTY OF WASHTENAW
SALINE, MICHIGAN 48176

**JAMES C. MARION * SUPERVISOR
KELLY L. MARION * CLERK
JENNIFER M. ZINK * TREASURER**

**TOM P. HAMMOND * TRUSTEE
ROBERT J. MARION * TRUSTEE**

**Regular Meeting
June 14, 2023
Page 1 of 2**

1. The Regular Meeting of the Saline Township Board was called to order by Supervisor Marion on June 14, 2023 at 7:00 PM at the Saline Town Hall, 5731 Braun Road, Saline, MI 48176.
2. Members present: Supervisor Marion, Clerk Marion, Trustee Hammond, and Trustee R. Marion. Treasurer Zink was absent. One other citizen was present.
3. Mr. Hammond led the Pledge of Allegiance.
4. Mr. R. Marion moved, supported by Mr. Hammond that the agenda be approved with one correction: (F) Mooreville Road Law Suite
5. Mr. R. Marion moved, supported by Mr. Hammond, that the consent agenda be approved as presented.
 - a. Approve minutes from the May 10 meeting.
 - b. Receive Clerk's budget, Financial Report
 - c. Approve Accounts Payable for June in the amount of \$30,315.45
 - d. Approval payroll for June in the amount of \$7,922.31
6. No Citizen Comments
7. Supervisor's Report
 - a. Sheriff's Report- no major incidents.
 - b. Andelina Farms- working on utility punch list, passing lanes were added to the entrance of phase two and three should be open by the week of June 19
 - c. Robert Santure H20- tabled until the July meeting.
 - d. WCRC Darin Approval- WCRC has approved two of the three drains applied for, time frame of project to be determined.
 - e. Jupiter- no update. Mr. Lucas the township attorney is working on a Fire Code Ordinance and a Cost Recovery Ordinance for the Board to adopt.
 - f. Mooreville Road Law Suite- Trustee Marion, moved to approve the consent judgment prepared and presented by the Township attorney in the matter Mooreville Road 10489, LLC v the Township of Saline, a matter pending in Washtenaw County Circuit Court, File No. 23-000728 CZ and to authorize the Supervisor and Clerk to sign the consent judgment on behalf of the Township. Seconded by Clerk Marion. Ayes 3 Nays 1 Treasurer Zink was absent.

Regular Meeting
June 14, 2023
Page 2 of 2

8. Trustee's Report- The Planning commission is working on having the entire Zoning Ordinances reviewed/ updated. Hope is to have this completed before the end of the year so that the Board can approve. Next meeting is August 1.
9. Zoning/Building Administrator Report- issuing building permits for phase three of Andelina Farms. Mr. Lucas to start issuing tickets to those residents who have not complied with the Blight Ordinance after being notified at least once to do so.
10. No Fireboard Report
11. No Township Hall Manager Report- Office has been stated for Treasurer Zink, still waiting on the siding estimate.
12. Board Member Comments- Clerk Marion will be absent at the July meeting.
13. The meeting adjourned at 7:40 pm.

Kelly L. Marion
Saline Township Clerk

James C. Marion
Saline Township Supervisor

CERTIFICATION

I, the undersigned, Kelly L. Marion, the duly qualified and elected Clerk for the Township of Saline, Washtenaw County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of the proceedings taken by the Township Board of said Township at a regular board meeting held on the 14th day of June 2023.

Kelly L. Marion
Saline Township Clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

RD Michigan Property Owner I LLC, a
Delaware limited liability company, Feldkamp
Siblings, LLC, a Michigan limited liability
company, Dennis Finkbeiner, an individual, Lynn
Ellen Finkbeiner, an individual, Wilkin Farm
Properties I, LLC, a Michigan limited liability
company, Dennis C. Wilkin, an individual,
and Alice M. Wilkin, an individual,

Plaintiffs,

v.

Saline Township, a Michigan municipal
corporation,

Defendant,

Kathryn Elizabeth Haushalter
Proposed Intervening Co-
Defendant/Cross-Claimant

v.

Saline Township, a Michigan municipal
corporation,

Proposed Cross-Claim Defendant

Civil Action No. 25-001577-CZ
Hon JULIA B. OWDZIEJ
Date filed: 9-12-25

**EXHIBITS F AND G TO
PROPOSED INTERVENING CO-
DEFENDANT AND CROSS-
CLAIMANT'S REPLY BRIEF TO
DEFENDANT SALINE TOWNSHIP IN
SUPPORT OF MOTION TO
INTERVENE**

EXHIBIT F

**TRANSCRIPT OF VIDEO-RECORDED
MEETING**

**SALINE TOWNSHIP
BOARD MEETING
OCTOBER 1, 2025**

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8 TRANSCRIPT OF VIDEO-RECORDED
9 MEETING

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11 SALINE TOWNSHIP
12 BOARD MEETING
13 OCTOBER 1, 2025

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1 MR. LUCAS: [inaudible]

2 MR. LANDRY: Okay.

3 MR. LUCAS: So everybody knows, as I indicated
4 before you went out, no decisions have been made of
5 any kind. It's just a discussion with the
6 attorneys, uh, that's for pending litigation. So,
7 uh, there are no -- there's no decisions have been
8 made of any sort at this point. Just so you're
9 aware.

10 [talking over each other]

11 MR. LANDRY: There's been six public hearings
12 on this matter. I was here last week. I see some
13 familiar faces. You're all familiar with the
14 project. Uh, there's a lawsuit filed and there has
15 been a proposed consent judgment to resolve this
16 and allow the data center.

17 We've been going back and forth with the other
18 lawyers to try to create some limitations, okay, on
19 how much water usage they can have and things of
20 that nature. And tonight, uh, when -- when you
21 negotiate, you have to -- you don't do it in open
22 public because the other side's here, okay. So you
23 don't do that.

24 So we had an exe- -- a closed session. And
25 what was presented to the board in closed session

1 was what their proposal was, the board has made, so
2 the changes to those. And so I want to explain to
3 you generally, uh, what this consent judgment, this
4 one which is going to be voted on tonight,
5 contains.

6 MR. LUCAS: [inaudible] the board hasn't voted
7 on [inaudible] --

8 MR. LANDRY: No. They have not voted on it.
9 There's been no vote. What they are going to vote
10 on is what I'm about to tell you, okay. Because I
11 know you have some concerns. And I'm going to let
12 you know what this proposed consent judgment
13 contains. And the board's either going to vote yes
14 or no tonight. Okay. No decision has been made.

