UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

February 2, 2018

Scott H. Kimpel
Hunton & Williams LLP
skimpel@hunton.com

Re: DTE Energy Company
Incoming letter dated December 18, 2017

Dear Mr. Kimpel:

This letter is in response to your correspondence dated December 18, 2017 concerning the shareholder proposal (the "Proposal") submitted to DTE Energy Company (the "Company") by Kenneth Fink (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated January 12, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: Kenneth Fink
***

February 2, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: DTE Energy Company
Incoming letter dated December 18, 2017

The Proposal requests that the Company commission an independent economic analysis of the potential cost avoidance and the potential financial benefit to shareholders and ratepayers of closing the Company's Fermi 2 nuclear power plant prior to the expiration of the Nuclear Regulatory Commission license.

We are unable to concur in your view that the Company may exclude the Proposal under rules 14a-8(b) and 14a-8(f). In this regard, we note that the proof of ownership statement was provided by a broker that provides proof of ownership statements on behalf of its affiliated DTC participant. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(6). In our view, the Company does not lack the power or authority to implement the Proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(6).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(7). In this regard, we note that the Proposal relates to economic and safety considerations attendant to nuclear power plants. See Securities Exchange Act Release No. 12999 (November 22, 1976). Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Caleb French
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

12 January 2018

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

VIA EMAIL: shareholderproposals@sec.gov
Cc: SKimpel@hunton.com

Response to DTE Energy Company's Intention to Exclude the Shareholder Proposal Submitted by Kenneth Fink Securities Exchange Act of 1934 - Rule 14a-8

Dear Ladies and Gentlemen:

I am writing in response to DTE's no-action request to exclude my shareholder resolution from its proxy for its 2018 Annual Meeting of Shareholders. While DTE seeks to exclude the proposal entitled "Shareholders Resolution Requesting Economic Assessment of the Continued Operation of Fermi 2," I have evidence that DTE's case for exclusion pursuant to Rule 14a-8G promulgated under the Securities Exchange Act of 1934 is without merit. I respectfully request that the Staff of the Division of Corporation Finance of the Securities and Exchange Commission deny DTE's exclusion request.

In response to DTE's Basis for Exclusion, I wish to address each separately.

DTE's lawyer alleged that I failed to provide the requisite proof of my continuous stock ownership in my original submission. This was a matter of wording, and a different date on my broker's letter and my filing letter. These oversights were corrected with my supplemental filing, done within the legal timeframe. Rules stated I had to have at least $2,000 worth of shares, and my broker letter proved my initial investment was over $12,000 and I have reinvested all my dividends since 2011.

DTE states the proposal relates to the company's ordinary business operations. A study would not interfere with DTE business, they can conduct such a study without interfering with business. And doing so would seem to be a good business practice.

The "Company lacks the power and authority to implement the Proposal." The Company lacks the power to do a study? In Mr. Kimpel's DTE filing, he states repeatedly about company "assessments" and is not assessment another word for study? Perhaps, they should use that argument with the Federal Energy Regulatory Commission (FERC) who this week turned down Energy Secretary Rick Perry's plan to prop up coal and nuclear power plants, because FERC stated they will formally ask electric grid operators what they are doing, if anything, to ensure that their grids remain resilient. DTE will have to do a study for that, or at least, an assessment. I

am asking for an assessment to see if a sustainable energy source is more cost effect than operating the Fermi 2 reactor.

Regarding my proposal, DTE cites Rule 14a-8(I)(7) that proposals should not interfere with day-to-day operations with shareholder oversight. The Company has done many studies, so one focusing on the economics of operating Fermi 2 doesn't deal with shareholder oversight, it would merely give stockholders an idea of their future financial investments.

According to world press, the price of solar dipped to another record low when five international companies bid as low as 2.99 cents per kilowatt-hour to develop the latest phase of work at Dubai's enormous solar park when complete. (http://ecowatch.com/?s=solar). That's 15 percent lower than the previous record-low bid of 3.5 cent per kWh from Italy's Enel Green Power for a solar project in Mexico.

Mr. Kimpel states on page 16 of his exclusion filing, "Moreover, the Proposal barely touches on safety and environmental concerns. In fact. The only references to these issues are the Proposal's use of the words "clean" and "safe" in two paragraphs." Kimpel adds that "the Proposal does not focus on a broader social problem issue." My proposal seeks an economic assessment/study, and does not address environmental issues or waste disposal.

Then on page 18, under Rule 14a-8(i)(6), Mr. Kimpel stated, "Although the Proposal is couched in terms of providing a report, the Proponent's ultimate objective is clearly the immediate closure of the Fermi 2 nuclear power plant." He jumped to a conclusion that he cannot substantiate, and that alone should be grounds to deny his exclusion request.

Kimpel further elaborated on all the agencies that would need to approve Fermi 2's closure, which included the NRC. Three reactors have closed since their license was renewed for another 20 years, so his elaboration is moot.

DTE's claim that providing distributed, on site, renewable generation installations directly to customers is a fundamental change to business operation is outright false. DTE's own description of business operations already includes renewable energy and supplements with purchases from " electricity generators, suppliers and wholesalers whose technology and sources of energy are not under the control of the Company," So by their own description, they engage in the exact operational activities we propose. The only significant operational difference is the lack of any need for land acquisitions on which to site new generating resources, as the resources will be sited on customer premises. What the Company frames as a technical limit on operational logistics is in fact a masking of monopolistic market protectionism. With other countries well on their way to 100% renewable generating capacity, what fundamental technological or conceptual advantage is the Company lacking that these other Utilities are not? Or is it the pure self interest of an entrenched monopoly protecting its own interest?

The Company asserts that the proposal amounts to inappropriate micro-management of professional, competent experts by technically incompetent shareholders. This is a bold assertion that requires a deeper look. They claim all their decisions are based on affordably providing

electricity to their 2.2 million customers, but any further analysis proves their strategic planning neglects feasible, affordable solutions for customers in favor of a centralized system which is easily monopolized. If they are so competent and customer focused, why not provide willing customers access to purchasing options that provide the same electricity, onsite, when the technology is already widely available and being deployed by their competitors? Why would the Company exclude itself from the most rapidly growing generating market in the world? Why should ratepayers pay higher rates for antiquated, centralized generation that runs on out of state fuel resources, when they can make their own at home? Why should we continue to incur the risks of operating an aging Fermi 2, if there are safe, clean, and affordable options for customers? How many of the Company's 2.2 million customers that desire on site solutions would it take to displace Fermi 2? What would be in the Company's best interest, to retain those customers, or to lose them altogether to off-grid solutions?

For the above reasons, I ask the Securities and Exchange Commission to deny DTE's request to exclude my proposal. Feel free to contact me should you have any questions or concerns. I will be out of Michigan until April, so please send correspondence by email.

Sincerely,

Kenneth Fink ***

*** FISMA & OMB Memorandum M-07-16

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December 18, 2017

VIA EMAIL (shareholderproposals@sec.gov)

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: DTE Energy Company
Shareholder Proposal Submitted By Kenneth Fink
Securities Exchange Act of 1934 – Rule 14a-8

Dear Ladies and Gentlemen:

I am writing on behalf of DTE Energy Company, a Michigan corporation ("DTE" or the "Company"), pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to inform you that the Company intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Shareholders (the "2018 Proxy Materials") a shareholder proposal entitled "Shareholders Resolution Requesting Economic Assessment of the Continued Operation of Fermi 2" (the "Proposal"), submitted by Kenneth Fink (the "Proponent"). We respectfully request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with the Company's view that, for the reasons stated below, the Company may exclude the Proposal from the 2018 Proxy Materials.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), the Company is emailing this letter and its exhibits to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), the Company is submitting this letter not less than 80 calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission and is concurrently sending a copy of this correspondence to the Proponent, as notice of the Company's intent to omit the Proposal from the 2018 Proxy Materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponent elects to submit to the Commission or the Staff. Accordingly, the Company is taking this

opportunity to inform the Proponent that if he submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned.

