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DOSTER LAW OFFICES, PLLC
2145 Commons Parkway
Okemos, MI 48864

Eric E. Doster
Email: eric@ericdoster.com

(517) 483-2296 (main)
(517) 977-0147 (direct)
www.ericdoster.com

January 8, 2021

Federal Election Commission
Office of Complaints Examination & Legal Administration
ATTN: Jeff S. Jordan, Assistant General Counsel
Kathryn Ross, Paralegal
1050 First Street, NE
Washington, DC 20463

BY EMAIL TRANSMISSION
cela@fec.gov

RE: MUR 7847 (DTE Energy Company, DTE Energy Corporate Services, LLC)

Dear Mr. Jordan and Ms. Ross:

This office represents DTE Energy Company and DTE Energy Corporate Services, LLC, in response to the complaint (the "Complaint") filed by the Campaign Legal Center. The Complaint alleges that DTE Energy Company and/or DTE Energy Corporate Services, LLC violated 52 U.S.C. 30119(a)(1) of the Federal Election Campaign Act of 1971 ("FECA") by making a contribution to American Working Families (Committee ID No. C00511915) as a Federal contractor.

The Complaint lacks factual and legal support to meet the minimum thresholds necessary to allege a violation of the law. Specifically, the Complaint alleges that DTE Energy Company made a contribution to American Working Families; however, DTE Energy Corporate Services, LLC, a subsidiary of DTE Energy Company, made this contribution. In fact, neither DTE Energy Corporate Services, LLC nor its parent, DTE Energy Company, was a Federal contractor at the time that DTE Energy Corporate Services, LLC made the contribution to American Working Families.¹ For these reasons, the Federal Election Commission (the "Commission")

¹ Moreover, even if DTE Energy Corporate Services, LLC and DTE Energy Company had been or were seeking to become a Federal contractor when DTE Energy Corporate Services, LLC contributed to American Working Families, the United States Supreme Court's decision in *Citizens United* and subsequent decisional law makes clear that the courts have narrowed the legitimate state interest here to one of preventing *quid pro quo*-type corruption, or the appearance thereof, and concluded that such corruption is not present in the context of independent expenditures. In prior enforcement matters, the Commission has not accepted similar arguments to those raised here in this footnote. See MUR 6403 (*Alaskans Standing Together, et al.*); MUR 6726 (*Chevron Corp., et al.*). Although the facts of this situation require the Complaint's dismissal without regard to this constitutional inquiry, the Commission should nonetheless take this opportunity to avoid this constitutional concern by interpreting Section 30119(a)(1)'s prohibition on Federal contractors making contributions to various entities—such as a "committee" or other "person"—to exclude contributions to Super PACs.

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should find there is no reason to believe that a violation of the law has occurred and should dismiss the Complaint with no further action.

SUMMARY OF ARGUMENT

By check dated August 25, 2020, DTE Energy Corporate Services, LLC (not DTE Energy Company as alleged in the Complaint) made a \$15,000 contribution to American Working Families.² American Working Families is an independent expenditure-only Federal political committee registered with the Commission (Committee ID No. C00511915), a type of entity commonly referred to as a “Super PAC”. As a result of the United States Supreme Court’s decision in *Citizens United v. FEC*, the United States Court of Appeals for the District of Columbia Circuit’s decision in *SpeechNow v. FEC* and the Commission’s Advisory Opinions in Commonsense Ten and Club for Growth, it is well-settled that a corporation or a limited liability company may make a contribution to a Super PAC without limitation as to amount.

DTE Energy Corporate Services, LLC (Federal Employer Identification Number 20-5898509) is a Michigan limited liability company. DTE Energy Corporate Services, LLC is one of many direct subsidiaries of DTE Energy Company (Federal Employer Identification Number 38-3217752), a Michigan corporation. DTE Energy Corporate Services, LLC provides functional support to the DTE Energy enterprise. DTE Energy Corporate Services, LLC derives revenue from members of the DTE Energy enterprise. Significantly, DTE Energy Corporate Services, LLC’s \$63 million of income from private sector sources (that is, sources other than holders of Federal contracts) overwhelmingly exceeds the \$15,000 contributed to American Working Families.³

DTE Energy Company is a diversified energy company that conducts its businesses through its direct and indirect subsidiaries, including DTE Electric Company and DTE Gas Company. DTE Electric Company, LLC (Federal Employer Identification Number 38-0478650) is a Michigan corporation and public utility engaged in the generation, purchase, distribution and sale of electricity to 2.1 million customers in southeastern Michigan. DTE Gas Company (Federal Employer Identification Number 38-0478040) is a Michigan corporation and a public utility engaged in the purchase, storage, transmission, distribution and sale of natural gas to 1.2 million customers throughout Michigan. DTE Energy Company also has non-utility subsidiaries engaged in energy marketing and trading, energy services and various other electricity, coal and gas related businesses predominantly in the Midwest and Eastern United States. In order to better appreciate the number of direct and indirect subsidiaries of DTE Energy Company, attached is DTE Energy Company’s organizational chart.⁴

Again, by check dated August 25, 2020, DTE Energy Corporate Services, LLC made a \$15,000 contribution to American Working Families.⁵ Nonetheless, based on the American

² American Working Families, Amended 2020 October Quarterly Report, FEC Form 3X at 7 (filed December 22, 2020) [202012229393400158.pdf \(fec.gov\)](#); See also, Exhibit A, Affidavit of Kenneth R. Bridge.

³ See Exhibit B, Affidavit of Tracy J. Myrick, ¶ 9.

⁴ See Exhibit B, Affidavit of Tracy J. Myrick, Exhibit 1.

⁵ American Working Families, Amended 2020 October Quarterly Report, FEC Form 3X at 7 (filed December 22, 2020) [202012229393400158.pdf \(fec.gov\)](#); See also, Exhibit A, Affidavit of Kenneth R. Bridge.

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Working Families' initial 2020 October Quarterly Report which has since been corrected, the Complaint alleges that DTE Energy Company made this contribution. However, even if DTE Energy Company made this contribution (which it certainly did not), then the Complaint should once again be dismissed because DTE Energy Company was not a Federal contractor at the time it made the contribution to American Working Families. As detailed below, while the USASpending.gov website is the sole basis for the Complaint's allegation that DTE Energy Company was a Federal contractor, that database does not always provide an accurate record of the specific corporate entity with which the Federal government has entered into an agreement. For example, if any member of the DTE Energy enterprise enters into an agreement with the Federal government, the USASpending.gov database may record this transaction as a contract between "DTE Energy Company" and the Federal government, which is incorrect.

Based upon a review of the information provided with the Complaint, information on the USASpending.gov website, and an independent search of the records of both DTE Energy Corporate Services, LLC and DTE Energy Company, DTE Energy Corporate Services, LLC and DTE Energy Company have found no evidence that either was a "Federal contractor" as defined in 11 C.F.R. 115.1(a) on August 25, 2020 when DTE Energy Corporate Services, LLC contributed to American Working Families, nor were either seeking to become a Federal contractor.

For all of these reasons, no violation of law occurred here, and it is respectfully requested that the Commission dismiss this matter without further action.

ARGUMENT

I. No Violation Of Law Occurred Because DTE Energy Corporate Services, LLC Was Not A Federal Contractor At The Time It Contributed To American Working Families

DTE Energy Corporate Services, LLC was the entity that made the contribution to American Working Families that is the subject of the Complaint.⁶ Because DTE Energy Corporate Services, LLC was not a Federal contractor when it made the contribution, there was no violation.