15 But this says that they get final site plan
16 approval for the -- for the data center that will
17 allow the data center to exist, but that the town-
18 -- but that the township would have their
19 environmental, their engineer, and their planning
20 consultants review the final plans. And if they
21 recommend changes, changes will be made as long as
22 they're not huge and drastic, and change the whole
23 concept.

24 Use restrictions, they can only use the
25 property for two reasons. One data center, two

1 agricultural. Because of the 575 acres, I think
2 there's -- there's a bunch of conservation
3 easement. I think it's 146 acres that are still
4 available for agriculture. They can do farming on
5 -- on the remaining 160 -- 46 acres. But they can't
6 do any other use. So it's not open yet to that.

7 They can't enlarge it. It cannot be enlarged
8 any larger than this site plan. Uh, with respect to
9 power they are obtaining it from DTE. And the
10 developer cannot construct or operate a power
11 generating facility. They can't -- they can't bring
12 another generating facility there. No solar farms.

13 They can't expand it. They preserve the
14 agricultural area. There's conservation easements
15 of 47.5 acres of wetlands and woodlands. Water
16 usage, they will not use high water evaporate
17 cooling. Water will not be used. There's concern
18 about the water aquifer and the water table.
19 They're not using it.

20 So if you go on the internet and you find that
21 these places consume all this water, they're not
22 going to do that. They're going to limit their
23 water to restrooms, humidity, landscaping, fire
24 protection if necessary. And general maintenance if
25 they need to wash the floor or something like that.

1 Okay.

2 However, in here it says, if any wells on
3 neighboring properties or ponds run dry as a result
4 of their water usage, they have to pay to fix it.
5 And they have to install immediately monitoring
6 wells. That's the way you're going to tell.

7 The aquifer around the property, how do you
8 prove if what they do dru- -- runs dry someone's
9 well. Well there's monitoring wells that will
10 monitor the level of the aquifer around their
11 property. So there would have to be monitoring
12 wells. And if it's proven that somebody's well went
13 dry because of the operation of the data center,
14 they have to restore the water.

15 Uh, they're going to buffer it and screen it
16 with berms. Access limitations, the, uh, ingress
17 and egress will only be off Michigan Avenue.
18 There's a secondary emergency access on Braun Road,
19 which is not to be used for the day to day
20 operation, only for emergency purposes. And if the
21 163 farming acres are going to be used [inaudible].
22 That's it.

23 Water and sewer, uh, they're going to have
24 their own, uh, sewage disposal system. The
25 township's not taking that over. Okay. The water

1 system, they're going to do a well. The township
2 will be required under the state law because
3 they're going to get a sales tax exemption to, uh,
4 to make that a -- a municipal water system. But
5 they are going to pay to built it, pay to maintain
6 it, and pay to keep it up. So it's going to be no
7 cost to the township for that.

8 Now they have offered some money, okay.
9 They've offered -- which you can do, it's called a
10 conditional rezoning. They offered to give, uh, two
11 million dollars for a farmland preservation trust
12 fund. It's been proposed that that go, uh, from two
13 million to four million. Uh, they haven't agreed to
14 that yet. This is what the township's going to vote
15 on.

16 There's a community investment fund of two
17 million dollars that the comm- -- that they've
18 offered, that the community could use it for, uh,
19 any community projects it seems, children's
20 township buildings, uh, maintenance of historic
21 cemeteries. They're offering that money.

22 They have also offered eight million dollars
23 for your fire facility, okay. They -- they
24 originally suggested five million dollars for
25 investments in trucks, fire trucks, and three

1 million dollars in investment for fire facilities.

2 Uh, what the board is -- or strike that -- the
3 board's not said anything yet.

4 What this contains is the eight million stays
5 the same, but it would be seven million dollars to
6 Saline, and one million dollars, 500 each to, uh,
7 Clinton and Manchester. Because those fire
8 departments also respond to fires in your township.
9 So they will share the wealth a little bit. And so
10 it will be seven million to Saline, and 500,000 to
11 Clinton, 500,000 to Manchester.

12 Road improvements, it's, uh, it's US-12. MDOT
13 has total, uh, jurisdiction over the road. They
14 have to require, uh, supply [inaudible] conform to
15 all MDOT requirements. Construction traffic, the
16 developer will provide temporary parking on site
17 and queuing so construction vehicles don't queue up
18 on Michigan Avenue. Uh, also what's proposed in
19 here is all semis and heavy construction equipment
20 must use US-12 and can't use unpaved roads.

21 Decommissioning, what if the place goes
22 vacant. If the place goes vacant, uh, or if the
23 developer becomes, uh, goes for five years, then
24 they have to, uh, uh, restore it to a natural area.
25 Or if they go insolvent, declare bankruptcy. They

1 have to do that. They are going to post a bond.
2 Because if they go insolvent, they don't have the
3 money to repair the property.

4 They have to, uh, post a bond between five
5 million and ten million dollars. And, uh, it shall
6 be reviewed every two years, uh, by the township
7 for the appropriate amount of money. Can't be
8 increased more than 20 percent in a 25 year period.

9 Uh, the, uh, existing property owner,
10 apparently one of the property owners has an, a --
11 a solar, um, approval. That's -- they're going to
12 give that up. So the -- there's going to be no
13 solar on this property.

14 Uh, I've already gone over the utilities.
15 They're going to do monitoring wells so you can
16 tell whether -- if there's any --

17 MR. LUCAS: No energy generating facility --

18 MR. LANDRY: Yeah. No energy generating
19 facilities on the property. Um, other than that,
20 uh, I think that's the specific issues. So what is
21 being proposed tonight is the data center will be
22 approved, it can't be expanded, the water would be
23 taken care of.

24 Uh, they got to get their power from DTE who
25 has already indicated that there's sufficient

1 power, uh, if any, uh, my understanding is that any
2 infrastructure they need, they have to pay for it.
3 That's between them and DTE. Um, and like I said,
4 the water and -- is -- that's all taken care of.

5 Uh, the -- the property taxes which would go
6 to the township every year, uh, is -- is like
7 750,000, 800,000 dollars a year in property taxes
8 extra that would go to the township --

9 MR. LUCAS: Approximately 750.

10 MR. LANDRY: Every -- every year from this
11 project, which is --

12 MR. LUCAS: That's -- that's after --

13 MR. LANDRY: After they -- they get a -- they
14 get an exemption, uh, all, uh, data facilities get
15 an exemption under, uh, under state law. But your -
16 - your -- it would generate for you at least that
17 much money a year, in addition to the 12 million
18 they offered. We're asking them to up it a little
19 bit.

20 So that's the summary of this. And I think now
21 we're going to have audience participation. And
22 then the board's going to vote yes or no. Thanks.