The Proposal

The Proposal states:

> Resolved: Shareholders request that Company (DTE) commission an independent economic analysis of the potential cost avoidance and the potential financial benefit to Shareholders and Ratepayers of closing the Fermi 2 prior to the expiration of the Nuclear Regulatory Commission license. Shareholders request that this analysis include financial projections indicating the most advantageous date of closure, and that opportunity costs are examined. Shareholders request that a report be provided and presented at the next DTE Shareholders Meeting.

A copy of the Proposal, supporting information and all related correspondence is attached hereto as Exhibit A.

Basis for Exclusion

As discussed in more detail below, the Company respectfully requests that the Staff concur in its view that the Proposal may be excluded from the 2018 Proxy Materials pursuant to:

(i) Rule 14a-8(b) and Rule 14a-8(f) because the Proponent failed to provide the requisite proof of continuous stock ownership in his original submission or in response to the Company's timely and proper Deficiency Notice;

(ii) Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations; and

(iii) Rule 14a-8(i)(6) because the Company lacks the power and authority to implement the Proposal.

Analysis

I. The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Establish The Requisite Eligibility To Submit The Proposal.

A. Background

The Proponent submitted to the Company the Proposal entitled "Criteria for Economic Assessment of the Continued Operation of Fermi 2" in a letter dated October 20, 2017, which was received by the Company via regular mail on October 26, 2017. The Company reviewed its stock records, which did not indicate that the Proponent was the record owner of sufficient shares to satisfy the requirements of Rule 14a-8(b) of the Exchange Act. The submission included a copy of a letter from Fidelity Investments to the Company, dated October 4, 2017 (the "Fidelity Letter"), which confirmed that "as of October 3, 2017 [the Proponent] held 307.634 shares of DTE Energy Holding Co. common stock . . . [, the Proponent's] initial purchase of this security occurred on November 9, 2011 for 250 shares and no sales have occurred within [the Proponent's] account since this date." The submission also included a written statement that the Proponent "will still hold those shares by the time the 2018 meeting occurs."

Accordingly, on October 31, 2017, within 14 days of the date the Company received the Proposal, the Company sent the Proponent a letter via overnight mail notifying him of the procedural deficiencies, as required by Rule 14a-8(f) (the "Deficiency Notice"). In the Deficiency Notice, the Company informed the Proponent of the requirements of Rule 14a-8 and how to cure the procedural deficiencies. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- that, according to the Company's stock records, the Proponent was not a record owner of sufficient shares;
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including the requirement for the statement to verify that the Proponent continuously held the requisite number of Company shares for the one-year period preceding and including October 20, 2017, the date the Proposal was submitted;

- that the Proponent must submit verification of the Proponent's ownership of the requisite number of Company shares from the record owner of those shares;

- that the Proponent is required under Rule 14a-8(b) to provide a statement of his intent to continue ownership of the required number of shares through the date of the Company's 2018 Annual Meeting of Shareholders;

- that a shareholder may submit no more than one proposal to a company for a particular shareholders meeting;

- that the Proponent's response had to be postmarked or transmitted electronically no later than 14 days from the date the Proponent receives the Deficiency Notice; and

- that a copy of the shareholder proposal rules set forth in Rule 14a-8 and the Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F") were enclosed.

The Deficiency Notice noted that to be a record holder, a broker or bank must be a DTC participant and provided the DTC website address at which the Proponent could confirm whether a particular broker or bank was a DTC participant. It also contained detailed instructions about how to obtain proof from a DTC participant if the Proponent's own broker or bank is not a DTC participant. Specifically, the Deficiency Notice stated, in part:

> If you intend to demonstrate ownership by submitting a written statement from the "record" holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC's participant list, which is available at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows: . . .

> (2) If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the required number of Company shares for the: one-year period preceding and including October 20, 2017. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. . . .

Shipping records from overnight courier service UPS confirm delivery of the Deficiency Notice to the Proponent on November 1, 2017.

The Company received the Proponent's response to the Deficiency Letter on November 16, 2017, which response purported to remedy all of the procedural deficiencies. The Proponent's response appears to have cured certain of the deficiencies identified in the Deficiency Notice. Specifically, the response (i) included a revised shareholder proposal entitled "Shareholders Resolution Requesting Economic Assessment of the Continued Operation of Fermi 2," (ii) confirmed the Proponent's intent to hold the required number of Company shares through the date of the 2018 Annual Meeting of Shareholders and (iii) confirmed the Proponent's share ownership as of November 9, 2017 in a second letter from Fidelity Investments, dated November 10, 2017 (the "Second Fidelity Letter"). However, as discussed in more detail below, the Second Fidelity Letter still failed to provide the Company with the requisite proof of continuous share ownership from a DTC participant or its affiliate satisfying the eligibility requirements of Rule 14a-8(b). The Company has received no further correspondence from the Proponent or his broker regarding the Proposal or proof of the Proponent's ownership of Company stock.

B. Analysis

The Company may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent failed to substantiate his eligibility to submit the Proposal under Rule 14a-8(b). Rule 14a-8(f) provides that a company may exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), so long as the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time. Rule 14a-8(b)(1) provides,

in part, that "[i]n order to be eligible to submit a proposal, [a shareholder] must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the shareholder] submit[s] the proposal." Staff Legal Bulletin No. 14 (Jul. 13, 2001) ("SLB 14") specifies that when the shareholder is not the registered holder, the shareholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the shareholder may do by one of the two ways provided in Rule 14a-8(b)(2). *See* Section C.1.c, SLB 14.

In SLB 14F, the Staff clarified that proof of ownership letters must come from the "record" holder of the proponent's shares and took the position that only DTC participants are viewed as records holders of securities that are deposited at DTC for purposes of verifying a proponent's ownership pursuant to Rule 14a-8(b)(2)(i). In Staff Legal Bulletin 14G (Oct. 16, 2012) ("SLB 14G"), the Staff extended the position announced in SLB 14F to include "affiliates" of DTC participants. A shareholder that owns shares through a broker or bank that is neither a DTC participant nor an affiliate of a DTC participant must obtain and submit two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

As the Staff stated in SLB 14F, "the requirements of Rule 14a-8(b) are highly prescriptive." Where a proponent comes close to complying with a procedural requirement but fails to comply fully, therefore, the Staff has been unwilling to allow a proposal to avoid exclusion based on substantial compliance or a good faith effort. For example, the Staff has permitted exclusion of the following proposals:

- A proposal that contained 504 words, exceeding Rule 14a-8(d)'s 500-word limit by four words. *See Intel Corp.* (Mar. 8, 2010).

- A proposal that was submitted to the company one day after the deadline imposed by Rule 14a-8(e)(2). *See Chevron Corp.* (Mar. 4, 2015).

- A proposal submitted by a proponent who provided proof of ownership 15 days after receiving a timely deficiency letter from the company, which was one day after the deadline imposed by Rule 14a-8(f). *See Comcast Corp.* (Mar. 5, 2014).

- A proposal accompanied by proof of continuous ownership covering one day less than the full one-year period preceding the date of submission of the proposal as required by Rule 14a-8(b). *See PepsiCo. Inc.* (Jan. 10, 2013).

