

**AGREEMENT BETWEEN SIERRA CLUB  
AND DTE ENERGY COMPANY AND DETROIT EDISON COMPANY**

The Parties to this Agreement (“Agreement”) are Sierra Club on the one hand and DTE Energy Company and Detroit Edison Company (collectively, “Detroit Edison”) on the other.

**RECITALS**

WHEREAS, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint against Detroit Edison on August 5, 2010, and Sierra Club subsequently intervened. *United States, et al. v. DTE Energy Company, et al.*, No. 2:10-cv-13101-BAF-RSW (E.D. Mich.).

WHEREAS, the United States and Sierra Club were later granted leave to amend their complaints (“Complaints”) and thereafter filed amended complaints (“Amended Complaints”), which alleged violations of the Clean Air Act (“CAA” or “the Act”) against Detroit Edison. Sierra Club, however, was denied leave to assert certain additional claims in its Amended Complaint.

WHEREAS, Detroit Edison does not admit any liability arising out of the transactions or occurrences alleged in the Complaints.

WHEREAS, the United States, Sierra Club, and Detroit Edison have executed and are lodging a Consent Decree (hereinafter “US Consent Decree”).

WHEREAS, in light of this and other ongoing matters in which Sierra Club and Detroit Edison have been involved, they desire to foster a spirit of cooperation and to work together for the benefit of the local community by undertaking the projects as described in Appendix A to the Agreement. They therefore have separately agreed to the terms of this Agreement as further consideration to resolve certain disputes between Sierra Club and Detroit Edison under federal

law, including but not limited to claims that the Court denied Sierra Club leave to assert in its Amended Complaint, as described further herein.

WHEREAS, the Parties recognize that this Agreement has been negotiated in good faith and that their settlement will avoid the expense and uncertainty of continued or potential litigation.

NOW, THEREFORE, without admission of any violation of law or liability by Detroit Edison, the Parties agree to the following:

### **APPLICABILITY**

1. The provisions of this Agreement shall apply to and be binding upon the Sierra Club and upon Detroit Edison and their respective successors, assigns, or other entities or persons otherwise bound by law. This Agreement may be assigned by Detroit Edison to another entity in connection with the sale or transfer of the River Rouge, Trenton Channel, or St. Clair power plants, and Detroit Edison shall be relieved of its obligations hereunder with respect to River Rouge, Trenton Channel, or St. Clair power plants if any of those plants are sold, transferred, or assigned, on and after such sale, transfer, or assignment provided that the purchaser, transferee, or assignee executes an assignment agreement as a condition of the sale, transfer, or assignment and agrees in writing to be bound by and liable for all of Detroit Edison's requirements in this Agreement being assumed. This Agreement is not assignable by the Sierra Club.

2. Detroit Edison shall expressly condition the sale or transfer of its River Rouge, Trenton Channel, or St. Clair power plants on any current or future buyer's or transferee's express acceptance of the retirement requirements set forth in this Agreement.

**DEFINITIONS**

3. The Definitions and other provisions set forth in Section III of the US Consent Decree are hereby incorporated herein as if fully set forth in (and shall be deemed to be part of) this Agreement.

**COMPLIANCE REQUIREMENTS**

4. By no later than the specific dates set forth below, Detroit Edison shall Retire the following Units:

Unit Name	Compliance Deadline (For Each Individual Unit)
River Rouge Unit 3	December 31, 2022
St. Clair Units 2-3 and 6-7	December 31, 2022
Trenton Channel Unit 9	December 31, 2022

5. Notwithstanding the deadlines in Paragraph 4 above, if the Retrofit, Refuel, Repower deadlines set forth in Paragraph 7 of the US Consent Decree for River Rouge Unit 3, St. Clair Units 2-3 and 6-7, or Trenton Channel Unit 9 are extended pursuant to that Paragraph or pursuant to the Force Majeure provisions of the US Consent Decree, the Retirement dates of these Units shall be extended to the same extent.