23 MR. LUCKHARDT: Okay. We're going to limit it
24 to two minutes. There's going to be no over tonight
25 like last week. Um, I let a few go over. You'll be

1 limited to two minutes. And that's -- we'll still
2 need your name, address, and where you're from
3 [inaudible]

4 MS. SINCLAIR: I'm Lynn Sinclair [ph]. I live
5 across the street from where the data center is
6 proposed. My question is, if for some reason -- and
7 they've done studies and I've seen the studies of
8 the water, that it should not happen. But if for
9 some reason our wells do go dry, it's in here that
10 they will replace the wells.

11 When you replace a well these days, you have
12 to update your septic systems, um, when you get a
13 new well put in. The septic system gets updated.
14 Will they also cover the cost of an updated se- --
15 septic system.

16 MR. LANDRY: That is not in what's proposed.
17 What's proposed is they will fix your well. That's
18 what's proposed.

19 MS. SINCLAIR: Thank you.

20 MR. LANDRY: To answer your question. But
21 understand that there's going to be monitoring
22 wells, which means before anybody -- before
23 anybody's well should ever go dry, we should all
24 know. Because we're going to monitor the aquifer.
25 So if it starts to go, red flags are going to go

1 off, and people are going, hey wait, what's going
2 on here.

3 They'll cooperate with you -- with the
4 township, what's going on. Everybody will
5 investigate it. So hopefully nobody's water -- long
6 before anybody's well went dry, those monitoring
7 wells are going to show -- start beeping and
8 everything. Okay?

9 MS. SINCLAIR: Well I know they did a water
10 study. And it shows less water under. But just in
11 case [inaudible] --

12 [talking over each other]

13 MR. LANDRY: Yep. Yep. Answer your question.

14 MS. SINCLAIR: Thank you very much.

15 MS. K. MARION: How do we know -- sorry. How
16 do we know which property's wells are fed by this
17 aquifer? Can that be identified ahead of time so we
18 all know when we see -- watching their well and if
19 -- my -- my neighbor's goes dry, but mine doesn't.
20 But you're saying he's not dug by this aquifer, how
21 do you know that?

22 MR. LANDRY: Right now [inaudible] this is --
23 is proposed. You would have to prove that your well
24 went dry because of what they did. And if you --
25 [talking over each other]

1 MS. K. MARION: Right. And how hard is that to
2 do?

3 MR. LANDRY: Well I -- I would -- I wouldn't
4 think it's that hard to do. You would have to hire
5 a [inaudible] to look at the aquifer. But again,
6 let's say your well went dry. But the monitoring
7 wells showed that the aquifer that they were
8 getting their water from is not decreasing. It's
9 not their fault that your -- that your well went
10 dry.

11 But if -- if their aquifer is not decreasing
12 according to the monitoring wells, then we'll be
13 all over their property. So it can't be them that
14 caused anything.

15 MS. K. MARION: Okay. So we know for sure
16 where they're putting these monitoring wells and
17 [inaudible] --

18 MR. LANDRY: We will -- we will talk with them
19 about it, the -- the township's consultants, the
20 township's engineering consultants. We'll confer
21 with them and agree on how many [inaudible]

22 MR. LUCKHARDT: Yeah, Willie [ph]?

23 WILLIE: Now I under- -- I understand they
24 already have a well drilled? How deep is that well?
25 Do you know?

1 MS. K. MARION: 118.

2 MR. LUCKHARDT: I'm sorry?

3 MS. K. MARION: 118.

4 [talking over each other]

5 WILLIE: What's that?

6 MS. K. MARION: 118, 6 inches --

7 WILLIE: 118 feet?

8 MR. LUCKHARDT: That's the farm well?

9 MS. K. MARION: That's the one that they'll --

10 I mean that's what's been in all the paperwork.

11 MR. LUCKHARDT: Okay. The test well.

12 MS. K. MARION: The test well.

13 MR. LUCKHARDT: Okay.

14 WILLIE: You know how far the water -- water
15 comes up in it?

16 MR. LUCKHARDT: [inaudible]

17 MR. LANDRY: We -- we haven't seen the data on
18 that yet. So that's -- they also need to do a -- a,
19 um, a dry [inaudible] test. So we'll look at those
20 results. But we have not seen that data. And I
21 think that is a temporary well, uh, not permanent.

22 MR. LUCAS: Is there -- are there any, um,
23 measures taken to, uh, uh, limit how much water
24 [inaudible]. Uh, and they talk about maybe 20 --
25 using as much water as a 20 home subdivision. But

1 and that's very -- that's very convincing But are -
2 - is there anything that limits how much water they
3 take?

4 MR. LANDRY: They can only use it for
5 humidity, restrooms, and, uh, landscaping. But to
6 put a gallon limitation -- if there's a fire there
7 that -- the fire department's going [inaudible] --
8 [talking over each other]

9 MR. LUCAS: Right [inaudible] --

10 MR. LANDRY: -- whatever water it needs
11 [inaudible]

12 MR. LUCAS: Sure.

13 MR. LANDRY: Okay. So as far as how many
14 gallons a day, that's limited by limiting the use.
15 How much do they need for landscaping, how much do
16 they need for restrooms --

17 MR. LUCAS: Right.

18 MR. LANDRY: -- it's not [inaudible]

19 MR. LUCAS: Right. Nobody's worried about the
20 landscaping. We're worried about the [inaudible]
21 uh, how much water could be used [inaudible] --
22 [inaudible overlapping whispering]

23 MR. LANDRY: But -- but -- but by limiting the
24 uses of the water, you know that it's not
25 [inaudible] water. How much water [inaudible]. How

1 much [inaudible] a humidifier use. Not as
2 [inaudible] water that these cooling devices
3 [inaudible]. So that's -- that's -- that's
4 [inaudible]

5 MR. LUCAS: The other question is, uh, you
6 mentioned 700,000 dollars, the new tax dollars for
7 Saline Township after the, uh, tax [inaudible]. How
8 much money do you guys take now for -- in -- like
9 how much [inaudible]

10 MR. LANDRY: Right now my understanding is the
11 tax generated by this farm is \$3,600 a year. So
12 it's going to go to 700 --

13 MR. LUCAS: Right. I'm -- I'm -- I'm looking
14 at the entire township. I -- I'm wondering how --
15 [talking over each other]

16 MR. LANDRY: Oh, the -- the budget?

17 MR. LUCAS: -- how much is the township's tax
18 [inaudible]

19 [talking over each other]

20 MS. K. MARION: So just recently, I think this
21 year, just for summer taxes so far, we collect six
22 million.

23 MR. LANDRY: No, no, no, no. How much --

24 MS. K. MARION: Like, oh, like just
25 [inaudible] township?

1 MR. LANDRY: Yeah. 160,000, 200,000?
2 MS. K. MARION: Yeah. Yeah. I -- I -- I would
3 have look up -- honestly [inaudible] I don't have
4 that number on me.