- A proposal accompanied by a written statement of the proponent's intent "to continue to own General Electric common stock through the date of" the annual meeting, without specifying that it would continue to own the requisite amount. *See General Electric Company* (Jan. 30, 2012).[1]

The Staff also has concurred in the exclusion of shareholder proposals that fail, following a timely and proper request by a company, to provide sufficient proof of ownership from a DTC participant or affiliate of a DTC participant. In *AT&T Inc.* (Dec. 2, 2014), the Staff allowed for the exclusion of a proposal that was accompanied by proof of ownership from T. Rowe Price, a broker that was not a DTC participant and thus was not the "record" holder of shares as required by Rule 14a-8(b), and that failed to indicate that it was an affiliate of a DTC participant that was the record holder of the company shares. The Staff allowed for the exclusion of the proposal even though T. Rowe Price's website included the following disclosure: "T. Rowe Price Brokerage is a division of T. Rowe Price Investment Services, Inc., member FINRA/SIPC. Brokerage accounts are carried by Pershing LLC, a BNY Mellon company, member NYSE/FINRA/SIPC." The DTC website lists Pershing LLC as a DTC participant. In *AT&T Inc.*, the Staff concluded that "the proponent appears to have failed to supply, within 14 days of receipt of AT&T's request, documentary support sufficiently evidencing that he satisfied the minimum ownership requirement for the one-year period as required by rule 14a-8(b)." *See also Devon Energy Corp.* (Mar. 13, 2015) (concurring in the exclusion of a proposal under Rule 14a-8(f) where the proponent's proof of ownership letter was provided by a non-DTC participant or affiliate); *Andrea Electronics Corp.* (July 16, 2014) (concurring in the exclusion of a proposal under Rule 14a-8(f) where the entity providing the proof of ownership letter was not a DTC participant); *Johnson & Johnson (Recon.)* (Mar. 2, 2012) (concurring in the exclusion of a proposal under Rule 14a-8(f) because the proof of ownership letter was provided by an investment advisor that was not a DTC participant, even though the proponent responded to the company's deficiency letter with a letter from the same

[1] *See also Yahoo! Inc.* (Mar. 24, 2011); *Cisco Systems, Inc.* (July 11 , 2011); *J.D. Systems, Inc.* (Mar. 30, 2011); *Amazon.com, Inc.* (Mar. 29, 2011); *Alcoa Inc.* (Feb. 18, 2009); *Qwest Communications International, Inc.* (Feb. 28, 2008); *Occidental Petroleum Corp.* (Nov. 21, 2007); *General Motors Corp.* (Apr. 5, 2007); *Yahoo! Inc.* (Mar. 29, 2007); *CSK Auto Corp.* (Jan. 29, 2007); *Motorola, Inc.* (Jan. 10, 2005); *Johnson & Johnson* (Jan. 3, 2005); *Agilent Technologies* (Nov. 19, 2004); *Intel Corp.* (Jan. 29, 2004); *Moody's Corp.* (Mar. 7, 2002).

investment advisor providing the name and DTC number of the investment advisor's DTC participant, Pershing).

The Proponent here was required to provide proof of ownership from a DTC participant or an affiliate of a DTC participant verifying his continuous ownership of the Company's shares for the one-year period preceding and including the date of submission. The Second Fidelity Letter attempted to address the relevant holding period by stating that the shares were held as of November 9, 2017. However, the Second Fidelity Letter, sent in response to the Company's timely and proper Deficiency Notice, failed to provide sufficient proof of ownership from a DTC participant. The entity that provided the proof of ownership letter, Fidelity Investments, is not a DTC participant according to the DTC website.[2] It also is unclear whether Fidelity Investments is an affiliate of a DTC participant that is the record holder of the Company's shares. The DTC participant list contains only one other entity having "Fidelity" in its name, Fidelity Clearing Canada ULC/CDS. In addition, although the Fidelity Investments website states that the "Fidelity Depository Trust Company (DTC) number is 0226," which is associated with "National Financial Services LLC" on the DTC participant list, the Second Fidelity Letter provides no indication that Fidelity Investments is an affiliate of National Financial Services LLC or that National Financial Services LLC is the record holder of the Company's shares.

By contrast, the proof of ownership letter in *American Airlines Group Inc.* (Feb. 20, 2015) clearly states that the "shares referenced above are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and Fidelity Investments affiliate." Notwithstanding the similarity of corporate names here, the Company has no way of determining whether the Fidelity entity appearing in the Second Fidelity Letter is in fact associated or affiliated with any DTC participant. But the burden does not lie with the Company to divine whether entities with similar sounding names or similar logos are affiliated. As detailed above, the relevant staff legal bulletins make clear that the burden to provide this evidence lies with the Proponent, not the Company—and the Proponent has not satisfied that burden here.

In addition, the Second Fidelity Letter states that the Proponent holds shares of "DTE Energy *Holding Co.*" (emphasis added), rather than the correct corporate name, which is "DTE Energy Company." The Company has no way of determining whether this is a simple

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[2] *See* DTC Member Directories, *available at* http://www.dtcc.com/client-center/dtc-directories.

scrivener's error, or instead whether the Proponent in fact holds shares in some other company with a name similar to the Company's. Again, the staff legal bulletins make clear that the burden of providing proof of ownership rests with the Proponent, and the Proponent has not met that burden here.

As discussed above, the requirements of Rule 14a-8(b) are highly prescriptive, and the Staff has consistently found that substantial compliance or a good faith effort to comply with the requirements is insufficient to avoid exclusion of a proposal. Indeed, by requiring companies to notify shareholders of procedural deficiencies and offer them an opportunity to cure, the rule provides a mechanism that prevents the exclusion of an otherwise eligible proposal that contains a deficiency resulting from the shareholder's oversight or inadvertence. Where, as in this case, a proponent is informed of a deficiency and fails to take the required action, there is no basis in either the language or policy of Rule 14a-8 for ignoring the deficiency.

The Company provided timely and proper notice of the deficiency to the Proponent and provided an opportunity for him to cure the deficiency. However, the Proponent failed to properly cure the deficiency. Rule 14a-8(f)(1) provides that, if a shareholder proponent fails to satisfy the eligibility or procedural requirements of Rule 14a-8, the company may exclude the proposal if the company notifies the proponent of the deficiency within 14 days of receipt of the proposal and the proponent then fails to correct the deficiency within 14 days of receipt of the company's notice. As noted above, the Staff also has consistently granted no-action relief pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) when insufficient proof of ownership is submitted by a proponent. *See AT&T Inc.*, *Devon Energy Corp.*, *Andrea Electronics Corp.* and *Johnson & Johnson*. Similar to the precedent cited above, the Proponent in this case has not satisfied the proof of ownership requirements of Rule 14a-8(b)(2)(i) because he failed to provide, with his original submission or in response to the Company's timely and proper Deficiency Notice, a letter from a DTC participant confirming either the Proponent's ownership of Company shares or the Proponent's broker's ownership of Company shares, as described in the Deficiency Notice. Accordingly, the Company believes the Proposal may properly be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Relating To The Company's Ordinary Business Operations.

A. Rule 14a-8(i)(7)

Rule 14a-8(i)(7) permits a company to exclude from its proxy materials a shareholder proposal that "deals with a matter relating to the company's ordinary business operations." In the Commission's release accompanying the 1998 amendments to Rule 14a-8, the Commission stated that the general underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission identified two central considerations that underlie the ordinary business exclusion. The first is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration relates to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

As explained in the 1998 Release, under the first consideration, a proposal that raises matters that are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" may be excluded, unless the proposal raises social policy issues that are sufficiently significant to transcend day-to-day business matters. A proposal being framed in the form of a request for a report does not change the nature of the proposal. The Staff has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the substance of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983).

B. The Proposal relates to the Company's choice of technologies and seeks to micro-manage the Company.

The Proposal requests that the Company commission an independent economic analysis of the potential cost avoidance and financial benefits to shareholders and ratepayers of closing Fermi 2, the Company' nuclear power plant, prior to the expiration of its Nuclear Regulatory Commission ("NRC") license. While the Proposal is styled as a request to produce

a report, the Proposal's primary purpose is to encourage the Company to close its nuclear power plant and replace that capacity with distributed renewable energy. The Proposal's Supporting Statement focuses entirely on investing in renewable energy, stating that "[i]nvestments in distributed, renewable energy are the fastest, safest, most affordable way to expand generating capacity" and "the company must support distributed power, or more ratepayers will be lost to off grid, standalone systems." The Proposal also includes the following references:

- "The worldwide electric energy market is rapidly shifting from fossil fuels and nuclear electricity to distributed renewable electric power."
- "Michigan is positioned to be a solar energy manufacturing hub. Adopting solar energy solutions on a mass scale feeds business synergy locally with leaders in the field."
- "This DTE half ownership [of the Ludington Power Pumping Station] is advantageous in positioning DTE with the flexibility to move aggressively to distributed and renewable energy."
- "DTE now can aggressively move toward these renewable energy and energy storage markets."
- "DTE can aggressively pursue additional installation, financing, and power purchasing agreements for renewable energy including wind and solar while retaining market share."