6. The provisions set forth in Section V (Prohibition on Netting Credits or Offsets) of the US Consent Decree apply to the emission reductions that result from Detroit Edison’s compliance with the requirements of Paragraph 4 above, and such provisions are hereby incorporated herein as if fully set forth in (and shall be deemed to be part of) this Agreement.

### **ENVIRONMENTAL MITIGATION PROJECTS**

7. Detroit Edison shall implement the Environmental Mitigation Projects (“Projects”) described in Appendix A to this Agreement.
8. Detroit Edison shall maintain, and present to Sierra Club upon request, documents to substantiate the completion of the Project described in Appendix A, and shall provide these documents to Sierra Club within 30 Days following such request.
9. Detroit Edison shall use good faith efforts to secure as much environmental benefit as possible for each of the Projects, consistent with the applicable requirements and limits of this Agreement.
10. Within 60 Days following the completion of each Project required under this Agreement (including any applicable periods of demonstration or testing), Detroit Edison shall submit to Sierra Club a report that documents the date that the Project was completed and the Project Dollars expended by Detroit Edison in implementing the Project.
11. In connection with any communication to the public or to shareholders regarding Detroit Edison’ actions or expenditures relating in any way to the Environmental Mitigation Projects set forth in Appendix A, Detroit Edison shall include prominently in the communication the information that the actions and expenditures were required by this Agreement.

### **REMEDIES**

12. The Parties agree that neither Party will be responsible or liable for monetary damages (direct, indirect, consequential, etc.) as a result of any breach of this Agreement. The Parties acknowledge and agree that monetary damages are not available as a remedy in the event the obligations of this Agreement are breached. The Parties agree that monetary damages would

not be an adequate remedy for material breach of this Agreement, and that no adequate remedy at law exists for noncompliance with the terms of this Agreement.

13. Accordingly, the Parties expressly agree that an award of injunctive relief is the appropriate remedy for a material breach of the obligations under this Agreement, provided the reviewing court has followed appropriate procedures for issuing injunctive relief. The Parties also agree that should either Party commence any legal action to enforce this Agreement, that neither Party will seek any remedy except specific performance.

### **RELEASE**

14. In consideration of the terms of this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, Sierra Club hereby remises, releases, and forever discharges Detroit Edison, its successors, assigns, subsidiaries, and affiliates, and each of their respective employees, representatives, officers, directors and shareholders of and from any and all claims that Sierra Club made or could have made against Detroit Edison that arose, directly or indirectly, from any modifications commenced at any System Unit prior to the Effective Date of this Agreement, including but not limited to those set forth in its Amended Complaint and related to the System Units and those that the Court denied Sierra Club leave to include in its Amended Complaint, under any or all of the following federal CAA provisions: (a) Part C or D of Subchapter I of the CAA, 42 U.S.C. §§ 7470-7492, 7501-7515, and the implementing PSD and Nonattainment NSR provisions of the Michigan SIP; (b) Section 111 of the CAA, 42 U.S.C. § 7411, and 40 C.F.R. Section 60.14; and (c) Title V of the CAA, 42 U.S.C. §§ 7661-7661f. Notwithstanding any foregoing provisions to the contrary, Sierra Club reserves its rights to enforce Detroit Edison's obligations under this Agreement pursuant to paragraphs

12, 13, 15, and 21 of this Agreement, and under the US Consent Decree pursuant to the terms of that Consent Decree.

### **DISPUTE RESOLUTION**

15. Before commencing any legal action to enforce this Agreement for a Party's material breach of this Agreement, a Party must: i) notify the other Party in writing of such material breach providing details regarding the nature of the breach, so that the other Party could explore whether it could cure such material breach through diligence and ii) take at least 30 days before filing any such action, during which period the Parties will undertake all reasonable efforts to resolve the matter, provided, further, if the non-performing Party is working to diligently cure the material breach, and the non-performing Party cannot reasonably cure in 30 days, such Party, provided it exercises diligence to cure the breach, will be given more time to cure the breach before an action is filed.