5 MR. LUCKHARDT: [inaudible]?

6 MS. ZINK: How about water usage during the
7 construction phase? Is there any way to monitor
8 that?

9 MR. LANDRY: With the monitoring wells. They
10 cannot negatively affect the aquifer. The
11 monitoring wells have to go in first before
12 construction starts.

13 MR. LUCKHARDT: Any other questions?

14 MS. ZINK: Sorry. I know I'm pushing it. I
15 have just one more. What is the rush? Is -- is
16 there a rush to make this decision tonight? And why
17 are we voting so quickly? It just seems like a lot
18 of information and a lot of details to be worked
19 out that are happening so fast that --

20 MR. LUCKHARDT: There has to be a decision in
21 the next two weeks. Okay? Because the developer is
22 going to map run it [ph]. They're going to have
23 what they call a tenant -- a tech company, which
24 you said is an American company, it's not a Chinese
25 company.

1 They lose their ability to do this if we don't
2 make this call in the next two weeks. Okay. And so
3 we got to make this call. And there's been six
4 public hearings on this. So --

5 MS. ZINK: Yeah [inaudible]

6 MR. LUCAS: Well the original call was by
7 today. And that was a lie. So let's say the next
8 one isn't [inaudible]

9 MS. K. MARION: Don't we have to respond to
10 the suit within so many days --

11 MR. LUCKHARDT: Correct --

12 MS. K. MARION: That -- that's what the
13 insurance company told me, 21 days. And they filed
14 another 12. And we had 21 days from that date. I
15 believe is how I understood it from the attorney
16 from the insurance company.

17 MS. COLEMAN: I don't have a question. Kelly
18 Coleman [ph]. Can I just make a comment? Uh, so
19 most companies need to move into an area where
20 they're welcomed with open arms to [inaudible].

21 [inaudible] Digital and the company they are
22 working for, uh, have done exactly the opposite.
23 They have chosen a community where they are trying
24 to force themselves to be accepted. They've sued
25 the very people that they want to partner with.

1 It's very obvious that the true value of this
2 company is not people, but money and prestige.

3 We are not impressed. Um, money hasn't been
4 the important thing in this community. Um, and you
5 keep trying to tell us how good their money is
6 going to make us. Um, certainly not rich -- and we
7 are certainly not rich in dollars.

8 We are rich in spirit, and the respect of the
9 land, the nature, and the quiet, and the peaceful
10 space that we have here. We are rich in the family
11 and our community members. Um, your money will not
12 make [inaudible]. It is not. In effect it is
13 galvanizing our efforts to keep people like you
14 out, um, in many ways.

15 Um, we leave this decision to our board
16 members obviously tonight. Um, however if you
17 proceed and this company makes its way into the
18 land, uh, that's proposed, um, just know that it
19 wasn't with [inaudible] joy of welcome to the
20 neighborhood and glad to have you here. Thank you.

21 MR. LUCKHARDT: Mitch?

22 MITCH: So we've talked about all this water,
23 when the place is done. What about the water
24 building [inaudible]. I mean if they're putting a
25 concrete plant on this place, where is that water

1 coming from?

2 MR. LANDRY: During construction?

3 MITCH: Yes.

4 MR. LANDRY: The aquifer. That's where the
5 water's coming from, from the aquifer. With
6 monitoring wells so you can determine whether or
7 not [inaudible]. That's been discussed. That's a
8 good point is -- is water usage during construction
9 as opposed to operation. And that's the purpose of
10 the monitoring wells.

11 Yeah. They're going to mix cement. They're
12 going to -- they're going to use water while
13 they're building this in the short period
14 [inaudible]. That's why the monitoring wells have
15 to go in to make sure they don't drain the aquifer
16 during construction.

17 MR. LUCKHARDT: Any other questions?

18 MS. ZINK: So it seems like they've -- they've
19 addressed this [inaudible]. Um, they've addressed a
20 lot of -- a lot of issues. But the thing that we
21 don't know what is going to happen is to our
22 electricity. We don't [inaudible] confirm without
23 the DTE [inaudible] last week that they -- we know
24 if the power goes out, emergency services go in
25 first, they'll go in second, and at some point the

1 rest of us will get our power back.

2 Well there's nothing in what we talked about
3 that deals with that. There's a bill in Ohio that
4 they're working on about the -- the electric
5 companies trying to regulate the thermostats in our
6 homes and [inaudible] against that. I don't know if
7 that's not coming down the line for us in Michigan.

8 So now we've got this huge source. They're
9 going to use literally, based on my math, and I'm
10 no mathematician, but they'll use in seven hours
11 what our whole township will use in a year. So if
12 that's happening, how do we -- what do we have to
13 come back on after all this is in and our power --
14 we're -- we're losing our power, we're getting
15 charged more money to have no way of -- of dealing
16 with any of that.

17 So nothing about what you talked about really
18 deals with that. And I understand that that's a DTE
19 thing. But that's going to happen to us. And we're
20 -- we're -- that's going to affect us.

21 MR. LANDRY: All I can tell you is, you heard
22 DTE, you heard DTE come in and say we've got enough
23 power. We don't -- if there's any infrastructure
24 requirements, they're going to pay for it. You
25 heard DTE say that. We can't -- the township cannot

1 control DTE. We cannot tell DTE what to do or what
2 not to do.

3 Any industrial developer that comes in is
4 going to use power. And they're going to use a lot
5 of it [inaudible]. There's no question [inaudible].
6 DTE says there's sufficient power. I can't prove
7 that there isn't sufficient power. I can't point to
8 another state and say, well this accident happened
9 over there [inaudible]. So nobody can guarantee
10 [inaudible]

11 All I can tell you is what DTE said. And
12 that's not them, it's not us, it's DTE. That's all
13 we can do. There's nothing else [inaudible]

14 MR. LUCKHARDT: Go ahead.

15 MS. WAGSTAFF: Dawn Wagstaff [ph], [inaudible]
16 Saline Township. I want to thank the board for all
17 the work and effort that they've put into trying to
18 determine whether or not this is a good fit for the
19 township. Um, I've been to all the meetings. I've
20 listened to the attorneys last week. I've listened
21 to all the information today.