Consequently, this Proposal seeks to influence the Company's choice of technology and resources used in the generation of electricity, specifically by calling for the Company to shift away from nuclear energy to other forms of renewable energy generation.

The Company generates, purchases, distributes and sells electricity to approximately 2.2 million residential, commercial and industrial customers in southeastern Michigan. With an 11,084 megawatt system capacity, the Company uses coal, nuclear fuel, natural gas, hydroelectric pumped storage and renewable sources to generate its electrical output, and supplements it by purchasing electricity from electricity generators, suppliers and wholesalers whose technology and sources of energy are not under the control of the Company. As a provider of electric utility services, decisions relating to the Company's mix of resources used

to generate electricity, including the costs, risks and impacts of using such sources, are fundamental to the Company's day-to-day business operations and are both impractical and too complex to be subject to direct shareholder oversight.

While the Proposal focuses solely on the perceived cost benefits of shifting to renewable energy, the generation of electricity is a complex process that requires the assessment of myriad of operational, technical, financial, legal, policy and regulatory factors. This robust and careful evaluation process requires management expertise and encompasses the Company's financial budgets, capital expenditures, pricing, production plans and short- and long-term business strategies and necessarily involves extensive regulatory authority review and evaluation of the recoverability of capital expenditures and other costs associated with the generation of electricity, which is crucial to preserving shareholder value. In addition to cost concerns, the process requires an assessment of the Company's ability to meet its obligation to serve electric customers in the near- and long-term. This process of determining the appropriate fuel types and mix of generation resources to ensure that all customers are being provided cost-efficient and reliable service is at the heart of the Company's business. Resulting decisions are the product of an extensive and methodological approach aimed at securing the appropriate level of generation, demand-side resources and market purchases to serve customers at reasonable cost and in a safe and reliable manner. These decisions relating to the technology and mix of resources used to efficiently and economically generate electricity are at the core of matters involving the Company's business and operations, are extremely complex and are beyond the ability of shareholders, as a group, to make informed judgments.

Management's decision-making is further complicated by the fact that the Company's activities are subject to the regulatory jurisdiction of various agencies, including but not limited to the Michigan Public Service Commission ("MPSC") and the NRC. For example, the MPSC regulates the Company's rates, recovery of certain costs, including the costs of generating facilities and regulatory assets, conditions of service, accounting and operating-related matters. As part of the Company's day-to-day operations, the Company evaluates a wide range of options for meeting customer needs, including decisions relating to plant closures and investments in new or existing generation. Any changes in the Company's mix of resources are developed in consultation with, and under the regulatory oversight of, the MPSC. In addition, the NRC has regulatory jurisdiction over all phases of the operation, construction, licensing and decommissioning of the Company's nuclear plant operations. In December 2016, the NRC approved the extension of the operating license of Fermi 2, which permits the power plant to continue generating electricity until 2045. Because of the breadth

and complexity of the regulatory environment and its impact on the Company's operations and finances, shareholders are not, as a practical matter, in a position to provide oversight for the Company's dealings with its regulators, let alone be able to provide an informed judgment regarding the impacts of specific technology and resource decisions on the Company.

The general policy underlying the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." 1998 Release. Accordingly, on numerous occasions, the Staff has concurred in the exclusion of shareholder proposals under Rule 14a-8(i)(7) because the proposals related to a company's choice of technologies for use in its operations. For example, in 2014, the Staff concurred in the exclusion of a proposal requesting an energy company's board to appoint a team to review the risks it faced under its solar generation development plans, including a review of other U.S. programs, and to develop a report detailing risks and benefits from increased solar generation, noting that the "proposal concerns the company's choice of technologies for use in its operations." *Dominion Resources, Inc.* (Feb. 14, 2014). In 2013, the Staff permitted, on the same grounds, an energy company to exclude a proposal requesting the diversification of the company's energy resources to include increased energy efficiency and renewable energy resources. *FirstEnergy Corp.* (Mar. 8, 2013). In FirstEnergy's letter to the Commission, the company argued that "[a]lthough the [p]roposal [was] styled as a request for the [c]ompany to assemble a report, it simultaneously intend[ed] to influence the [c]ompany' s choice of technology and resources used to generate electricity." In granting no-action relief, the Staff noted that proposals "that concern a company's choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7)." *See also*, allowing exclusion on the same grounds, *PG&E Corporation* (Mar. 10, 2014) (concurring in the exclusion of a proposal requesting a CPUC application to revise the company's smart meter policy to, among other things, allow no initial fees for opting out and no fees for opt out meters, install an analog meter free of charge upon request and require new smart meters only for those who voluntarily request them); *AT&T Inc.* (Feb. 13, 2012) (concurring in the exclusion of a proposal requesting a cable and internet provider to publish a report disclosing actions it was taking to address the inefficient consumption of electricity by its set-top boxes, including the company's efforts to accelerate the development and deployment of new energy efficient set-top boxes); *CSX Corp.* (Jan. 24, 2011) (concurring in the exclusion of a proposal requesting the company develop a kit that would allow it to convert the majority of its locomotive fleet to a more efficient system); *WPS Resources Corp.* (Feb. 16, 2001) (concurring in the exclusion of a proposal requesting an energy company develop new co-generation facilities and improve

energy efficiency because the proposal related to the "choice of technologies"); *Union Pacific Corp.* (Dec. 16, 1996) (concurring in the exclusion of a proposal requesting a report on the status of research and development of a new safety system for railroads on the basis that the development and adaption of new technology for the company's operations constituted ordinary business operations); *Applied Digital Solutions, Inc.* (Apr. 25, 2006) (concurring in the exclusion of a proposal requesting a report on the harm the continued sale and use of radio frequency identification chips could have to the public's privacy, personal safety and financial security as ordinary business related to the company's product development); *International Business Machines Corp.* (Jan. 6, 2005) (concurring in the exclusion of a proposal requesting the company employ specific technological requirements in its software as it related to IBM's ordinary business operations).

This Proposal, like the proposals described above, seeks to involve shareholders in decisions relating to the Company's choice of technology and mix of resources it uses in its electric service business. These decisions, which are fundamental to management's ability to run the Company on a day-to-day basis, are based on highly technical and complex matters. Company management, not shareholders, have the necessary skills, knowledge, expertise and resources available to make informed decisions. Accordingly, the Company believes the Proposal may properly be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(7).

C. The Proposal does not focus on a significant policy issue.

The Company does not believe that the Proposal focuses on a significant policy issue that transcends the Company's ordinary business or its day-to-day operations. The Proposal requests that the Company commission an independent economic assessment of the continued operation of the Company's Fermi 2 nuclear power plant. The Supporting Statement indicates that the Proposal also is focused on the Company investing in renewable energy for new generating capacity. However, the fact that the Proposal mentions nuclear operations or renewable energy does not remove it from the scope of Rule 14a-8(i)(7) because the Proposal is focused on the Company's financial decisions with respect to operating a specific power plant and not on a broader social policy issue.