A. The Prohibition On Federal Contractor Contributions Is Limited In Scope

1. The Statute And Regulations Limit The Prohibition In Scope And Time

Section 30119(a)(1) of the FECA prohibits, among other things, any person "who enters into any contract" with the Federal government that is to be paid with appropriated funds from "directly or indirectly" making "any contribution ... to any political party, committee, or candidate for public office or to any person for any political purpose or

⁶American Working Families, Amended 2020 October Quarterly Report, FEC Form 3X at 7 (filed December 22, 2020) [202012229393400158.pdf \(fec.gov\)](https://www.fec.gov/disclosure/202012229393400158.pdf); See also, Exhibit A, Affidavit of Kenneth R. Bridge.

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use.”⁷ The only person subject to Section 30119(a)(1) is a “federal contractor,” defined as a non-Federal party who enters into a contract with the Federal government for the “rendition of personal services,” to “[f]urnish[] any material, supplies or equipment,” or to “[s]ell any land or buildings” if appropriated funds are used to pay for performance of the contract.⁸

The prohibition of Section 30119(a)(1) is also limited in time, and only applies between the “earlier of the commencement of negotiations .or when requests for proposals [“RFP”] are sent out,” and “the later of either the “completion of performance” or the “termination of negotiations.”⁹ It does not apply to a person just because the person has in the past been, or may in the future be, a party to a contract with the Federal government. Consequently, even a person who regularly contracts with the Federal government would not be covered by Section 30119(a)(1) if that person were to make a contribution after the completion of a contract or before the commencement of negotiations or an RFP for a new contract.

By its terms, Section 30119(a)(1) also does not apply to many categories of individuals and entities, notwithstanding the control they may have over, the potential benefit they may derive from, or their interest in pursuing Federal contracts. Persons expressly exempted from the prohibition of Section 30119(a)(1) by the statute or Commission regulations include: (1) third party beneficiaries of a Federal contract;¹⁰ (2) the separate segregated fund of a Federal contractor;¹¹ (3) shareholders of a Federal contractor;¹² (4) officers and employees of a federal contractor;¹³ and (5) partners, if the Federal contractor is a partnership.¹⁴ These persons could derive much, if not, all, of their income or revenue from an entity that is a Federal contractor, but by statute and regulation, they are not *themselves* Federal contractors subject to Section 30119(a)(1)'s contribution prohibition.

Accordingly: “When determining whether a committee has received, or an entity has made, a contribution in violation of [52 U.S.C. 30119(a)(1)], the Commission first looks to whether an entity met the statutory and regulatory definition of government contractor at the time the contribution was made.”¹⁵

⁷ See 52 U.S.C. 30119(a)(1); See also 11 C.F.R. 115.2.

⁸ See 52 U.S.C. 30119(a)(1); 52 U.S.C. 30101(11) (defining “person”); See also 11 C.F.R. 115.1(a) (defining “Federal contractor”).

⁹ See 52 U.S.C. 30119(a)(1); 11 C.F.R. 115.1(b) (modifying the statutory provision by adding the clause “when the requests for proposals are sent out” as a trigger condition for the beginning of the period of Section 30119(a)(1) applicability).

¹⁰ 11 C.F.R. 115.1(d) (“The third party beneficiary of a Federal contract is not subject to the prohibitions of this part.”).

¹¹ 52 U.S.C. 30119(a)(1)(b); 11 C.F.R. 115.3.

¹² 11 C.F.R. 115.6.

¹³ 11 C.F.R. 115.6; 11 C.F.R. 115.4(c).

¹⁴ 11 C.F.R. 115.4(b).

¹⁵ Factual and Legal Analysis at 5, MUR 6403 (Aleut Corp., *et al*).

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2. The Commission's Application Of The Federal Contractor Ban To Separate Entities Of The Same Corporate Family

According to the Commission:¹⁶

"The Commission has recognized a parent company may make a contribution to an independent-expenditure-only political committee if it has an ownership interest in a federal contractor subsidiary when (1) the subsidiary is a "separate and distinct legal entity" and (2) the parent company has sufficient revenue derived from sources other than its contractor subsidiary to make the contribution. See, e.g. MUR 6403 (*Alaskans Standing Together. et al.*)."

Consequently, in MUR 6726 (*Chevron Corp., et al*), the Commission found no reason to believe that the FECA was violated based on the following:

1. Chevron Corporation (the contributor of the funds) and Chevron USA (the Federal contractor and subsidiary of Chevron Corporation) were separately incorporated.
2. Chevron Corporation and Chevron USA were under the direction and control of separate management.
3. Chevron Corporation had sufficient funds not derived from its Federal contractor subsidiary (Chevron USA) to make the contribution in question.

As will be shown below, the facts of the present situation require dismissal even more than the facts in MUR 6726 because:

1. DTE Energy Corporate Services, LLC (which is neither a Federal contractor nor a parent entity), made the contribution to American Working Families.
2. The parent of DTE Energy Corporate Services, LLC, DTE Energy Company, is not a Federal contractor.
3. The Federal contracts identified in the Complaint are held by DTE Electric Company and DTE Gas Company, which are subsidiaries of DTE Energy Company.
4. DTE Energy Corporate Services, LLC, DTE Energy Company, DTE Electric Company, and DTE Gas Company are separate and distinct legal entities.

¹⁶ Factual and Legal Analysis at 6, MUR 6726 (*Chevron Corp., et al*). See, also, Advisory Op. No. 1998-11, at 5 (Sept. 3, 1998) (*Patriot Holdings*) (stating that "the prohibitions of 2 U.S.C. § 441c [now 52 U.S.C. 30119(a)(1)] do not apply" to an LLC parent of two federal contractor subsidiaries because the LLC was a "separate and distinct legal entity from its Federal contractor subsidiaries"); see also MUR 6403 (*Alaskans Standing Together*), First General Counsel's Report, at 15 (stating that "[i]n the case of a parent company contributor, if it can demonstrate that it is, in fact, a separate and distinct legal entity from its government contracting subsidiaries, and that it had sufficient funds to make the contribution from non-subsidiary income, then the prohibition on contributions by government contractors would not extend to the parent company.")

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5. DTE Energy Corporate Services, LLC had sufficient funds not derived from its corporate family members who are Federal contractors, to make the \$15,000 contribution to American Working Families.

Accordingly, if DTE Energy Company had made the \$15,000 contribution to American Working Families (which it certainly did not), the present situation would be exactly like MUR 6726; however, because DTE Energy Corporate Services, LLC (which has no subsidiaries) made this contribution, the facts of the present situation require dismissal even more than the facts in MUR 6726.

B. The Complaint Lacks Factual Support To Allege That The Contribution Was Made By A Federal Contractor

The Complaint lacks a foundation in fact. The Complaint alleges that DTE Energy Company made the \$15,000 contribution to American Working Families. Again, by check dated August 25, 2020, DTE Energy Corporate Services, LLC made this \$15,000 contribution to American Working Families.¹⁷ However, even if DTE Energy Company made this contribution (which it certainly did not), then the Complaint should once again be dismissed because DTE Energy Company was not a Federal contractor at the time DTE Energy Corporate Services, LLC made the contribution to American Working Families.

1. The Contribution To American Working Families Was Made By DTE Energy Corporate Services, LLC, Not DTE Energy Company Or Any Other Subsidiary Of DTE Energy Company

The making of an impermissible contribution is an absolute prerequisite to establishing a violation of Section 30119(a)(1). The sole basis for the Complaint's allegation of a Section 30119(a)(1) violation is a contribution to American Working Families in August of 2020. DTE Energy Corporate Services, LLC made this \$15,000 contribution to American Working Families,¹⁸ not DTE Energy Company or any other subsidiary of DTE Energy Company. Consequently, neither DTE Energy Company nor any subsidiary of DTE Energy Company could have violated Section 30119(a)(1) because none of these entities made a contribution.