22 Um, the benefits of having the data center
23 here, in my opinion, far outweigh any kind of
24 negative, um, that may come with it. Just the fact
25 that they're going to be independent agricultural

1 area of the township. And I'm strongly urging the
2 township board to vote for this package that you
3 now presented before us that's even more improved
4 than what I heard last time. Thank you.

5 MR. LUCKHARDT: Any others? Seeing none --

6 MS. K. MARION: Shouldn't we at least, uh --
7 the -- the other option it was -- that was
8 discussed, not -- not option, but, um, if this gets
9 turned down, if we do the lawsuit, the owners could
10 sell to like a school or the federal government and
11 avoid our ordinances?

12 MR. LANDRY: That's a good --

13 MS. K. MARION: And we would have no say with
14 anything.

15 MR. LANDRY: That's a good point.

16 MS. K. MARION: Right. I think that's
17 [inaudible]

18 MR. LANDRY: Educational institutions --

19 MS. K. MARION: It may or may not be.

20 MR. LANDRY: -- are not regulated by your
21 zoning ordinance. So a school district [inaudible]
22 they can build whatever setbacks they want. They
23 are not subject to your zoning ordinances. If this
24 is turned down, the developer or the owners could
25 sell it to Michigan State University, the

1 University of Michigan, Western School District.

2 They could come in, because this is such a
3 prime center, build the data center, you would have
4 zero control. You can't tell them to put monitoring
5 wells in, you can't tell them to do any of that.
6 You don't get the millions of dollars. And they pay
7 zero taxes. So your taxes go in the other
8 direction.

9 Not only do you not get the 3,600 you're
10 getting now from the farm, but you don't get the
11 750,000 a year. That's the other thing that
12 [inaudible]. Data centers are in demand. And if --
13 if it's an educational institution that owns it,
14 they're not [inaudible]. You get nothing. You have
15 no control.

16 MR. LUCKHARDT: Okay. Anything? Seeing none --

17 MR. J. MARION: [inaudible] data centers,
18 they're having a lot of issues [inaudible] in other
19 places.

20 MR. LANDRY: They have a lot of issues with
21 the other places?

22 MR. J. MARION: [inaudible] data centers --

23 MR. LANDRY: I'm -- I'm not understanding your
24 question.

25 MR. J. MARION: Well you said that everything

1 is good to go [inaudible] the way I took it.

2 MR. LANDRY: No. Everything's good to go. I --
3 I -- I don't understand [inaudible]

4 MR. J. MARION: Down in, uh, Indiana, Ohio,
5 and whatnot, uh, they're not, uh, they're not
6 getting [inaudible] down there.

7 MR. LANDRY: I don't know what their zoning
8 ordinances say. I don't know if there's
9 exclusionary zoning going on. I don't know how much
10 of power, how much power they're using. I don't
11 know what the power capacity is in those other
12 facilities. Those are all issues, if there wasn't
13 enough power, if [inaudible] water to cool. And so
14 [inaudible] really going to be a problem with the
15 water.

16 I don't know the traffic. I don't know what
17 roads feed into it. Those are all issues upon which
18 you could -- you -- anybody could fight
19 [inaudible]. None of those issues exist here.
20 That's what I meant.

21 MR. J. MARION: That's what you mean.

22 MR. LANDRY: That's what I meant.

23 MR. J. MARION: So DTE [inaudible]

24 MR. LANDRY: According to DTE it's no issue.

25 MALE 6: That's not what they said the other

1 day.

2 MR. J. MARION: Say what?

3 MALE 6: Some of the data or the DTE guy said
4 the other day, and I tried to pin him down on who
5 would get power, if you recall.

6 MR. J. MARION: Right.

7 MALE 6: And he said, police, uh, fire, then
8 he said seniors. And I said, who's number three?
9 Data centers? And he said nothing. So you read
10 between those lines. I read data centers. So when
11 we're -- when we're -- our pipes are bursting, we
12 don't have power in our homes, they're going to be
13 humming along. [inaudible] the generators, I guess
14 that's a plus, huh?

15 MR. LUCKHARDT: Okay.

16 MR. J. MARION: I agree.

17 MS. K. MARION: I -- I -- I do have one
18 question about decommission [inaudible] empty
19 before it will be -- it has to be decommissioned?

20 MR. LANDRY: Your question is what?

21 MS. K. MARION: To decommission the building,
22 the -- or the, uh, site.

23 MR. LANDRY: Yeah.

24 MS. K. MARION: If -- if they [inaudible] and
25 a new technology comes, and they close up shop, how

1 long will that sit vac- -- sit vacant in our
2 township and contribute to blight?

3 MR. LANDRY: Well the shorter period of if
4 they go bankrupt, immediately it has to be
5 [inaudible]. Five years it has to be [inaudible].
6 If they don't go bankrupt, they just walk away from
7 the project, okay, but they have to post a bond
8 between five and ten million --

9 MS. K. MARION: I understand that --

10 MR. LANDRY: -- so they can't go, oh we don't
11 have the money to restore this to farmland. They
12 have to pay for a bond. And then if they walk away
13 and they don't restore it, the bonding company pays
14 the township to restore it.

15 MS. K. MARION: Okay.

16 MR. LANDRY: Those are the terms. Okay.

17 MS. K. MARION: And that's in --

18 MR. LANDRY: It's in the consent -- the
19 proposed consent judgment.

20 MS. K. MARION: And we can't make that
21 tighter?

22 MR. LANDRY: We already did. They wanted 10
23 years.

24 MS. K. MARION: Thank you.

25 MR. LUCKHARDT: [inaudible] close the public

1 comment.

2 MR. LUCAS: So we think five to ten million's
3 enough to tear down a [inaudible] dollar project?

4 MR. LANDRY: Yep.

5 MR. LUCAS: Really?

6 MR. LANDRY: Yep.

7 MR. LUCAS: You must have -- you must have
8 better contractors than most.

9 MR. LUCKHARDT: Okay. One in the back.

10 MALE 7: So will this be Saline Township's
11 industrial, um -- if it goes through, is it Saline
12 Township industrial zoning?