The Staff has allowed the exclusion of proposals if their overall focus is not on a significant policy issue or other matter that is outside of ordinary business. For example, in *Exxon Mobil Corp.* (Mar. 6, 2012), the Staff allowed for the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the possible short and long term risks to the company's

finances and operations posed by the environmental, social and economic challenges associated with the oil sands. In its no-action letter, the Staff noted that the proposal "addresses the 'economic challenges' associated with the oil sands and does not, in our view, focus on a significant policy issue." *See also JPMorgan Chase & Co.* (Mar. 12, 2010) (concurring in the exclusion of a proposal requesting the adoption of a policy barring future financing of companies engaged in a particular practice impacting the environment because the proposal addressed "matters beyond the environmental impact of JPMorgan Chase's project finance decisions"); *Bank of America Corp.* (Feb. 24, 2010) (same); *General Electric Co.* (Jan. 9, 2009) (concurring in the exclusion of a proposal requesting a report addressing the potential costs and benefits to the company of divesting its nuclear energy investment in the near future, and investing instead in renewable energy as relating to the company's ordinary business operations); *Niagara Mohawk Holdings* (Jan. 3, 2001) (concurring in the exclusion under the ordinary business exclusion for a proposal relating to the operation of the company's nuclear energy facility with reinsertion of previously discharged fuel to achieve fuel cost and storage savings and minimize nuclear waste); *Carolina Power & Light* (Mar. 8, 1990) (concurring in the exclusion of a proposal requesting a report regarding specific aspects of the Company's nuclear operations relating to, *inter alia*, safety, regulatory compliance, emissions problems, hazardous waste disposal and related cost information as implicating the company's ordinary business operations); *General Electric Co.* (Feb. 2, 1987) (concurring in the exclusion of a proposal requesting the company prepare a cost-benefit analysis of the Company's nuclear promotion from 1971 to present, including costs related to lobbying activity and the promotion of nuclear power to the public as implicating ordinary business matters); *Pacific Gas & Electric Co. (Rattner)* (Feb. 8, 1984) (concurring in the exclusion of a proposal relating to obtaining appropriate levels of insurance at The Diablo Canyon Nuclear Power Plant to allow an adequate rate of dividends in the event of a serious accident at the plant as relating to the company's ordinary business operations).

Similar to the proposal in *Exxon Mobil*, the Proposal is focused on financial matters relating to the operation of the Fermi 2 nuclear power plant and not on a broader policy issue. The Proposal is entitled "Shareholders Resolution Requesting *Economic Assessment of the Continued Operation of Fermi 2*" (emphasis added) and contains numerous references to the economic impact to ratepayers and shareholders of the Company closing the Fermi 2 nuclear power plant. For example, the "Resolved" clause requests the following:

> that Company (DTE) commission an independent *economic analysis* of the *potential cost avoidance* and the *potential financial benefit to Shareholders and Ratepayers* of closing the Fermi 2 prior to the expiration of the Nuclear

> Regulatory Commission license. Shareholders request that this analysis include *financial projections* indicating the most advantageous date of closure, and that *opportunity costs* are examined. (emphasis added)
>
> In addition, the Proposal includes the following references to financial matters:
>
> - "Fermi 2 financials are so poor . . . ."
> - "The Fermi 2 nuclear plant is the most expensive electrical generating facility in the DTE fleet."
> - "The loss of potential business for DTE, and Michigan, will continue to rise with high electricity rates . . . ."
> - "Development of a diverse and growing local industrial sector benefits DTE Shareholders with increased sales and viability."
> - "This resolution is necessary to address the future viability of the company in changing times. Investments in distributed, renewable energy are the fastest, safest, most affordable way to expand generating capacity. To protect DTE's market share, and DTE stockholder's financial interests, the company must support distributed power, or more ratepayers will be lost to off grid, standalone systems."

Moreover, the Proposal barely touches on safety and environmental concerns. In fact, the only references to these issues are the Proposal's use of the words "clean" and "safe" in two paragraphs. The Proposal mentions "clean" and "safe" only once and twice, respectively, and neither word appears until the seventh paragraph of the Proposal.

The proposal in *Chesapeake Energy Corp.* (Apr. 13, 2010) provides a helpful contrast to the Proposal. The Staff denied no-action relief for a proposal seeking a report on various environmental issues relating to the company's hydraulic fracturing operations because "the proposal focuse[d] primarily on the environmental impacts of Chesapeake's operations." Unlike the Proposal, the text of the proposal in *Chesapeake Energy Corp.* clearly articulated its focus on the potential environmental "impacts on surrounding communities including the potential for increased incidents of toxic spills, water quantity and quality impacts, and air quality degradation." The Proposal, however, focuses on the Company's financial decisions with respect to operating the Fermi 2 power plant and not on a broader social policy issue.

The Staff also has allowed for the exclusion of proposals focusing on specific decisions relating to certain facilities or products rather than focusing on the broader policy issue. For example, the Staff has indicated that a proposal that mentions a significant policy issue is nevertheless excludable if it relates to the closure or relocation of particular company facilities. In *Pacific Telesis Group* (Feb. 2, 1989), the Staff stated that unlike "proposals dealing generally with the broad social and economic impact of plant closings or relocations[,] . . . proposals concerning specific decisions regarding the closing or relocation of particular plant facilities" are excludable. The Staff further stated that this position applies "even if such proposal deals generally with the broad social and economic [impacts] of plant closings and relocations." *See also Exxon Corp.* (Feb. 28, 1992) (concurring in the exclusion of part of a proposal requesting the company review its Northern Ireland operations, including the plant location, and prepare a report on the review as relating to the Company's ordinary business operations); *Newmont Mining Corp.* (Jan. 12, 2006) (concurring in the exclusion of a proposal on the basis of Rule 14a-8(i)(7) recommending management review its operations in Indonesia in light of potential financial and reputational risks to the company); *Hershey Company* (Feb. 2, 2009) (concurring in the exclusion of a proposal relating to manufacturing all finished products in the United States and Canada that are sold in those countries, pursuant to Rule 14a-8(i)(7), as relating to the location of the company's manufacturing operations); *The Allstate Corporation* (Feb. 19, 2002) (concurring in the exclusion of a proposal on the basis of Rule 14a-8(i)(7) recommending the company cease conducting operations in Mississippi); *Amgen Inc.* (Feb. 10, 2017) (concurring in the exclusion of a proposal requesting a report listing the rates of annual price increases of the company's top ten selling branded prescription drugs for the last six years under rule 14a-8(i)(7) because the proposal relates to the rationale and criteria for price increases of the company's top ten selling branded prescription drugs in the last six years); *Eli Lilly & Co.* (Feb. 10, 2017) (same).

Similar to the proposals cited above, the Proposal raises concerns about a particular Company power plant, which is mentioned by name several times in the Proposal, and focuses on the business decision of closing the power plant. The Proposal notes the financials of the Fermi 2 nuclear power plant and requests an economic assessment of the potential financial benefit of "closing the Fermi 2 prior to the expiration of the Nuclear Regulatory Commission license," including "financial projections indicating the most advantageous date of closure." Consistent with the precedent above, the Proposal does not focus on a broader social policy issue.

As discussed above, the Company's choice of technology and resources it uses in its electric service business is core to the Company's day-to-day business and operations, and the

Proposal does not focus on a significant policy issue that transcends the Company's ordinary business or its day-to-day operations. Accordingly, the Company believes the Proposal may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(7).

III. The Proposal May Be Excluded Under Rule 14a-8(i)(6) Because The Company Lacks The Power And Authority To Implement The Proposal.

Rule 14(a)-8(i)(6) permits the exclusion of a shareholder proposal if the company would lack the power or authority to implement the proposal. Although the Proposal is couched in terms of providing a report, the Proponent's ultimate objective is clearly the immediate closure of the Fermi 2 nuclear power plant. Here, even if the Company determined to move forward with closing the Fermi 2 nuclear power plant, it could not do so unilaterally and would instead be required to seek approval from Midcontinent Independent System Operator ("MISO"), which approval is not assured and is beyond the Company's control.