In August of 2020, executives employed by DTE Energy Corporate Services, LLC decided to contribute to American Working Families.¹⁹ Significantly, executives of DTE Energy Corporate Services, LLC requested that the \$15,000 contribution be made to American Working Families from DTE Energy Corporate Services, LLC.²⁰

DTE Energy Corporate Services, LLC, and not DTE Energy Company or any other subsidiary of DTE Energy Company, made the contribution and the Complaint's allegation as to DTE Energy Company (or any other subsidiary of DTE Energy Company) lacks the support

¹⁷ American Working Families, Amended 2020 October Quarterly Report, FEC Form 3X at 7 (filed December 22, 2020) [202012229393400158.pdf \(fec.gov\)](#); See also, Exhibit A, Affidavit of Kenneth R. Bridge.

¹⁸ American Working Families, Amended 2020 October Quarterly Report, FEC Form 3X at 7 (filed December 22, 2020) [202012229393400158.pdf \(fec.gov\)](#); See also, Exhibit A, Affidavit of Kenneth R. Bridge.

¹⁹ See Exhibit C, Affidavit of Andrew J. Coulouris.

²⁰ See Exhibit C, Affidavit of Andrew J. Coulouris.

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necessary to justify further review by the Commission. Any Complaint as to DTE Energy Corporate Services, LLC must also be dismissed, for the reasons described below. Because the Complaint incorrectly alleges that “DTE Energy Company” made the \$15,000 contribution, the Complaint did not (and cannot) provide facts demonstrating that DTE Energy Corporate Services, LLC was a Federal contractor at the time of its contribution on August 25, 2020.

2. The Complaint Does Not, And Could Not, Show That DTE Energy Corporate Services, LLC Was A Federal Contractor At The Time Of The Contribution

Section 30119(a)(1) only applies to those persons who are Federal contractors under the law at the time of the contribution. Because the Complaint incorrectly alleges that “DTE Energy Company” made the \$15,000 contribution, the Complaint did not (and cannot) provide facts demonstrating that DTE Energy Corporate Services, LLC was a Federal contractor at the time of its contribution on August 25, 2020.

DTE Energy Corporate Services, LLC is not a party to any contract with the Federal government, nor is it seeking to become a Federal contractor. As a result of the Complaint filed in this matter, DTE Energy Corporate Services, LLC conducted an internal review and was unable to locate any contracts between DTE Energy Corporate Services, LLC and the Federal government.²¹ Nor did this internal review reveal any evidence that DTE Energy Corporate Services, LLC was in the process of negotiating, or responding to a request for proposal for, or undertaking performance pursuant to, a contract with the Federal government on August 25, 2020.²²

The Complaint relies exclusively on a review of the USASpending.gov database for its allegation as to whether an entity qualifies as a Federal contractor under the FECA. Consequently, a review of this USASpending.gov database demonstrates that there are no references to “DTE Energy Corporate Services, LLC” as a holder of any Federal contract.²³

Accordingly, DTE Energy Corporate Services, LLC was not a Federal contractor at the time when it made this \$15,000 contribution to American Working Families.

3. To The Extent Relevant, The Complaint Incorrectly Alleges That DTE Energy Company Was A Federal Contractor At The Time Of The Contribution Made By DTE Energy Corporate Services, LLC

To the extent relevant (because DTE Energy Corporate Services, LLC made the contribution in question), the Complaint incorrectly alleges that DTE Energy Company was a Federal contractor. The sole basis for this assertion is based on a review of the USASpending.gov database. However, as a result of a review of the USASpending.gov database when knowledge of the contracts is applied, it is clear that DTE Energy Company was not a Federal contractor when DTE Energy Corporate Services, LLC made the contribution in question. Significantly, after reviewing the contracts listed as being held by “DTE Energy

²¹See Exhibit B, Affidavit of Tracy J. Myrick, ¶ 10.

²²See Exhibit B, Affidavit of Tracy J. Myrick, ¶ 10.

²³ See Exhibit D, Affidavit of Steven B. Friedland, ¶ 8.

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Company” in the Complaint and in the USASpending.gov database, the actual recipient of these contracts was either DTE Electric Company or DTE Gas Company, or both.²⁴ Because both DTE Electric Company or DTE Gas Company have annual revenues in the billions of dollars, as observed in MUR 6726, each of these two entities “derives a relatively insignificant amount of revenue from Federal contracts.”²⁵

DTE Energy Company is not a “Federal contractor” as defined in 11 C.F.R 115.1(a), nor is it seeking to become a Federal contractor. As a result of the Complaint filed in this matter, DTE Energy Company conducted an internal review and—with the exception of a single Guaranty²⁶—was unable to locate any contracts between DTE Energy Company and the Federal government.²⁷ Significantly, this Guaranty is not a contract with the Federal government for the “rendition of personal services,” to “[f]urnish[] any material, supplies or equipment,” or to “[s]ell any land or buildings” if appropriated funds are used to pay for performance of the contract.²⁸ Nor is there any evidence, either in the Complaint or after internal review, that DTE Energy Company was in the process of negotiating, or responding to a request for proposal for, or undertaking performance pursuant to, a contract with the Federal government on August 25, 2020.²⁹ The results of this internal review are not surprising. Although DTE Energy Company has subsidiary entities that may enter into an agreement with the Federal government for the provision of utilities, DTE Energy Company is not, and was not on August 25, 2020, in the business of Federal contracting.

Accordingly, to the extent relevant, DTE Energy Company was not a Federal contractor at the time when DTE Energy Corporate Services, LLC made this \$15,000 contribution to American Working Families.

C. DTE Energy Corporate Services, LLC, DTE Energy Company, DTE Electric Company, And DTE Gas Company Are Separate And Distinct Legal Entities

In similar cases to the present matter under review, the Commission has recognized that a parent company may make a contribution to an independent-expenditure-only political committee if it has an ownership interest in a Federal contractor subsidiary when the subsidiary is a “separate and distinct legal entity”.³⁰ Although DTE Energy Corporate Services, LLC is not

²⁴ See Exhibit D, Affidavit of Steven B. Friedland, ¶ 5-6.

²⁵ See Exhibit B, Affidavit of Tracy J. Myrick, ¶ 11-12; Compare, Factual and Legal Analysis at 3, MUR 6726 (Chevron Corp. *et al*).

²⁶ See Exhibit B, Affidavit of Tracy J. Myrick, Exhibit 2.

²⁷ See Exhibit B, Affidavit of Tracy J. Myrick, ¶ 7-8.

²⁸ See Exhibit B, Affidavit of Tracy J. Myrick, ¶ 7; See, also, 52 U.S.C. 30119(a)(1); 52 U.S.C. 30101(11) (defining “person”); See also 11 C.F.R. 115.1(a) (defining “Federal contractor”).

²⁹ See Exhibit B, Affidavit of Tracy J. Myrick, ¶ 8.

³⁰ Factual and Legal Analysis at 6, MUR 6726 (Chevron Corp., *et al*). See, also, Advisory Op. No. 1998-11, at 5 (Sept. 3, 1998) (Patriot Holdings) (stating that “the prohibitions of 2 U.S.C. § 441c [now 52 U.S.C. 30119(a)(1)] do not apply” to an LLC parent of two federal contractor subsidiaries because the LLC was a “separate and distinct legal entity from its Federal contractor subsidiaries”); see also MUR 6403 (Alaskans Standing Together), First General Counsel's Report, at 15 (stating that “[i]n the case of a parent company contributor, if it can demonstrate that it is, in fact, a separate and distinct legal entity from its government contracting subsidiaries, and that it had sufficient

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a parent of any other entity, this analysis is applicable here. Here, the record supports the conclusion that DTE Energy Corporate Services, LLC, DTE Energy Company, DTE Electric Company, and DTE Gas Company are separately incorporated.³¹ The companies are under the direction and control of its own management.³² In addition, as required³³ and recognized by the Internal Revenue Service, DTE Energy Corporate Services, LLC, DTE Energy Company, DTE Electric Company, and DTE Gas Company each have separate and distinct employer identification numbers³⁴ because these are separate and distinct legal entities. Moreover, being well capitalized may alone suffice to establish that DTE Energy Corporate Services, LLC, DTE Energy Company, DTE Electric Company, and DTE Gas Company are separate legal entities from each other.³⁵ To this end, there can be no dispute that DTE Energy Corporate Services, LLC, DTE Energy Company, DTE Electric Company, and DTE Gas Company are each well capitalized—with each having revenues or income in the millions or billions of dollars, and some having assets in the billions of dollars.³⁶ Accordingly, DTE Energy Corporate Services, LLC, DTE Energy Company, DTE Electric Company, and DTE Gas Company are each a “separate and distinct legal entity”.