13 MR. LANDRY: Yep.

14 MALE 7: That's it?

15 MR. LANDRY: Yep.

16 MALE 7: Any more industrial, we can fight it.

17 MR. LANDRY: Yep.

18 MR. LUCKHARDT: Okay. I'll make a motion to
19 close the public comment.

20 [talking over each other]

21 MR. LUCKHARDT: I move to approve the consent
22 judgment with the terms outlined by our attorneys.

23 MALE 8: Before [inaudible] questions. We've,
24 uh, always had the, uh, planning commission vote on
25 before [inaudible]

1 [talking over each other]

2 MALE 8: Why not?

3 MR. LUCAS: Because it's a court case. The
4 only authority -- the only body with authority
5 [inaudible]. That's why.

6 MALE 8: So what we're voting on is a court
7 case.

8 MR. LUCAS: Yes. You're voting on a court case
9 [inaudible] court case. That's why.

10 MS. K. MARION: I second.

11 MR. LUCKHARDT: Okay. It's been moved and
12 supported. Any discussion? Role call vote.

13 MS. K. MARION: Kelly Marion, yes. Jim Marion?

14 MR. MARION: No.

15 MS. K. MARION: Uh, Tom Hammond?

16 MR. HAMMOND: Yes.

17 MS. K. MARION: Dean Marion?

18 MR. MARION: Yes.

19 MS. K. MARION: Jennifer Zink?

20 MS. ZINK: Yes.

21 MR. LUCKHARDT: Okay. Motion passes, 4 to 1.

22 MR. LUCAS: Uh, [inaudible] point out, doesn't
23 mean this case is settled. Okay? Because we put a
24 lot of stuff in that, uh, judgment that was not
25 there when it was [inaudible] plaintiffs had put in

1 it. There's more stuff in it.

2 So it may not be -- this may not be done.

3 Because we added a bunch of stuff that wasn't in
4 [inaudible]

5 MR. LUCKHARDT: What we added tonight.

6 MR. LUCAS: Right. We're still talking about.

7 But that's why the stuff in that judgment
8 [inaudible] not approved or seen. So it may not be
9 decided. All you have done is said that you are
10 willing to settle according to -- to visions that
11 we have spoken about, not necessarily what they've
12 agreed.

13 So understand this may be -- may be a moot
14 point, they don't accept the -- the -- the -- what
15 -- what -- what we have presented to them with the
16 reductions. For example, from ten years to five
17 years on the decommissioning and all the other
18 things that we put in there. So I'm just letting
19 you know that it's -- it's not necessarily a done
20 deal no matter what.

21 MR. LUCKHARDT: Okay. Board member comments?

22 Okay. Entertain a motion for adjournment.

23 MR. LUCAS: So moved.

24 MR. J. MARION: So moved.

25 MR. LUCKHARDT: Been moved and supported. Any

1 discussion? All in favor [inaudible] by saying aye.

2 ALL: Aye.

3 MR. LUCKHARDT: All opposed [inaudible] motion
4 passes [inaudible]

5 [talking over each other]

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I, Chris Naaden, a transcriber, hereby declare under penalty of perjury that to the best of my ability the above 30 pages contain a full, true and correct transcription of the tape-recording that I received regarding the event listed on the caption on page 1.

Chris Naaden

February 5, 2026

Chris Naaden

(50910, Saline Township board meeting, 10-1-25)

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EXHIBIT G

2000 WL 33522374

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

BURTCHVILLE TOWNSHIP,
Plaintiff/Counter Defendant/Appellee,

v.

Noel BUCKNER, d/b/a Indian
Trail North, Defendant-Appellant,
and

FORT GRATIOT TOWNSHIP, Defendant,
and

ST. CLAIR COUNTY, Defendant/Counter Plaintiff.

No. 209178.

I

March 10, 2000.

Before: WHITE, P.J., and HOOD and JANSEN, JJ.

Opinion

PER CURIAM.

***1** Defendant Noel Buckner, doing business as Indian Trail North, appeals as of right from the trial court's judgment in favor of plaintiff. The judgment, following a bench trial, required defendant to disconnect from its water supply arrangement with Fort Gratiot Township and connect to plaintiff's water supply system at defendant's cost. The practical implication of requiring Indian Trail to connect to the township's water system is a cost of between \$600,000 and \$800,000 to the residents of Indian Trail. We reverse.

Indian Trail North is a manufactured housing community located in Burtchville Township that was developed by Noel Buckner. Initially, Indian Trail was supplied water from wells. By 1980, the amount of water from the wells was insufficient to meet the needs of the community. Burtchville Township, however, did not have a water system in place at that time to meet the needs of the community. Consequently, Indian Trail entered into negotiations with neighboring Fort Gratiot Township, Burtchville Township, and St. Clair County so that Indian Trail could obtain water from Fort Gratiot Township. St. Clair County created Fort Gratiot water district I-extended,

which was a new water district which included service to Indian Trail. Fort Gratiot Township and Indian Trail then entered into a fifteen-year water transmission agreement on February 20, 1980 for Fort Gratiot Township to provide water to Indian Trail. Further, the agreement required Noel Buckner to construct and install a water transmission main and water meter at his own expense. On June 20, 1980, Burtchville Township passed a resolution granting permission to the St. Clair County Department of Public Works, as the supplier of Fort Gratiot Township's water system, to supply water to Indian Trail.

In 1994, St. Clair County passed several resolutions which recommended the establishment of St. Clair County Water Supply System No. IX-Burtchville Township. However, because the water transmission agreement between Indian Trail and Fort Gratiot Township expired on February 20, 1995, those two parties entered into a new fifteen-year water transmission agreement on May 17, 1995. In December 1995, Indian Trail filed a petition with the Michigan Tax Tribunal challenging its inclusion in the special assessment district. Burtchville Township assessed an amount of \$598,775, representing a special assessment of \$34,400 and an indirect connection fee of \$564,375.¹

On August 20, 1996, Burtchville Township passed a resolution withdrawing its consent of allowing Indian Trail to receive water from Fort Gratiot Township. In another resolution dated September 17, 1997, Burtchville Township again withdrew its consent of allowing Indian Trail to receive water from Fort Gratiot Township. In the meantime, on January 14, 1997, Burtchville Township filed a complaint for declaratory judgment seeking to compel Indian Trail to cease using Fort Gratiot Township's water supply system and to use its water supply system once that system became fully operational.

***2** Following a bench trial, the trial court issued its opinion on December 15, 1997. The trial court found initially that Burtchville Township and Indian Trail entered into a binding contractual agreement in 1980, relying on the June 12, 1980 resolution, and an indemnity agreement signed the same day as constituting the contract. The trial court went on to conclude that this contract was ambiguous and used parol evidence to interpret the parties' agreement. Taking all of this evidence, the trial court ruled that the contract required Indian Trail to tap into Burtchville Township's water supply system upon its completion. Alternatively, the trial court further found that Burtchville Township was statutorily authorized

under [M.C.L. § 123.739](#); MSA 5.570(9) to withdraw its initial consent to allow St. Clair County and Fort Gratiot Township to supply Indian Trail with water and that this statute required St. Clair County to discontinue supplying water to Indian Trail.