### **SALES OR TRANSFERS OF OPERATIONAL OR OWNERSHIP INTERESTS**

16. At least 60 Days prior to any transfer of ownership or operation of any System Unit, Detroit Edison shall provide a copy of this Agreement to the proposed transferee and shall simultaneously provide written notice of the prospective transfer to Sierra Club. No transfer of ownership or operation of a System Unit, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Detroit Edison of the obligation to ensure that the terms of this Agreement are implemented, unless and until:

- a. the transferee agrees, in writing, to undertake the obligations required by this Agreement with respect to that System Unit(s);
- b. Sierra Club consents, in writing, to relieve Detroit Edison of its Consent Decree obligations applicable to such System Unit(s); and

c. the transferee becomes a party to this Agreement with respect to the System Unit(s), pursuant to Paragraph 20 below (Modification).

17. Any attempt to transfer ownership or operation of any of the System Units or any portion thereof, without complying with Paragraph 16 above constitutes a breach of this Agreement.

**NOTICES**

18. Notices to Sierra Club or Detroit Edison related to this Agreement shall be made as follows:

**As to the Sierra Club:**

Shannon Fisk  
Earthjustice  
1617 John F. Kennedy Blvd. Suite 1130  
Philadelphia, PA 19103  
sfisk@earthjustice.org

**As to Detroit Edison:**

DTE Energy Company  
Office of the General Counsel  
One Energy Plaza  
Detroit, MI 48226

Attn: DTE Electric General Counsel

With copy to:

DTE Energy Company  
Environmental Management & Resources  
One Energy Plaza 2455 WCB  
Detroit, MI 48226

Attn: Vice President

**EFFECTIVE DATE**

19. The effective date of this Agreement shall be the date following the date on which the District Court for the Eastern District of Michigan enters the US Consent Decree and dismisses the Amended Complaints filed by the United States and Sierra Club.

**MODIFICATION**

20. The terms of this Agreement may be modified only by a subsequent written agreement signed by the Parties to this Agreement.

**CHOICE OF LAW**

21. This Agreement will be construed and governed in all respects by the laws of the State of Michigan, without regard to the principles of conflicts of law. A Party seeking to resolve a dispute arising over the terms and conditions contained in this Agreement must seek relief from a court of competent jurisdiction located in Wayne County, Michigan.

**SIGNATORIES AND SERVICE**

22. The undersigned representative of Detroit Edison and Sierra Club certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind to this document the Party he or she represents.

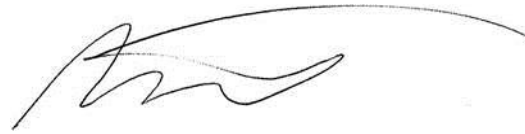
23. This Agreement may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.



**FOR SIERRA CLUB**

By its Counsel:

5/11/20  
Date



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Shannon Fisk  
Managing Attorney  
Earthjustice  
1617 John F. Kennedy Blvd. Suite 1130  
Philadelphia, PA 19103

**FOR DTE ENERGY CO. AND DETROIT EDISON CO.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Randall L. Rutkofske  
Vice President & Deputy General Counsel DTE Energy  
General Counsel DTE Electric Company  
One Energy Plaza, 2335 WCB, Detroit MI 48226

**FOR SIERRA CLUB**


By its Counsel:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Shannon Fisk  
Managing Attorney  
Earthjustice  
1617 John F. Kennedy Blvd. Suite 1130  
Philadelphia, PA 19103

**FOR DTE ENERGY CO. AND DETROIT EDISON CO.**

May 5, 2020  
Date

  
Randall L. Rutkofske  
Vice President & Deputy General Counsel DTE Energy  
General Counsel DTE Electric Company  
One Energy Plaza, 2335 WCB, Detroit MI 48226

## APPENDIX A

### ENVIRONMENTAL MITIGATION PROJECTS FOR AGREEMENT BETWEEN PLAINTIFF SIERRA CLUB AND DEFENDANTS DTE ENERGY COMPANY AND DETROIT EDISON COMPANY

1. Defendants shall comply with the requirements of this Appendix and Paragraphs 7 through 11 (Environmental Mitigation Projects) of the Agreement to implement and secure the benefits of each of the projects described in this Appendix.