D. DTE Energy Corporate Services, LLC Had Sufficient Funds Not Derived From Its Corporate Family Members Who Are Federal Contractors To Make The \$15,000 Contribution To American Working Families

In similar cases to the present matter under review, the Commission has recognized a parent company may make a contribution to an independent-expenditure-only political committee if it has an ownership interest in a Federal contractor subsidiary when the parent company has sufficient revenue derived from sources other than its contractor subsidiary to make the contribution.³⁷ To this end, DTE Energy Corporate Services, LLC derives income from members of the DTE Energy enterprise. Significantly, in the most recent fiscal year, DTE Energy Corporate Services, LLC’s income from private sector sources (that is, sources other than holders of Federal contracts) exceeds \$ 63 million.³⁸ Accordingly, DTE Energy Corporate

funds to make the contribution from non-subsidiary income, then the prohibition on contributions by government contractors would not extend to the parent company.”)

³¹ See Exhibit B, Affidavit of Tracy J. Myrick, ¶ 9, 11-13.

³² See Exhibit B, Affidavit of Tracy J. Myrick, ¶ 6,14.

³³ See Internal Revenue Service Publication 1635, Employer Identification Number, Understanding Your EIN

³⁴ See Exhibit B, Affidavit of Tracy J. Myrick, ¶ 9, 11-12.

³⁵ MUR 6726 (Chevron Corp., *et al*) First General Counsel's Report, at 9 (stating that “Indeed, that Chevron U.S.A. is well capitalized and maintains its own assets exceeding \$36 billion may alone suffice to establish that Chevron U.S.A. constitutes a separate legal entity from Chevron.”(citations omitted)

³⁶ See Exhibit B, Affidavit of Tracy J. Myrick, ¶ 3,5,9, 11-12

³⁷ Factual and Legal Analysis at 6, MUR 6726 (Chevron Corp., *et al*). See, also, Advisory Op. No. 1998-11, at 5 (Sept. 3, 1998) (Patriot Holdings) (stating that “the prohibitions of 2 U.S.C. § 441c [now 52 U.S.C. 30119(a)(1)] do not apply” to an LLC parent of two federal contractor subsidiaries because the LLC was a “separate and distinct legal entity from its Federal contractor subsidiaries”); see also MUR 6403 (Alaskans Standing Together), First General Counsel's Report, at 15 (stating that “[i]n the case of a parent company contributor, if it can demonstrate that it is, in fact, a separate and distinct legal entity from its government contracting subsidiaries, and that it had sufficient funds to make the contribution from non-subsidiary income, then the prohibition on contributions by government contractors would not extend to the parent company.”)

³⁸ See Exhibit B, Affidavit of Tracy J. Myrick, ¶ 9.

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Services, LLC had sufficient funds not derived from its corporate family members who are Federal contractors, to make the \$15,000 contribution to American Working Families.

II. Conclusion

In retrospect, this entire matter under review would have been avoided if American Working Families had initially identified DTE Energy Corporate Services, LLC as having made the \$15,000 contribution on August 25, 2020. This seemingly innocent mistake (which was corrected by American Working Families on December 22, 2020) was compounded when the Complaint then incorrectly alleged that DTE Energy Company made this contribution to American Working Families and then was further compounded when it was alleged that DTE Energy Company was a Federal contractor. As conclusively demonstrated in this Response:

1. DTE Energy Corporate Services, LLC (which is neither a Federal contractor nor a parent entity), made the contribution to American Working Families.
2. The parent of DTE Energy Corporate Services, LLC, DTE Energy Company, is not a Federal contractor.
3. The Federal contracts identified in the Complaint are held by DTE Electric Company and DTE Gas Company, which are subsidiaries of DTE Energy Company.
4. DTE Energy Corporate Services, LLC, DTE Energy Company, DTE Electric Company, and DTE Gas Company are separate and distinct legal entities.
5. DTE Energy Corporate Services, LLC had sufficient funds not derived from its corporate family members who are Federal contractors, to make the \$15,000 contribution to American Working Families.

For all of these reasons, DTE Energy Corporate Services, LLC and DTE Energy Company respectfully request that the Commission conclude there is no reason to believe that a violation of the FECA has occurred and dismiss this matter without further action.

Thank you for your consideration of this Response.

Respectfully submitted,

DOSTER LAW OFFICES, PLLC



Eric Doster

EED/lk
Enc.

EXHIBIT A

AFFIDAVIT

Affidavit of Kenneth R. Bridge
 Assistant Treasurer and Director, Cash Management and Forecast

MUR 7847

STATE OF MICHIGAN)
) ss.
 COUNTY OF WAYNE)

Kenneth R. Bridge, being first duly sworn, deposes and says that this Affidavit is made upon personal knowledge of the facts stated herein, and if sworn as a witness, the Affiant can testify competently to the following to the best of the Affiant's knowledge:

1. I am the Assistant Treasurer of DTE Energy Company and Director of Cash Management and Forecast.

2. As Assistant Treasurer of DTE Energy Company and Director of Cash Management and Forecast, I have personal knowledge of how a check is issued by subsidiaries of DTE Energy Company.

3. I reviewed the Complaint in the above-referenced matter and can unequivocally state that the \$15,000 check to American Working Families dated August 25, 2020 represents a contribution from DTE Energy Corporate Services, LLC.

4. Attached as Exhibit 1 to this Affidavit is a copy of the \$15,000 check to American Working Families dated August 25, 2020.

5. Checks issued by DTE Energy Corporate Services, LLC, as a subsidiary of DTE Energy Company, state "DTE Energy Company OBO DTE Energy Corporate Services, LLC". The check identified in Exhibit 1 was issued in the same manner as other checks issued by DTE Energy Corporate Services, LLC.

6. Attached as Exhibit 2 to this Affidavit is a copy of the accounting record and internal order related to the \$15,000 check to American Working Families dated August 25, 2020.

7. Exhibit 2 illustrates that the \$15,000 check to American Working Families dated August 25, 2020 was authorized by DTE Energy Corporate Services, LLC, and DTE Energy Corporate Services, LLC was charged for this payment.

8. Exhibit 1 and Exhibit 2 illustrate that no entity, other than DTE Energy Corporate Services, LLC, made this contribution, including, without limitation, DTE Energy Company, DTE Electric Company, or DTE Gas Company.

FURTHER, AFFIANT SAYETH NOT.

Dated: January 8, 2021

**Kenneth R.
Bridge** Digitally signed by
Kenneth R. Bridge
Date: 2021.01.08
09:53:48 -05'00'

Kenneth R. Bridge

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

On this 8th day of January, 2021, before me, a notary public in and for said county, personally appeared Kenneth R. Bridge and executed the foregoing instrument and who acknowledged that he executed the same as his free act and deed.