The Commission has acknowledged that exclusion under Rule 14a-8(i)(6) "may be justified where implementing a proposal would require intervening actions by independent third parties." *See* 1998 Release, at note 20. Further, the Staff has permitted exclusion of proposals that seek implementation through the action of third parties. For example, in *American Home Products Corp.* (Feb. 3, 1997), the proponent requested that advertising and literature associated with the company's product incorporate certain warnings. In granting no-action relief, the Staff stated that the proposal was excludable from the company's proxy materials under former Rule 14a-8(c)(6) because it would be beyond the company's power to lawfully effectuate the proposal as the company was not "free to add statements to its products labeling without regulatory approval or to add precautionary language to its advertisements beyond those approved for the product labeling." The Staff took a similar position in *Alza Corporation* (Feb. 12, 1997). In that case, the proponent requested that the company change the content of its product advertising and literature to address specific warnings related to its product. In granting no-action relief, the Staff found that the proposal was excludable under former Rule 14a-8(c)(6) because the company did not have the unilateral authority to change the content of its product advertising and literature without the involvement and approval of the U.S. Food and Drug Administration and thus did not have the power to effectuate the proposal as requested by the proponent. *See, e.g., eBay Inc.* (Mar. 26, 2008) (concurring in the exclusion of a proposal prohibiting the sale of dogs and cats on the company's affiliated Chinese website, where the website was a joint venture which eBay did not control and therefore eBay could not implement the proposal without the consent of its joint venture partner); *Catellus Development Corp.* (Mar. 3, 2005) (concurring in the

exclusion of a proposal requesting that the company take certain actions related to property it managed but no longer owned); *AT&T Corp.* (Mar. 10, 2002) (concurring in the exclusion of a proposal requesting a bylaw amendment concerning independent directors that would "apply to successor companies," where the staff noted that it did "not appear to be within the board's power to ensure that all successor companies adopt a bylaw like that requested by the proposal"); *SCEcorp (Recon.)* (Dec. 20, 1995) (concurring in the exclusion of a proposal to require unaffiliated fiduciary trustees of the company's employee stock plan, due to the lack of power by the company to compel the third parties to do so); *The Southern Co.* (Feb. 23, 1995) (concurring in the exclusion of a proposal requesting that the board of directors take steps to ensure ethical behavior by employees serving in the public sector).

In this case, the Proponent wishes the Company to close the Fermi 2 nuclear power plant. However, similar to *American Home Products Corp.* and *Alza Corporation*, the Company cannot unilaterally close a power plant without approval from MISO and participation by its other regulators, including the MPSC and NRC. Notably, MISO's permission is required to retire generating units pursuant to the MISO Tariff.[3] MISO has a defined approval process for unit retirements and extended reserve shutdowns called an Attachment Y process. During the approval process, MISO evaluates the impacts of a requested generating unit's retirement or shutdown on grid reliability and determines if a unit can be removed from service for extended time periods or retired without negatively impacting grid reliability planning requirements. Under the Tariff provisions, MISO has the ability to require the owner of a generating asset to maintain operation of the generation as a System Support Resource ("SSR") if the generator is needed to avoid violations of applicable planning criteria. If MISO requires the continued operation of a generating unit, MISO and the market participant negotiate the terms of an SSR Agreement, which is required to be filed with the Federal Energy Regulatory Commission prior to the effective date. The MISO Attachment Y process provides a mechanism to evaluate the retirement or suspension of generation resources to determine if transmission is adequate to permit a generator to discontinue operation.

In addition, closing the Fermi 2 nuclear power plant would require participation by the NRC, which has regulatory jurisdiction over all phases of the operation, construction, licensing and decommissioning of the Company's nuclear plant operations. To ensure that the

[3] MISO FERC Electric Tariff, 38.2.7 Generation Suspension, Generation Retirement, and System Support Resources (effective Apr. 8, 2017). *See also* MISO Transmission Expansion Plan ("MTEP17 Report"), 4.4 Generation Retirements and Suspensions (Dec. 2017).

decommissioning of a nuclear power plant is safe and environmentally sound, the NRC has established strict regulations outlining the requirements and processes companies must follow, including rules involving cleanup of radioactively contaminated plant systems and structures and removal of the radioactive fuel.

Closing the Fermi 2 nuclear power plant also would require participation by the MPSC, which, as discussed above, regulates the Company's rates and recovery of certain costs, including the costs of generating facilities and regulatory assets. The Company has sought and received approval from the MPSC to recover costs associated with Fermi 2. Consequently, the Company may be required to seek regulatory approvals from the MPSC to address recovery of Fermi 2 costs under the Company's current rates.

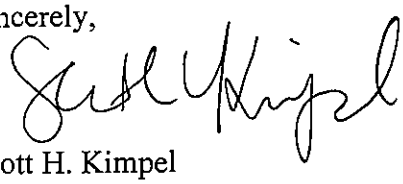
For the reasons discussed above, the Company does not have the unilateral power or authority to implement the action the Proponent advocates the Company undertake because express approval by MISO and participation by its regulators, including the MPSC and NRC, are required. In view of the foregoing, the Company lacks the power or authority to implement the Proposal and, therefore, believes that the Proposal may be excluded from the 2018 Proxy Materials under Rule 14a-8(i)(6).

Conclusion

For the foregoing reasons, the Company respectfully requests your confirmation that the Staff will not recommend any enforcement action to the Commission if the Company excludes the Proposal from the 2018 Proxy Materials.

Please do not hesitate to contact me at (202) 955-1524, or by email at skimpel@hunton.com, if you have any questions or require any additional information regarding this matter.

Sincerely,



Scott H. Kimpel

HUNTON&
WILLIAMS

Enclosures

cc: Timothy Kraepel, Director – Legal (Securities, Finance & Governance), DTE Energy Company (via email)
Kenneth Fink (via overnight delivery)

EXHIBIT A

20 October 2017

DTE Corporate Secretary
DTE Energy Company
One Energy Plaza
Room 2386 WCB
Detroit MI 48226-1279

To Whom It May Concern:

I am a Beneficial Stockholder and wish to introduce the following resolution recommending the phase-out of the Fermi 2 nuclear reactor. The resolution calls for replacing Fermi 2 with a program to produce electricity by a sustainable energy source. I am submitting this resolution for inclusion in the company's proxy card for the 2018 annual meeting.

Also attached is the letter from my broker showing I have the required stock holdings, which I have continually held since 2011. I will still hold those shares by the time the 2018 meeting occurs.

Since the location of the 2018 meeting has not been announced, I will later provide the name of my representative that will present the resolution.

This resolution is being filed before the Nov. 20, 2017 deadline, so that I add any necessary information that may have been omitted from this filing.

Feel free to contact me should you have any questions or concerns.

Sincerely,

Kenneth Fink
***

Proxy control number 0463457716751727

Cc
Jessie Pauline Collins, CRAFT Co-chair
***

*** FISMA & OMB Memorandum M-07-16

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

October 04, 2017

Kenneth Fink
***

Dear Mr. Fink:

Thank you for contacting Fidelity Investments in regards to a holding verification for your Traditional IRA account ending in *** . I appreciate the opportunity to assist you.

Please allow this letter to serve as confirmation that as of October 3, 2017 you held 307.634 shares of DTE Energy Holding Co. common stock (Symbol DTE; CUSIP 233331107). Your initial purchase of this security occurred on November 9, 2011 for 250 shares and no sales have occurred within your account since this date.

I hope you find this information helpful. If you have any questions regarding this issue or general inquiries regarding your account, please contact your Private Client Group Team at 800-544-5704 for assistance.

Sincerely,

Sam Griffith
Personal Investing Operations

Our File: W835618-04OCT17

*** FISMA & OMB Memorandum M-07-16

Criteria for Economic Assessment of the Continued Operation of Fermi 2

Whereas: The worldwide energy market is rapidly shifting from fossil fuels and nuclear to distributed renewable power.

Whereas: The loss of potential business for DTE, and Michigan, will continue to rise with high electricity rates driving a continued exodus of the manufacturing base in Michigan, and driving ratepayers off grid.

Whereas: Development of a diverse and growing local industrial sector benefits DTE stockholders with increased sales and viability. Michigan is positioned to be a solar energy manufacturing hub going into the future. Adopting solar energy solutions on a mass scale feeds business synergy locally with leaders in the field.

Whereas: The continued operation of Fermi 2 is a wholly unnecessary addition to the grid mix, with current online supplies exceeding demand.

Whereas: Persistent seasonal toxic algae blooms in Lake Erie are demonstrably linked to Fermi's thermal discharges and pose a severe threat to drinking water and human health.

Whereas: The viability of distributed energy storage is already a reality. Elon Musk of Tesla, Inc. has resolved the storage issue by his battery wall technology

Whereas: Large scale energy storage exists in Michigan for decades in the form of the Ludington Power Pumping Station, and can be expanded, easing the transition to distributed, renewable energy and reducing the need for buying make up energy and fuel from out of state. Wide spread storage adds reliability and survivability, countering existing distribution inefficiencies and vulnerabilities.