#### **A. Bus Replacement Project - Electrification**

2. For purposes of carrying out the Bus Replacement Project set forth in Appendix A to the US Consent Decree, Defendants shall propose and implement a plan to replace school buses and/or municipal transit buses with electric buses and related electrification infrastructure. Defendants shall seek and prioritize making such bus replacements in Ecorse, River Rouge, the 48217 zip code, and/or other non-attainment and/or environmental justice areas within Wayne County.

#### **B. Community Based Environmental Projects (no less than \$ 2 million)**

3. DTE will establish, within 120 days of the effective date of the Agreement, a Community Environmental Action Committee (“Committee”) that will assist DTE in selecting and implementing projects within Ecorse, River Rouge, and the 48217 zip code.

4. The Committee will be made up of five members: One DTE representative; one representative from an academic institution with a focus on public health and/or the environment; and three community members who reside in Ecorse, River Rouge, or the 48217

zip code. DTE shall consult with Sierra Club to identify a list of community members to serve on the Committee.

5. DTE is responsible for convening the committee as necessary, but no less than once a quarter for the first year after its establishment, to consider and recommend community based environmental projects. The projects recommended by the Committee will seek to maximize public health and environmental benefits in Ecorse, River Rouge, and/or the 48217 zip code, and may include urban solar arrays, installation of air filtration systems in public schools and homes, urban forestation, health and safety retrofits for low-income customers, and reducing energy use and overall energy cost burden. The Committee will make project recommendations by majority vote of all members. The Committee may recommend projects on a rolling basis, and shall recommend projects totaling at least \$2 million no later than June 30, 2021.

6. The Committee shall not propose, and DTE will not fund, any project that would provide a direct financial benefit to any Committee member, or for which the entity or entities that selected such members would be the primary beneficiary of a project. DTE will not be deemed the primary beneficiary of a project solely because it is the owner, operator, seller, or purchaser of electricity or renewable energy credits from projects recommended by the committee, or because of good will generated as a result of DTE funding such projects.

7. Committee members filling the three “community member” seats on the committee will be eligible for a per-meeting stipend of \$300 for all in-person meetings, and a \$100 stipend for all meetings conducted through remote participation. DTE will pay the stipends from funds outside the settlement. The stipend does not create a legal, financial, or fiduciary relationship between DTE and the community members of the Committee, and should not be used as any evidence of a conflict of interest.

8. DTE shall fund and/or implement one or more of the projects recommended by the Committee and complete such project or projects no later than June 30, 2023. DTE shall spend no less than \$2 million on these projects.

9. DTE will inform the Committee of progress on the projects on a semi-annual basis after each project is selected.

10. In all communications to the public or shareholders about the projects recommended by the Committee and formally selected by DTE, Defendants shall include prominently in the communication that the projects were required by the Agreement and the Committee's role in selecting the project.

### **C. Energy Efficiency Improvement Project at Kemeny Recreation Center**

11. DTE will work with Kemeny Recreation Center, located at 2260 S. Fort St., in the Boynton community in Detroit, Michigan, to improve energy efficiency and reduce overall energy use at the facility, DTE will fund at least one project to advance such energy efficiency and use goals at the Center.

12. DTE will inform Sierra Club when DTE selects a project and when it has completed the project. Such project shall be selected within one year, and completed within three years, of the effective date of the Agreement.