Defendant Noel Buckner first argues that plaintiff was not entitled to a declaratory judgment based on an alleged contract because such a contract was not alleged in plaintiff's pleadings. We need not address the propriety of whether an alleged contract was properly pleaded in plaintiff's complaint because we find that the trial court erred in finding that there was a contract between plaintiff and defendant.

The trial court first found that there was a contract between plaintiff and defendant which required defendant to disconnect from Fort Gratiot Township's water supply system and connect to plaintiff's water supply system. However, there is no "contract" here. Rather, there is a resolution, adopted by Burtchville Township, and an indemnity agreement. The June 12, 1980 resolution granted permission to defendant to construct and install, at defendant's expense, a water main under Metcalf Road and granted permission to the St. Clair County Department of Public Works to supply water to the residents of Indian Trail. The resolution further states in pertinent part:

3. The permissions granted are without prejudice to the right of the Township of Burtchville to cause the said Indian Trail North Mobile Home Park to be included in any water supply district that may be hereafter established in the Township of Burtchville and without obligation to allow any credit for expenditures made by any person or entity pursuant to such permissions.

The indemnity agreement, dated June 12, 1980 and signed by Noel Buckner, states:

In consideration of the Township of Burtchville, St. Clair County, Michigan granting permission for the construction of a water line on Metcalf Road within the limits of the Township of Burtchville

to serve the Indian Trail North Mobile Home Park, the undersigned hereby covenants and agrees to indemnify, protect and hold harmless the said Township of Burtchville and its officers and agents from all claims, action and demands which may be asserted against it or them arising out of the granting of such permission or the construction, operation and maintenance of the said water line for 6 months from today.

*³ The resolution and indemnity agreement, even if taken together, do not create a contract between plaintiff and defendant. These documents are what they purport to be and no more. Further, both the resolution and indemnity agreement are clear and unambiguous. The indemnity agreement says nothing about requiring Indian Trail to disconnect from Fort Gratiot Township's water supply system to connect to Burtchville Township's water supply system. Moreover, the language in the resolution only states that Burtchville Township was reserving the right to "cause" Indian Trail to be *included in any water supply district* that may later be established in Burtchville Township. This does not translate to requiring Indian Trail to connect to Burtchville Township's water supply system.² If Burtchville Township wanted to require Indian Trail to connect to its own water supply system at some point in the future, it should have explicitly stated so in the resolution. However, the resolution only states that Burtchville Township could require Indian Trail to be included in any water supply district and this is a material difference from requiring Indian Trail to connect to Burtchville Township's water supply system at Indian Trail's expense.

It cannot really be contended that the resolution, adopted by plaintiff, constitutes a contract.³ Contracts are created by parties and require mutual assent on all essential terms. *Kamalnath v. Mercy Memorial Hosp Corp*, 194 Mich.App 543, 548-549; 487 NW2d 499 (1992). The resolution does not contain the essential elements of a contract: offer, acceptance, and consideration. Thus, it is not appropriate to apply contract principles to the resolution and the trial court should not have considered parol evidence. Our Supreme Court has stated:

When the law requires municipal bodies to keep records of their official action in the legislative business conducted at their meetings, the whole policy of the law would be defeated in they could rest partly in writing and partly in parol, and the true official history of their acts would perish with the living witnesses, or fluctuate with their conflicting memories. No authority was found, and we think none ought to be, which would permit official records to be received as either partial or uncertain memorials. That which is not established by the written records, fairly construed, cannot be shown to vary them. They are intended to serve as perpetual evidence, and no unwritten proofs can have this permanence. [*Ferrario v. Escanaba Bd of Ed*, 426 Mich. 353, 371; 395 NW2d 195 (1986); *Tavener v Elk Rapids Rural Agricultural School Dist*, 341 Mich. 244, 251-252; 67 NW2d 136 (1954); *Alcona Co v. Alcona Probate Judge*, 311 Mich. 131, 142; 18 NW2d 399 (1945); *Derosia v. Loree*, 158 Mich. 64, 73; 122 NW 357 (1909); *Stevenson v. Bay City*, 26 Mich. 44, 45 (1872)].

St. Clair County was required to obtain Burtchville Township's consent before supplying water to Indian Trail and the township provided that consent through a resolution. Moreover, as has been stated, we do not find the resolution or indemnity agreement to be ambiguous. Thus, it is not proper to consider parol evidence in this case where the resolution speaks for itself.

*4 Accordingly, the trial court erred in finding that there was any contract between plaintiff and defendant requiring plaintiff to disconnect from Fort Gratiot Township's water supply system and requiring it to connect to Burtchville Township's water supply system because the resolution and indemnity agreement do not create any contract so requiring.

Next, we find that the trial court erred in relying on certain statutes to require Indian Trail to disconnect from Fort Gratiot Township's water supply system and connect to Burtchville Township's water supply district. The trial court relied on M.C.L. § 123.739; MSA 5.570(9), which provides in relevant part: "[n]o county shall have the power to furnish water service, sewage disposal service or refuse service to the individual users within any municipality without its consent." Although this statute clearly requires the consent of a township before the township's residents can be supplied water from another county, the statute says nothing about withdrawing that consent and certainly does not compel a finding that defendant is required to connect to plaintiff's water supply system.

Accordingly, we reverse the trial court's order requiring Indian Trail to disconnect from the Fort Gratiot Township water supply district and connect to Burtchville Township's water supply district at Indian Trail's expense in the absence of any contractual or statutory authority to do so.

Reversed.

[HOOD](#), J. (dissenting).

[HOOD](#), J.

I respectfully dissent from the majority's conclusion that a contractual agreement was not reached between the parties.

In the present case, defendant was unable to provide a sufficient water supply to the residents of its mobile home park from wells. In order to remedy the problem, Noel Buckner and his attorney, Milton Bush, Jr., negotiated with plaintiff's representatives. While an agreement was not executed between plaintiff and defendant, plaintiff's board executed a resolution which authorized defendant to obtain water from a neighboring source. However, plaintiff asserted that the authorization was temporary. That is, defendant agreed to connect to the water system of plaintiff upon its construction. The resolution does not unambiguously state that defendant must connect to plaintiff's system upon its completion, but rather, provides that plaintiff has the right to "cause" defendant to be included in any water supply district established by plaintiff. In *Alcona County v. Freer*, 311 Mich. 131, 142; 18 NW2d 399 (1945), the Supreme Court held that municipalities must keep records of their official action and the policy of the law would be defeated by allowing officials to rely on parol evidence. However, there are exceptions to the general rule. Parol evidence may be considered in disputes involving municipalities to aid the record of official action where the same is ambiguous or where entries have been omitted. *North Star Twp v. Cowdry*, 212 Mich. 7, 15; 179 NW 259 (1920). The ambiguity in the language of the resolution required the consideration of parol evidence. *Id.* Parol evidence is permitted when the document purporting to express the parties' intent is incomplete. *In re Skotzke Estate*, 216 Mich.App 247, 252; 548 NW2d 695 (1996). The testimony of township officials does not contradict the writing, but explains the intent of the parties where the terms of the resolution are ambiguous. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich.App 486, 492; 579 NW2d 411 (1998). Accordingly, I would hold that the trial

court did not err in its admission and reliance upon parol evidence.