Resolved: Company (DTE) should cease and desist operating Fermi 2, and move aggressively to establish renewable energy and energy storage capacity, or risk economic suicide. As markets shift to safe, clean, rapidly deployable, renewable energy installations, continued refusal to engage and support the evolving market will equate to abandoning the new market share for refusal to adapt. DTE should offer installation, financing, and power purchasing agreements to all customers with clean, renewable energy generating resources on site, in addition to current efforts to expand centralized wind and solar. Customers will be better served, DTE will retain market share, and generating capacity will be added without adding costly land holdings.

Supporting Statement:
This resolution is necessary to address the future viability of the company in changing times. Investments in distributed, renewable energy are the fastest, safest, most affordable way to expand generating capacity. In order to protect DTE's market share, and DTE stockholder's financial interests, the company must support distributed power, or more ratepayers will be lost to off grid, standalone systems.

HUNTON & WILLIAMS LLP
2200 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20037-1701

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

SCOTT H. KIMPEL
DIRECT DIAL: 202 • 955 • 1524
EMAIL: SKimpel@hunton.com

October 31, 2017

FILE NO: 55788.41

VIA OVERNIGHT DELIVERY

Mr. Kenneth Fink
***

Dear Mr. Fink:

I am writing on behalf of our client, DTE Energy Company (the "Company"), which received your stockholder submission entitled "Criteria for Economic Assessment of the Continued Operation of Fermi 2" (the "Submission") on October 26, 2017. The Submission contains certain procedural deficiencies that SEC regulations require the Company to bring to your attention.

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), provides that stockholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the stockholder proposal was submitted. The Company's stock records do not indicate that you are the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received adequate proof that you have satisfied Rule 14a-8's ownership requirements as of the date that the Submission was submitted to the Company. The October 4, 2017, letter from Fidelity Investments (the "Fidelity Letter") that you provided is insufficient because it verifies ownership between November 9, 2011, and October 3, 2017, rather than for the one-year period preceding and including October 20, 2017, the date the Submission was submitted to the Company. In addition, the Fidelity Letter is insufficient because it does not state that the shares were held continuously during the required one-year period.

To remedy these defects, you must obtain a new proof of ownership letter verifying your continuous ownership of the required number of Company shares for the one-year period preceding and including October 20, 2017, the date the Submission was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

*** FISMA & OMB Memorandum M-07-16

(l) a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that you continuously held the required number of Company shares for the one-year period preceding and including October 20, 2017; or

(2) if you have filed with the SEC a Schedule l3D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the required number of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and statement that you continuously held the required number of Company shares for the one-year period.

If you intend to demonstrate ownership by submitting a written statement from the "record" holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository. DTC is also known through the account name of Cede & Co. Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC's participant list, which is available at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

(1) If your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the required number of Company shares for the one-year period preceding and including October 20, 2017.

(2) If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the required number of Company shares for the: one-year period preceding and including October 20, 2017. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership

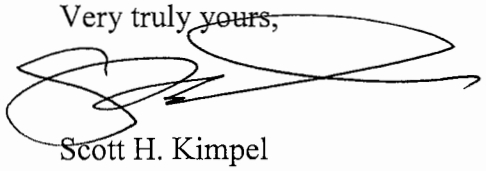
statements verifying that, for the one-year period preceding and including October 20, 2017, the required number of Company shares were continuously held: (i) one from your broker or bank confirming your ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

Moreover, as discussed above, under Rule 14a-8(b) of the Exchange Act, a stockholder must have continuously held at least $2,000 in market value, or 1%, of the Company's securities entitled to vote on the proposal for at least one year as of the date the proposal was submitted to the Company *and* must provide to the Company a written statement of the stockholder's intent to continue ownership of the required number of shares through the date of the Company's 2018 Annual Meeting of Stockholders. We believe that your written statement that you "will still hold those shares by the time the 2018 meeting occurs" is not adequate to confirm that you intend to hold the required number of the Company's shares through the date of the 2018 Annual Meeting of Shareholders. To remedy this defect, you must submit a written statement that you intend to continue holding the required number of Company shares through the date of the Company's 2018 Annual Meeting of Shareholders.

Finally, according to Rule 14a-8(c) under the Exchange Act, a stockholder may submit no more than one proposal to a company for a particular stockholders' meeting. We believe that the Submission includes more than one stockholder proposal. Specifically, while parts of the Submission appear to relate to the closure of the Company's Fermi 2 Power Plant, we believe that the other two items requesting that the Company "move aggressively to establish renewable energy and energy storage capacity" and that it "should offer installation, financing, and power purchasing agreements to all customers" each address a separate and distinct matter. You can correct this procedural deficiency by indicating which proposal you would like to submit and which two proposals you would like to withdraw.

Please note that the SEC's rules require your response to this letter be postmarked or transmitted electronically to me no later than 14 calendar days from the date you receive this letter. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Very truly yours,



Scott H. Kimpel

Enclosures

Appendix A
Rule 14a-8

Title 17: Commodity and Securities Exchanges
PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1:* What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections:* If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal:* If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented:* If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.,* one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication:* If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions:* If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends:* If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010]

Appendix B
Staff Legal Bulletin No. 14F

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.

B. The types of brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Eligibility to submit a proposal under Rule 14a-8

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.[1]

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.[2] Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.[3]

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.[4] The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.[5]

3. Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to

accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,[8] under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.[9]

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC

participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).[10] We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

> "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."[11]

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c).[12] If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.[13]

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act

on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company's no-action request.[16]

F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission's website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

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[1] *See* Rule 14a-8(b).

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

[3] If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

[4] DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. *See* Proxy Mechanics Concept Release, at Section II.B.2.a.

[5] *See* Exchange Act Rule 17Ad-8.

[6] *See* Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

[8] *Techne Corp.* (Sept. 20, 1988).

[9] In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. *See* Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

[10] For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

[11] This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

[12] As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

[13] This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by

the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

[14] *See, e.g.*, Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

[15] Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

[16] Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

http://www.sec.gov/interps/legal/cfslb14f.htm

From: iShip_Services@iship.com
To: Kelley, JaVonda
Subject: Delivery Notification
Date: Wednesday, November 01, 2017 11:16:50 AM

The shipment to Mr. Kenneth Fink has been delivered.

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SHIPMENT SUMMARY

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SENDER

Hunton & Williams LLP

Washington, DC 20037

RECIPIENT

Mr. Kenneth Fink

ANN ARBOR, MI 48103-4845 US

SHIPPED THROUGH

Hunton & Williams

202-955-1827

CARRIER & SERVICE

UPS Next Day Air

SHIPMENT TRACKING & REFERENCE

Tracking No.: ***

Shipment ID: ***

Client Matter #: 55788.000041

*** FISMA & OMB Memorandum M-07-16

User ID: ***

SHIP DATE

Tuesday, October 31, 2017

DELIVERY DATE

Wed 01 Nov 2017 09:51 AM

MESSAGE FROM SENDER

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TRACKING INFORMATION

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To get complete tracking information, click the following link:

https://urldefense.proofpoint.com/v2/url?u=https-3A__iship.com_trackit_track.aspx-3Ft-3D1-26Track-
*** rc-3D-5Fe&d=DwIFAg&c=jxhwBfk-KSV6FFIot0PGng&r=J0ZS2Y_nVJ-
hRDQLUsXew6OKMfFc1TgV7tq5pPq1Tkk&m=Pr_50kwDE6pYqLKS_L-x8eV44fN4NV_V4yscukgbANg&s=-
qPycJ5-l4_SeRDWG-Idcesx2-jSB6mjrqUaNqbTebc&e=

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QUESTIONS OR CONCERNS ABOUT THIS SHIPMENT?

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If you have questions regarding this shipment, have the carrier

tracking number ready and then contact UPS directly:

1-800-PICK-UPS (1-800-742-5877)

Or contact the facility listed in the SHIPPED THROUGH section above.