Estella R. Branson Digitally signed by Estella R.
Branson
Date: 2021.01.08 09:54:19 -05'00'

Estella R. Branson, Notary Public
Oakland County, Michigan
Acting in Wayne County, Michigan
My commission expires: 10-26-2023

0000015329

DTE ENERGY COMPANY
 ●BO DTE Energy Corporate Services, LLC
 One Energy Plaza
 Accounts Payable 1110 WCB
 Detroit, MI 48226

Exhibit 1 - Contribution Check

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DATE: August 25, 2020
 CHECK NUMBER: 0000015329
 AMOUNT PAID: \$15,000.00

00018 40606 CKS NE 20237 - 0000015329 NNNNNNNNNNN 2375100006210 XN70GL C
 AMERICAN WORKING FAMILIES
 107 SOUTH WEST ST
 STE 527
 ALEXANDRIA VA 22314



Vendor No: 249637

Date	Invoice Number	Contract PO Number	Description	Gross Amount	Discount	Net Amount
08/13/20	203		INV#203,CORP CONTRIBUTION EEI 527	\$15,000.00	\$0.00	\$15,000.00
			TOTALS	\$15,000.00	\$0.00	\$15,000.00

PLEASE DETACH BEFORE DEPOSITING CHECK

DTE ENERGY COMPANY
 OBO DTE Energy Corporate Services, LLC
 One Energy Plaza
 Accounts Payable 1110 WCB
 Detroit, MI 48226

CHECK
 NUMBER 0000015329
 August 25, 2020

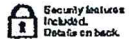
56-1544
 441

PAY AMERICAN WORKING FAMILIES
 TO THE 107 SOUTH WEST ST
 ORDER OF: STE 527
 ALEXANDRIA, VA 22314

CHECK AMOUNT

\$15,000.00

EXACTLY *****15,000 DOLLARS AND 00 CENTS



JPMorgan Chase Bank, N.A.
 Columbus, OH

Jeff A Jewell

Authorized Signature

EXHIBIT 2--ACCOUNTING RECORD AND INTERNAL ORDER RELATED TO THE AMERICAN WORKING FAMILIES CONTRIBUTION

Accounting record for the \$15,000 contribution check issued to American Working Families:

CoCode	PK	Account	Description	Amount	Curr.	Tr.Prt	Functional Area	Order	Profit Center
0388	31	249637	AMERICAN WORKING FA...	15,000.00	USD				
	40	561700	Lob/Contrib&Membrshp	15,000.00	USD		DTE00	200000054633	0388R035

Details about the Internal Order used for this expense:

Order: 200000054633 Order type: ZSAM DTE Internal Order O&M Project specific
 Description: LLC - CGA Oth Political Activities- 4264

Assignments	Prd-End Closing	Investments
Assignments		
Controlling Area	DTE	DTE Energy
Company Code	0388	DTE Eng Corp Svcs LLC
Functional Area	DTE00	Blank Functional Area
Profit Center	0388R035	CA Advocacy
WBS element	M-000033-0001-0002	CGA VP Staff
General data		
Ferc Indicator		
Substation/Circuit		
Processing group	1	N/A
<input checked="" type="checkbox"/> Work approval		
Status		
System status	REL GMPS SETC	Tech. comple
User status	APPR	
Status number	2	

EXHIBIT B

AFFIDAVIT

Affidavit of Tracy J. Myrick
 Director, Technical and Corporate Accounting

MUR 7847

STATE OF MICHIGAN)
) ss.
 COUNTY OF WAYNE)

Tracy J. Myrick, being first duly sworn, deposes and says that this Affidavit is made upon personal knowledge of the facts stated herein, and if sworn as a witness, the Affiant can testify competently to the following to the best of the Affiant's knowledge:

1. I am the Director of Technical and Corporate Accounting for DTE Energy Company.
2. DTE Energy Company and its numerous subsidiaries are a leading integrated energy company in the Midwest and Eastern United States.
3. In its most recent fiscal year, the combined revenue of DTE Energy Company and its subsidiaries exceeded \$ 12.6 billion.
4. As the Director of Technical and Corporate Accounting for DTE Energy Company, I have personal knowledge of activities of DTE Energy Company, DTE Energy Corporate Services, LLC, DTE Electric Company and DTE Gas Company relevant to the Complaint in the above-referenced matter.
5. DTE Energy Company is a diversified energy company that conducts its businesses through its direct and indirect subsidiaries, including DTE Electric Company and DTE Gas Company. DTE Energy Company is well capitalized and has subsidiaries with assets exceeding \$ 41 billion.

6. As a general matter, DTE Energy Company itself does not sell goods or services; instead, DTE Energy Company conducts its businesses through its direct and indirect subsidiaries, including DTE Energy Corporate Services, LLC, DTE Electric Company and DTE Gas Company. In order to better appreciate the number of direct and indirect subsidiaries of DTE Energy Company, attached as Exhibit 1 to this Affidavit is DTE Energy Company's organizational chart. Each of these subsidiaries is a separate legal entity, under the direction and control of its own management.

7. With the exception of a Guaranty attached as Exhibit 2 to this Affidavit, DTE Energy Company is not a party to any contract with the Federal government, nor is it seeking to become a Federal contractor. The Guaranty attached as Exhibit 2 to this Affidavit is not a contract for:

- (i) The rendition of personal services; or
- (ii) Furnishing any material, supplies, or equipment; or
- (iii) Selling any land or buildings

8. As a result of the Complaint filed in this matter, DTE Energy Company conducted an internal review and was unable to locate any contracts between DTE Energy Company and the Federal government with the exception of a Guaranty attached as Exhibit 2 to this Affidavit. Nor am I aware that DTE Energy Company was in the process of negotiating, or responding to a request for proposal for, or undertaking performance pursuant to, a contract with the Federal government on August 25, 2020.

9. DTE Energy Corporate Services, LLC (Federal Employer Identification Number 20-5898509) is a Michigan limited liability company. DTE Energy Corporate Services, LLC is

one of many direct subsidiaries of DTE Energy Company (Federal Employer Identification Number 38-3217752), a Michigan corporation. DTE Energy Corporate Services, LLC provides functional support to the DTE Energy enterprise. DTE Energy Corporate Services, LLC derives income from members of the DTE Energy enterprise. In the most recent fiscal year, DTE Energy Corporate Services, LLC's income from affiliates other than DTE Electric Company and DTE Gas Company (that is, sources other than holders of Federal contracts) exceeds \$ 63 million.

10. DTE Energy Corporate Services, LLC is not a party to any contract with the Federal government, nor is it seeking to become a Federal contractor. As a result of the Complaint filed in this matter, DTE Energy Corporate Services, LLC conducted an internal review and was unable to locate any contracts between DTE Energy Corporate Services, LLC and the Federal government. Nor did this internal review reveal any evidence that DTE Energy Corporate Services, LLC was in the process of negotiating, or responding to a request for proposal for, or undertaking performance pursuant to, a contract with the Federal government on August 25, 2020.

11. DTE Electric Company (Federal Employer Identification Number 38-0478650) is a Michigan corporation and public utility engaged in the generation, purchase, distribution and sale of electricity to 2.1 million customers in southeastern Michigan. Some of these customers include Federal government agencies; however, based on its normal annual revenues of approximately \$ 5.2 billion, DTE Electric Company derives a relatively insignificant amount of revenue from Federal contracts. DTE Electric Company is well capitalized and maintains its own assets exceeding \$ 24 billion.

12. DTE Gas Company (Federal Employer Identification Number 38-0478040) is a Michigan corporation and a public utility engaged in the purchase, storage, transmission, distribution and sale of natural gas to 1.2 million customers throughout Michigan. Some of these

customers include Federal government agencies; however, based on its normal annual revenues of approximately \$ 1.5 billion, DTE Gas Company derives a relatively insignificant amount of revenue from Federal contracts. DTE Gas Company is well capitalized and maintains its own assets exceeding \$ 5.7 billion.

13. DTE Energy Company, DTE Energy Corporate Services, LLC, DTE Electric Company and DTE Gas Company are separately incorporated entities.