*5 Defendant also argued that even if parol evidence was considered, the testimony of Loyall Watson, John Perry, and Noel Buckner and documentary evidence executed in order for defendant to obtain a water supply failed to establish an “agreement.” I disagree. Loyall Watson served as plaintiff’s legal counsel at the time of the negotiations and subsequent enactment of the resolution which allowed defendant to obtain water from an outside source. Watson specifically testified that the parties did not intend that defendant would be permitted to maintain a connection to Fort Gratiot Township once plaintiff had an operational water supply system. While defendant contends that Watson testified that he had “no independent memory of this at all,” it appears that defendant has taken this statement out of context. Review of the deposition testimony reveals that Watson was referring to his recollection of who drafted two unexecuted resolutions in 1980, and not the parties’ transaction as a whole.

Furthermore, defendant ignores the testimony of James Brown, which was relied upon by the trial court in concluding that defendant was compelled to tap into plaintiff’s water system upon its completion. Brown, plaintiff’s township supervisor in 1980, testified that the plain language of the resolution as well as his understanding of the parties’ negotiations required that defendant “hook up” to plaintiff’s water system once it became operational. The trial court found that this testimony was credible. This Court gives special deference to the trial court’s findings where they are based on the credibility of witnesses. *In re Pott*, 234 Mich.App 369, 377; 593 NW2d 685 (1999).

Defendant contends that Buckner testified that an agreement was never reached which would have required the mobile home park to join any water system created by plaintiff and that the trial court “did not make a finding that Buckner was not credible.” While there was no express statement in the opinion addressing Buckner’s credibility, by rejecting Buckner’s version of events, essentially, the trial court concluded that he was not credible. Furthermore, at trial, Buckner was asked if Brown was a liar because of his testimony that Buckner had agreed to join plaintiff’s water system upon completion. Buckner responded that Brown was a good man and a deal “may” have been reached conditioned upon the price of connection. Furthermore, at the hearing regarding defendant’s motion for a stay pending appeal, the trial court indicated that defendant had agreed to join

plaintiff’s water system and could no longer *avoid* the cost of the “tap-in” fee. While review of a declaratory judgment is de novo, the trial court’s factual findings will not be reversed unless they are clearly erroneous. *Auto-Owners Ins v. Harvey*, 219 Mich.App 466, 469; 556 NW2d 517 (1996). The trial court’s factual findings were premised upon the credibility of the witnesses, and I cannot conclude that the factual findings were clearly erroneous.

*6 While the majority concludes that the practical implications of requiring defendant to connect to plaintiff’s water system is a cost of between \$600,000 and \$800,000, the final accounting has yet to be determined. In addition to this litigation, proceedings were filed before the Tax Tribunal. In an order denying plaintiff’s motion for summary disposition, the Tax Tribunal took exclusive jurisdiction of the issue of the special assessment for water services. In that order, the Tax Tribunal noted that the apportioned amount of \$598,775 to defendant consisted of \$34,400 for the special assessment and \$564,375 for the “tap-in” charge. The Tax Tribunal also found that the “tap-in” fee was within its exclusive jurisdiction because it was an exercise of plaintiff’s power to apportion special assessment costs. At oral argument, the parties represented that the Tax Tribunal proceeding was held in abeyance pending a decision from this Court. Accordingly, it appears that while the parties have obtained a final judgment regarding the merits of any agreement to join in plaintiff’s water system, the costs and propriety of joining remains outstanding. That is, at oral argument, defendant represented that if it was not included within plaintiff’s water system, it would have to explore other options, including the digging of wells, in order to supply its residents with water. If the Tax Tribunal ruled in favor of defendant’s challenge to the special assessment, arguably it could be cost beneficial to join plaintiff’s water system as opposed to relying on wells.¹

Furthermore, I note that while defendant’s disconnection from Fort Gratiot’s water supply appears to be mandated by statute, any compulsion to join in plaintiff’s water system has not been adequately addressed by the parties. MCL 324.4703; MSA 13A.4703 provides that two or more municipalities, as defined by M.C.L. § 324.4701; MSA 13A.4701 to include counties and townships, may request that a water supply district be organized to function in a particular area. MCL 324.4708; MSA 13A.4708 sets forth the powers of a water district and grants water districts the broad authority to construct and operate water supply systems. Janet Kitamura of St. Clair County Road Commission testified that water districts were created by the county. She testified that

in 1980, defendant was made a part of water district I extended. As a result of the creation of water district IX, which would serve plaintiff, district I extended would cease to exist. Accordingly, it appears that, contractual agreements aside, defendant was required to disconnect from Fort Gratiot's system and be *included* in the water district covering plaintiff's region. The parties failed to explore whether "inclusion" involves compelled participation in a water district. [MCL 324.3104](#); MSA 13A.3104 provides that the Department of Environmental Quality (DEQ), [M.C.L. § 324.3101](#); MSA 13A.3101, is to negotiate and cooperate with other governmental units regarding water quality control planning, development, and management. Whether this broad

degree of authority encompasses an order of mandatory inclusion in a water district has never been litigated. However, in light of the DEQ's regulation of water, it appears that the parties should have determined whether that regulation has any bearing on defendant's connection to any water system or the digging of wells.

*7 I would affirm.

All Citations

Not Reported in N.W.2d, 2000 WL 33522374

Footnotes

- ¹ Interestingly, Burtchville Township asserted in the Tax Tribunal that the indirect connection fee was a *voluntary fee* paid by those residents who wished to connect to the township's water system and was not a special assessment.
- ² We note that the trial court acknowledged in its opinion that the resolution does not require Indian trail to disconnect from Fort Gratiot Township's water supply system.
- ³ The trial court acknowledged this too in its opinion when it stated that Indian Trail was not a party to the resolution and thus could not be contractually bound by the resolution itself.
- ¹ This is particularly important because defendant's prior reliance on wells failed to satisfy the water needs of its mobile home residents.