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DO NOT REPLY DIRECTLY TO THIS E-MAIL

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Questions or Comments about the iShip service?

mailto:info@iship.com

Need technical support for the iShip service?

mailto:support@iship.com

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On-line shipping and tracking services brought to you by iShip(r).

Shipping Insight.(r)

Want to use iShip for your corporate shipping? Visit https://urldefense.proofpoint.com/v2/url?u=http-3A__iship.com&d=DwIFAg&c=jxhwBfk-KSV6FFIot0PGng&r=J0ZS2Y_nVJ-hRDQLUsXew6OKMfFc1TgV7tq5pPq1Tkk&m=Pr_50kwDE6pYqLKS_L-x8eV44fN4NV_V4yscukgbANg&s=UnuRO-WQpZhEsOH7b6abIIt0_G8I3ww8jNbmn0KH-mU&e=.

Wednesday, November 1, 2017 08:15 AM Pacific Daylight Time

13 November 2017
(Revision to submission dated 20 October 2017)

Scott Kimpel
Hunton and Williams Law Firm
2200 Pennsylvania Ave., NW
Washington, DC 20037-1701

DTE Corporate Secretary
DTE Energy Company
One Energy Plaza
Room 2386 WCB
Detroit MI 48226-1279

Dear Mr. Kimpel:

In response to your Oct. 31st letter regarding my stockholder's proposal filing, I am updating per your recommendations. We have revised the proposal to simplify it, and therefore not in violation of the one-proposal limitation in Rule 14a-8(c).

Please find attachd the broker's new letter verifying I am eligible to submit this proposal. I intend to continue holding the required number of shares through the date of the 2018 Annual Meeting of Shareholders.

Feel free to contact me further if you have more questions or concerns.

Sincerely,

Kenneth E. Fink

Kenneth E. Fink
***

Cc: CRAFT, ***

*** FISMA & OMB Memorandum M-07-16

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

November 10, 2017

Kenneth Fink
***

Dear Mr. Fink:

Thank you for contacting Fidelity Investments. This letter is in response to your request for Fidelity to verify the purchases and sales of DTE Energy Holding Co. (DTE) within your Traditional IRA ending in *** . I appreciate the opportunity to assist you with this matter.

Your initial purchase of this security occurred on November 9, 2011 for 250 shares. Since that initial purchase, no sales or transfers have occurred out of your account. Please see following tables for the detailed history of DTE Energy Holding Co. (DTE) holdings within the above referenced account:

Number of shares owned as of the close of trading on November 09, 2011	250.000
Number of shares owned as of the close of trading on November 09, 2017	309.934

Trade Date	Transaction Type	Event Quantity	Event Amount	Price
11/09/2011	Buy	250.000	$12,757.95	$51.00
01/15/2012	Div Reinvest	2.736	$146.88	$0.00
04/15/2012	Div Reinvest	2.747	$148.48	$0.00
07/15/2012	Div Reinvest	2.543	$150.10	$0.00
10/15/2012	Div Reinvest	2.635	$159.98	$0.00
01/15/2013	Div Reinvest	2.641	$161.61	$0.00
04/15/2013	Div Reinvest	2.361	$163.25	$0.00
07/15/2013	Div Reinvest	2.589	$174.01	$0.00
10/15/2013	Div Reinvest	2.674	$175.71	$0.00
01/15/2014	Div Reinvest	2.656	$177.46	$0.00
04/15/2014	Div Reinvest	2.378	$179.20	$0.00
07/15/2014	Div Reinvest	2.376	$180.75	$0.00
10/15/2014	Div Reinvest	2.438	$192.05	$0.00

Cost Basis, Gain/Loss, and Holding Period Information: NFS will report gross proceeds and certain cost basis and holding period information to you and the IRS on your annual Form 1099-B as required or allowed by law, but such information may not reflect adjustments required for your tax reporting purposes. Taxpayers should verify such information when calculating reportable gain or loss. Fidelity and NFS specifically disclaim any liability arising out of a customer's use of, or any tax position taken in reliance upon, such information. Unless otherwise specified, NFS determines cost basis at the time of sale based on the average cost-single category (ACSC) method for open-end mutual funds and on the first-in, first-out (FIFO) method for all other securities. Consult your tax advisor for further information.

Personal Investing

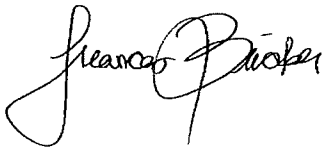
P.O. Box 770001
Cincinnati, OH 45277-0045

Trade Date	Transaction Type	Event Quantity	Event Amount	Price
01/15/2015	Div Reinvest	2.243	$193.73	$0.00
04/15/2015	Div Reinvest	2.386	$195.28	$0.00
07/15/2015	Div Reinvest	2.530	$196.93	$0.00
10/15/2015	Div Reinvest	2.575	$210.19	$0.00
01/15/2016	Div Reinvest	2.680	$212.07	$0.00
04/15/2016	Div Reinvest	2.405	$214.03	$0.00
07/15/2016	Div Reinvest	2.202	$215.78	$0.00
10/12/2016	Div Reinvest	2.503	$229.30	$0.00
01/11/2017	Div Reinvest	2.526	$247.75	$0.00
04/11/2017	Div Reinvest	2.423	$249.83	$0.00
07/12/2017	Div Reinvest	2.387	$251.83	$0.00
10/12/2017	Div Reinvest	2.300	$253.80	$0.00

This table contains information as of November 09, 2017, and can be subject to change pending any new and subsequent transactions in the same securities. They may not reflect impact from any previous corporate actions. This information is unaudited and is not intended to replace your monthly statement or official tax documents.

I hope you find this information helpful. If you have any questions regarding this issue or general inquiries for your account, please contact your Private Client Group team at 800-544-5704 for assistance.

Sincerely,



Frances Bricker
Personal Investing Operations

Our File: W744291-09NOV17

Shareholders Resolution Requesting Economic Assessment of the Continued Operation of Fermi 2

Whereas: The worldwide electric energy market is rapidly shifting from fossil fuels and nuclear electricity to distributed renewable electric power.

Whereas: Fermi 2 financials are so poor, that it is at risk of closing because Operation and Maintenance (O&M) costs alone exceed the day-ahead purchase price for replacement power. https://nuclear-news.net/2016/10/19/the-r-street-institutes-sober-assessment-of-nuclear-power-costs/ (Oct. 19, 2016)

Whereas: The Fermi 2 nuclear plant is the most expensive electrical generating facility in the DTE fleet.

Whereas: The loss of potential business for DTE, and Michigan, will continue to rise with high electricity rates driving a continued exodus of the manufacturing base in Michigan, and driving ratepayers off grid.

Whereas: Development of a diverse and growing local industrial sector benefits DTE Shareholders with increased sales and viability. Michigan is positioned to be a solar energy manufacturing hub. Adopting solar energy solutions on a mass scale feeds business synergy locally with leaders in the field.

Whereas: DTE half ownership of the Ludington Power Pumping Station provides storage of electrical power which can be made available during peak demand. This DTE half ownership is advantageous in positioning DTE with the flexibility to move aggressively to distributed and renewable energy.

Whereas: Regional and national energy markets are trending to safe, clean, rapidly deployable, renewable energy installations, DTE now can aggressively move toward these renewable energy and energy storage markets.

Whereas: DTE can aggressively pursue additional installation, financing, and power purchasing agreements for renewable energy including wind and solar while retaining market share.

Resolved: Shareholders request that Company (DTE) commission an independent economic analysis of the potential cost avoidance and the potential financial benefit to Shareholders and Ratepayers of closing the Fermi 2 prior to the expiration of the Nuclear Regulatory Commission license. Shareholders request that this analysis include financial projections indicating the most advantageous date of closure, and that opportunity costs are examined. Shareholders request that a report be provided and presented at the next DTE Shareholders Meeting.

Supporting Statement: This resolution is necessary to address the future viability of the company in changing times. Investments in distributed, renewable energy are the fastest, safest, most affordable way to expand generating capacity. To protect DTE's market share, and DTE stockholder's financial interests, the company must support distributed power, or more ratepayers will be lost to off grid, standalone systems.