14. DTE Energy Corporate Services, LLC and DTE Energy Company (neither of which is a Federal contractor) are under the direction and control of separate management than either DTE Electric Company and DTE Gas Company. Without limiting the generality of the foregoing, while DTE Energy Corporate Services, LLC and DTE Energy Company share the same President/Chief Executive Officer, DTE Electric Company and DTE Gas Company are led by two other individuals who serve as the President/Chief Executive Officer.

FURTHER, AFFIANT SAYETH NOT.

Dated: January 8, 2021

Digitally signed by Tracy J. Myrick
Myrick
Date: 2021.01.08 10:22:16 -05'00'

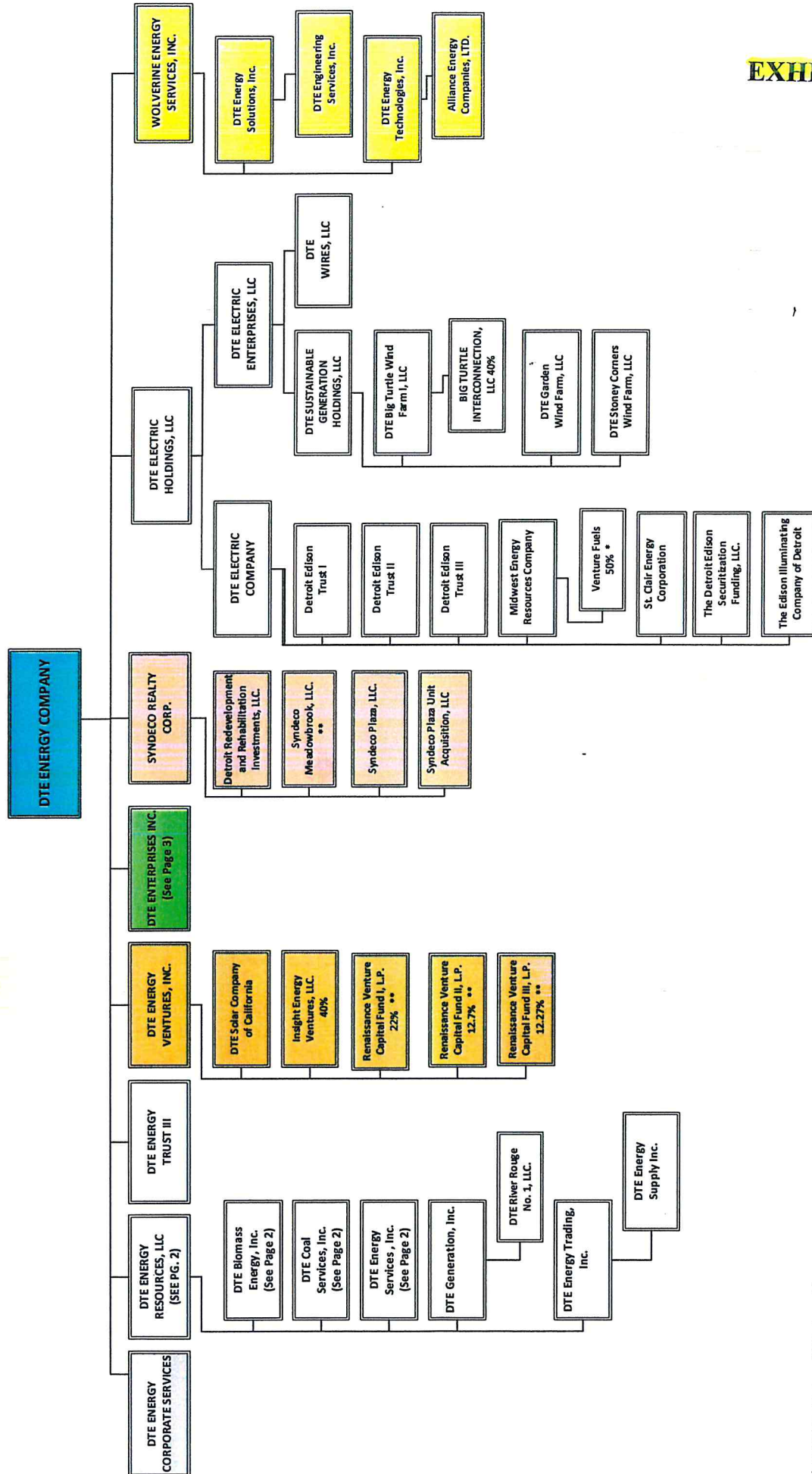
Tracy J. Myrick

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

On this 8th day of January, 2021, before me, a notary public in and for said county, personally appeared Tracy J. Myrick and executed the foregoing instrument and who acknowledged that she executed the same as her free act and deed.

Digitally signed by Estella R. Branson
Branson
Date: 2021.01.08 10:22:45 -05'00'

Estella R. Branson, Notary Public
Oakland County, Michigan
Acting in Wayne County, Michigan
My commission expires: 10-26-2023

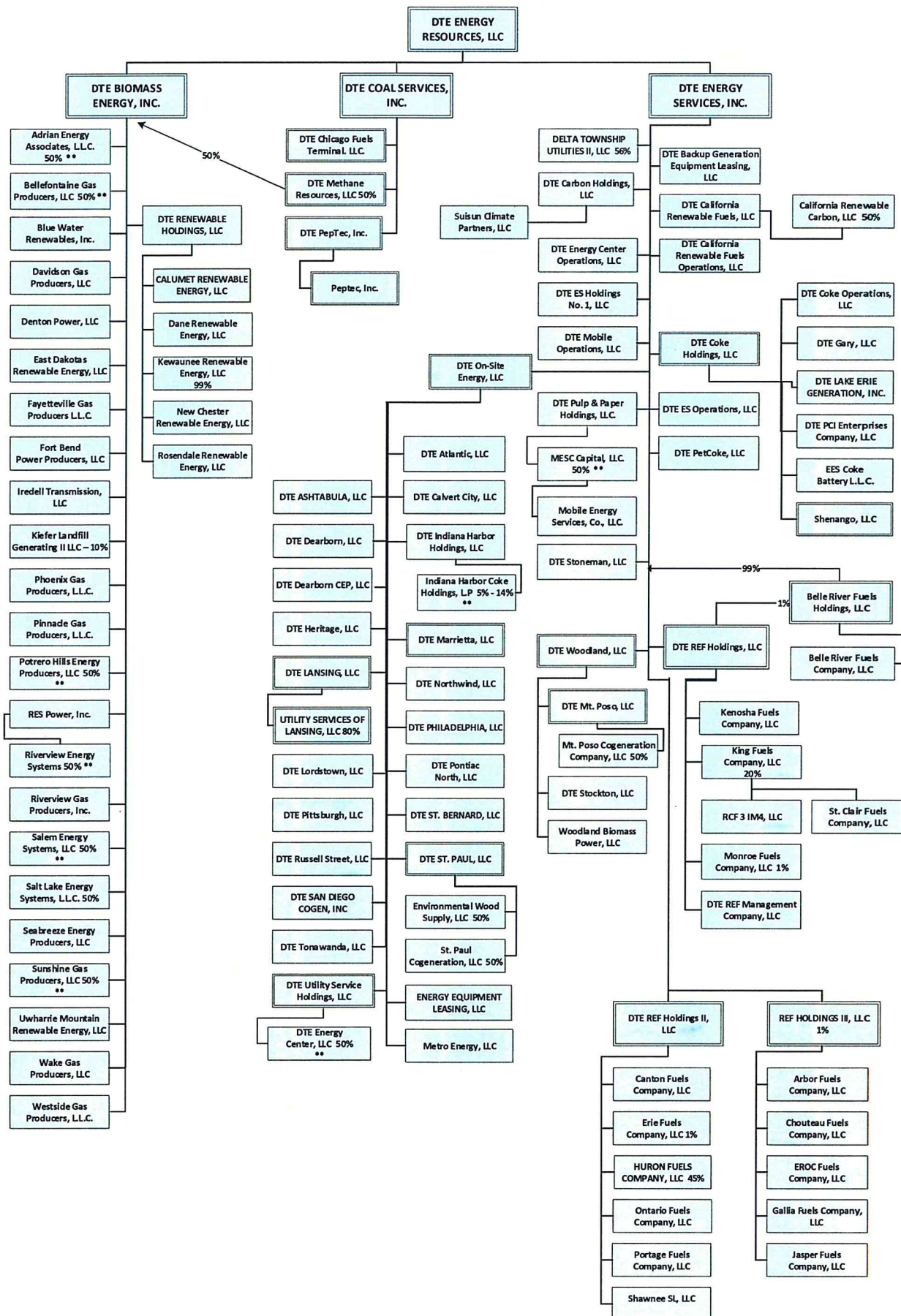
EXHIBIT 1

* Joint Venture ** Partnership

Page 1 of 3

Q3 2020

Revised: 10/05/2020



* Joint Venture **Partnership

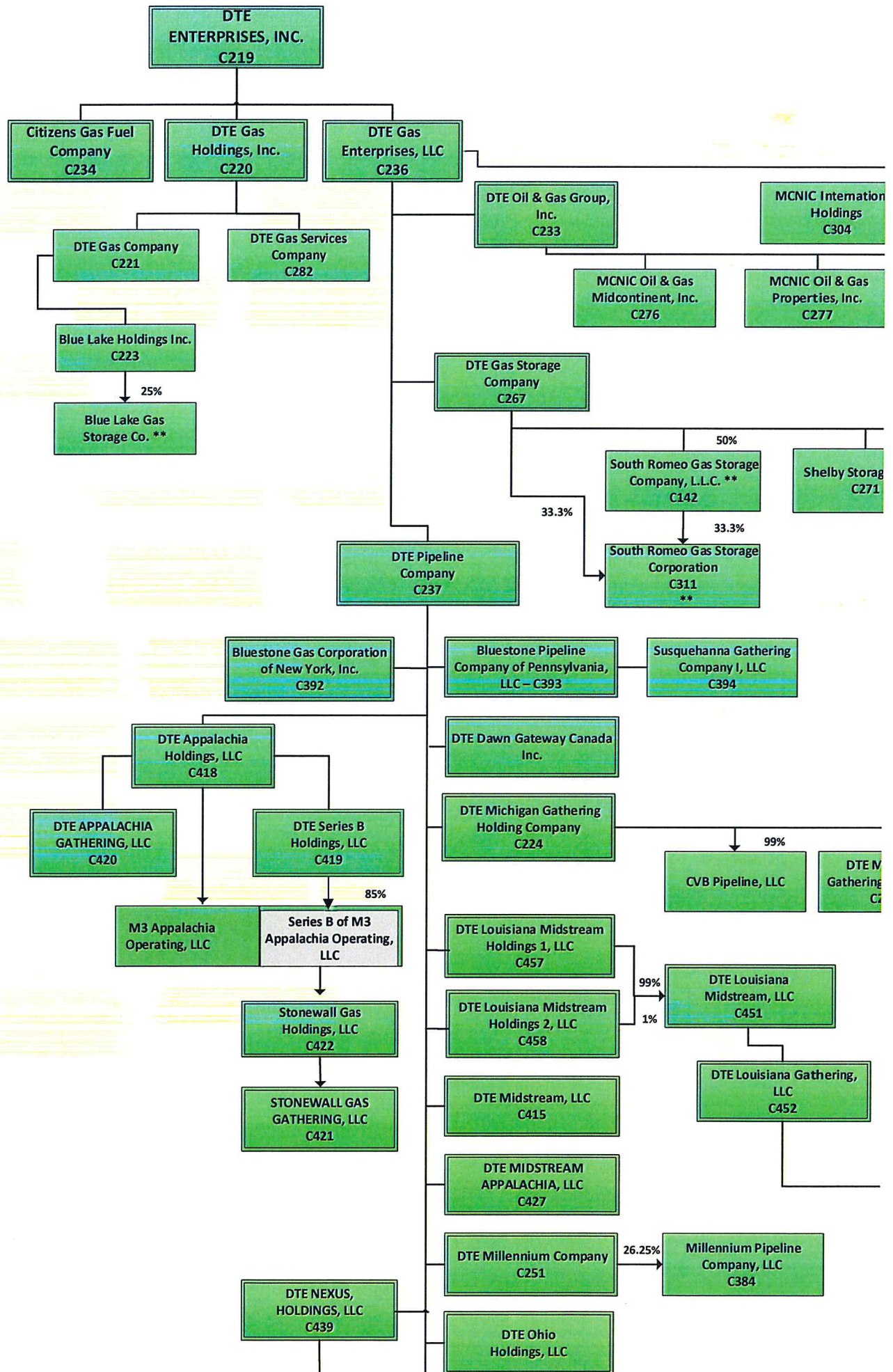


EXHIBIT 2

TVA Contract No. 94546029

Contract No. 486.00077**GUARANTY**

This Guaranty is made by DTE Energy Company ("**Guarantor**"), a Michigan Corporation, in favor of the Tennessee Valley Authority ("**TVA**"), a corporate agency and instrumentality of the United States of America, created by and existing under and by virtue of the Tennessee Valley Authority Act of 1933, as amended, to guarantee certain payment obligations of DTE Calvert City, LLC ("**Company**"), a Delaware limited liability company. The payment obligations covered by this Guaranty (the "**Guaranteed Obligations**") will be all payment obligations, whether billed or unbilled (including damages for non-performance), of Company arising while this Guaranty is in effect under or related to any contracts entered into between Company and TVA for any services, including Power Contract No. 7127, as amended, for the purchase and sale of electricity, effective April 1, 2013, ("**Contracts**"). Guarantor's liability under this Guaranty shall not exceed One Million Five Hundred Thousand U.S. Dollars (\$1,500,000.00). This is a guaranty of payment and not of collection.

For one dollar and other good and valuable consideration, receipt of which is hereby acknowledged, Guarantor absolutely and unconditionally guarantees, as a compensated guarantor, the payment when due, by acceleration or otherwise, of the Guaranteed Obligations, together with all interest and charges accruing thereon.

Guarantor hereby waives: (a) notice of acceptance of this Guaranty; (b) notice of changes in the Contracts; (c) notice of changes of Company's obligations under the Contracts; (d) notice of the acceptance, surrender, release, exchange or alteration of any other security held by TVA for Company's payment obligations; (e) any requirement that suit be brought or that remedies be pursued against Company or any other entity or security as a condition of enforcement of this Guaranty; (f) notice of presentment and demand for payment concerning the liabilities of Company hereunder, except as specifically provided herein; (g) any dishonor or default by, or disputes from TVA; (h) any other notice or demand; (i) any defense of the statute of limitations in any action hereunder; and (j) any right to trial by jury in any action relating to this Guaranty.

Guarantor's liability hereunder shall not be released or reduced by the insolvency, bankruptcy, reorganization, release, receivership, or discharge of Company. Any payment made by Company to TVA that is rescinded or must otherwise be returned to Company because of insolvency, bankruptcy, reorganization, or otherwise, shall be deemed a payment never made by Company.

This Guaranty shall be and continue to be in full force and effect from the effective date hereof until the first to occur of the following events (a) all of the Guaranteed Obligations have been paid in full; or (b) December 31, 2020. No amendment of this Guaranty shall be effective unless consented to in writing by TVA. Notwithstanding any other provision contained herein, Guarantor may, in its sole discretion, revoke this Guaranty by delivering written notice to Tennessee Valley Authority, 400 West Summit Hill Drive, WT 4C, Knoxville, TN 37902-1401, Attn: Director, Corporate Credit & Insurance, that this Guaranty will not apply to Company's payment obligations created after the effective revocation date specified in the notice, which date must be at least 30 calendar days after the delivery date of such notice. Any such revocation will apply only to Company's payment obligations created after the effective revocation date; such revocation will not apply to Company's payment obligations created prior to the effective revocation date, even when such obligations may become due and payable after such revocation.

Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses which Company may have to payment of the Guaranteed Obligations other than defenses expressly waived by the Company in its agreements with TVA or otherwise waived in this Guaranty or defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Company. If Guarantor makes one or more payments to TVA under this Agreement, then upon payment in full of all of the Guaranteed Obligations, Guarantor shall be subrogated to the rights of TVA.

Except as the same comprise Guaranteed Obligations under the terms of any agreements between TVA and Company, Guarantor shall not be liable hereunder for special, consequential, exemplary, or tort damages.

This Guaranty shall be binding upon Guarantor and upon its successors and assigns and shall be for the benefit of TVA and its successors and assigns provided that notice is sent to the other party.

The validity, interpretation, performance and enforcement of the Guaranty will be governed by the Federal laws of the United States, including but not limited to, the Federal Bankruptcy Code; provided that the laws of the State of New York may be applied to the extent not inconsistent with, or duplicative of, the Federal laws of the United States. Guarantor agrees to jurisdiction and venue in the United States District Court for the Eastern District of Tennessee in any action to enforce this Guaranty. Should TVA be the prevailing party in any action to enforce this Guaranty, Guarantor agrees to pay, in addition to the Guaranteed Obligations, any and all reasonable legal fees, costs, and other expenses incurred by TVA in enforcing this Guaranty subject to the Guaranty cap of \$1,500,000.

Any notices given or required to be given hereunder shall be given to the parties at their respective address below:

If to Guarantor: DTE Energy Company
Attn: Credit Risk Management
414 South Main Street, Suite 200
Ann Arbor, Michigan 48104
Phone: 734 887-4205
Fax: 734 887-4065

If to Creditor: Tennessee Valley Authority
Attn: Kirk Kelley, Director, Corporate Credit & Insurance
400 West Summit Hill Drive, WT-4C
Knoxville, TN 37902

The Guarantor is signing this Guaranty to be effective on the date below its signature.

DTE ENERGY COMPANY

By: K. Bridge
Title: Assistant Treasurer
Date: 12/11/2019

ACCEPTED BY:

TENNESSEE VALLEY AUTHORITY

By: Jones, Rebecca L. Digitally signed by
Director Jones, Rebecca L.
Power Customer Contracts Date: 2019.12.19
17:52:42 -05'00'

EXHIBIT C

AFFIDAVIT

Affidavit of Andrew J. Coulouris
Director, Federal Government Affairs

MUR 7847

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

Andrew J. Coulouris, being first duly sworn, deposes and says that this Affidavit is made upon personal knowledge of the facts stated herein, and if sworn as a witness, the Affiant can testify competently to the following to the best of the Affiant's knowledge:

1. I am employed by DTE Energy Corporate Services, LLC and am the Director of Federal Government Affairs.

2. As the Director of Federal Government Affairs for DTE Energy Corporate Services, LLC, I have personal knowledge of the process which led to the making of the \$15,000 contribution from DTE Corporate Services, LLC to American Working Families.

3. In August, 2020 I requested that the \$15,000 contribution be made to American Working Families from DTE Energy Corporate Services, LLC.

4. I reviewed the Complaint in the above-referenced matter and can unequivocally state that the \$15,000 contribution to American Working Families was made by DTE Energy Corporate Services, LLC.

FURTHER, AFFIANT SAYETH NOT.

Dated: January 8, 2021

Andrew J.
Coulouris

Andrew J. Coulouris

Digitally signed by
Andrew J. Coulouris
Date: 2021.01.08 09:55:23
-05'00'

STATE OF MICHIGAN)
) ss.
 COUNTY OF WAYNE)

On this 8th day of January, 2021, before me, a notary public in and for said county, personally appeared Andrew J. Coulouris and executed the foregoing instrument and who acknowledged that he executed the same as his free act and deed.

Estella R. Branson

Digitally signed by Estella R.
 Branson
 Date: 2021.01.08 09:56:04 -05'00'

Estella R. Branson, Notary Public
 Oakland County, Michigan
 Acting in Wayne County, Michigan
 My commission expires: 10-26-2023

EXHIBIT D

AFFIDAVIT

Affidavit of Steven B. Friedland
 Manager, Governmental & Institutional Major Accounts Services

MUR 7847

STATE OF MICHIGAN)
) ss.
 COUNTY OF WAYNE)

Steven B. Friedland, being first duly sworn, deposes and says that this Affidavit is made upon personal knowledge of the facts stated herein, and if sworn as a witness, the Affiant can testify competently to the following to the best of the Affiant's knowledge:

1. I am the Manager of Governmental & Institutional Major Accounts Services.
2. As Manager of Governmental & Institutional Major Accounts Services, I oversee the contracting activities for electric sales between DTE Electric Company and its governmental and institutional customers.
3. DTE Electric Company is a party to a GSA Areawide Public Utility Contract for Electric, Natural Gas, gas Transportation, Energy Management Services, and Services Provided under the Appropriate Regulatory Authority, Contract No. 47PA0418D0032 (the "Areawide Contract"). The parties to that contract are the United States of America, DTE Electric Company, and DTE Gas Company. Neither DTE Energy Company nor DTE Energy Corporate Services, LLC are parties to the Areawide Contract.
4. Under this Areawide Contract, an "Ordering Agency" may request electric or gas sales and services under the Contract. This is accomplished through the issuance of separate purchase orders that are governed by the Areawide Contract.

5. I reviewed the Complaint in the above-referenced matter and can unequivocally state that none of the Federal contract awards identified in the Complaint were held by DTE Energy Company or DTE Energy Corporate Services, LLC.

6. The Federal contracts identified in the Complaint as being held by “DTE Energy Company” are purchase orders for electric and gas sales under the Areawide Contract. Award ID 15B41720FVP420006 is a purchase order for gas sales service to the Department of Justice for the Milan prison building issued under the Areawide Contract (47PA0418D0032); Award ID W911XK20F0018 is a purchase order for electric sales for Detroit area office facilities issued under the Areawide Contract (47PA0418D0032); and Award ID 36C25020F0052 is a purchase order for electric sales for the Department of Veterans Affairs issued under the Areawide Contract (47PA0418D0032); and Award ID W911XK20P0006 is a purchase order for natural gas sales with the Department of Defense.

7. I have reviewed the awards in the USASpending.gov database that were active in August 2020 where “DTE Energy Company” was listed as the recipient, and in each case, the actual recipient appears to be either DTE Electric Company or DTE Gas Company, or both.

8. I have reviewed the USASpending.gov database for any references to “DTE Energy Corporate Services, LLC” and did not find any such references during my search.

FURTHER, AFFIANT SAYETH NOT.

Dated: January 8, 2021

**Steven B.
Friedland**

Steven B. Friedland

Digitally signed by Steven B.
Friedland
Date: 2021.01.08 09:57:12
-05'00'

STATE OF MICHIGAN)
) ss.
 COUNTY OF WAYNE)

On this 8th day of January, 2021, before me, a notary public in and for said county, personally appeared Steven B. Friedland and executed the foregoing instrument and who acknowledged that he executed the same as his free act and deed.

Estella R. Branson

Digitally signed by Estella R.

Branson

Date: 2021.01.08 09:58:08 -05'00'

Estella R. Branson, Notary Public

Oakland County, Michigan

Acting in Wayne County, Michigan

My commission expires: 10-26-2023