



August 17, 2009

Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549  
Attention: Elizabeth M. Murphy, Secretary

**Re: Proposed Rules – Facilitating Shareholder Director Nominations (Release Nos. 33-9046; 34-60089; IC-28765; File No. S7-10-09)**

Ladies and Gentlemen:

DTE Energy Company (“DTE Energy”) appreciates the opportunity to comment on the Securities and Exchange Commission’s (the “Commission”) proposed rule entitled “Facilitating Shareholder Director Nominations” (the “Proposed Rules”).

As an issuer of publicly traded securities, we strongly support efforts to increase transparency in the proxy system and improve communications with shareholders. We also believe in good corporate governance practices, which include the right of shareholders to have an effective vote in the election process and the ability to recommend persons for nomination to the board of directors.

We believe that corporations and shareholders must be mindful that any proxy access process must appropriately balance the interests of all shareholders of a corporation and, at the same time, not unnecessarily expend corporate resources or distract management attention. We support amending Rule 14a-8(i)(8) to permit shareholders to propose proxy access bylaws for their respective companies. However, we also support proxy access procedures that are flexible from company to company given the particular facts and circumstances of a company. In light of this, we believe a federally mandated rule that all public companies be subject to the same process – with identical ownership thresholds, holding requirements, and procedural requirements, among other things – may not be appropriate, and certainly not be in the best interests of all shareholders.

Accordingly, we do not support adoption of proposed Rule 14a-11 as currently proposed. If proposed Rule 14a-11 is adopted, it should, at a minimum, be modified to permit companies and their shareholders to “opt out”; and, in addition, its eligibility thresholds, nominee qualifying and disclosure requirements, and certain procedural requirements likewise should be modified, as further discussed below.

## **Proposed Rule 14a-11**

I. Eligibility to Use Rule 14a-11. Proposed Rule 14a-11 provides that shareholders who beneficially own 1% (for large accelerated filers) or 3% (for accelerated filers) of a company's securities for one year may nominate a director and have their nominee included in the company's proxy materials. For the reasons set forth below, we believe these thresholds are too low.

A. Ownership Threshold. Shareholder proposals, of all types, have a financial impact on all shareholders, as they generally require substantial attention and resources of a company, including its in-house legal and investor relations staff, outside securities and state-law counsel, senior management, and the board of directors. As such, we believe the Commission should set the minimum threshold at a level that ensures that the nominating shareholder or group have a substantial economic interest in the company.

We believe that the appropriate threshold should be the beneficial ownership of 5% of the company's securities that are entitled to be voted on the election of directors at a meeting of shareholders for single nominating shareholders and 10% where a group of shareholders are nominating the director. We believe such thresholds would provide the appropriate balance between permitting shareholders who have a substantial economic interest in the company to utilize proxy access and limiting the potential cost and disruption of such access to companies and their shareholders. In addition, while we support the right of shareholders to aggregate their holdings for the purpose of nominating a director, we believe a shareholder should not be permitted to be a member of more than one nominating group at a time.

B. Holding Period Requirements. In seeking to balance shareholders' ability to participate more fully in the nomination and election process against the potential cost and disruption to companies subject to the proposed new rule, the Commission is proposing that only holders of a significant, long-term interest in a company be able to rely on proposed Rule 14a-11 to have disclosure about their nominees for director included in a company's proxy materials. We support the Commission's position, but do not believe that shareholders who have held their shares for only one year should be considered long-term shareholders. We believe that the nominating shareholder should be required to have beneficially owned the securities that are used for purpose of determining the ownership threshold for at least two years as of the date of the shareholder notice on Schedule 14N. In the case of a nominating group, each member of the group should have held the securities for at least two years as of the date of the shareholder notice on Schedule 14N.

C. Resubmission Threshold. We believe that proposed Rule 14a-11 should include a provision that would deny eligibility for any nominating shareholder that has previously had a nominee included in the company's proxy material where such nominee did not receive a sufficient percentage of votes. If the nominating shareholder's nominee fails to receive 25% of the vote at the meeting at which such nominee's nomination is

being voted upon, the nominating shareholder (and, if applicable, all of the members of the nominating group) should be prohibited from submitting another nominee for a period of two years. We believe this is appropriate, as that nominating shareholder would not have demonstrated sufficient support from other shareholders to indicate that it would in the following year be successful in having its nominee elected to the board and thereby justify repeated use of the company's proxy materials. In addition, the nominee should not be eligible for nomination for a similar two-year period. These proposed resubmission thresholds would allow the company to avoid expending the significant resources involved in including the nominee in its proxy materials where the nominee did not garner significant support from the shareholders of the company; and provide an opportunity for other shareholders to submit nominations for consideration.

II. Companies Should Be Permitted to "Opt-Out" of Proposed Rule 14a-11. We note that most companies, including DTE Energy, are willing to engage with their shareholders in discussions of corporate governance issues, including potential nominees for director. Many public companies, again including DTE Energy, also have procedures in place for shareholders to submit recommendations for director nominations to the board of directors. A single mandated procedure with respect to nominating persons for the board of directors, even one that is thoughtfully proposed, may not be appropriate for all public companies.

Accordingly, we recommend that companies and their shareholders be permitted to "opt out" of proposed Rule 14a-11 by adopting and implementing their own form of proxy access. We support the approach suggested by the Society of Corporate Secretaries & Governance Professionals, under which a company could propose a proxy access procedure to its shareholders, or shareholders could propose a proxy access procedure pursuant to the proposed amendment to Rule 14a-8. In either case, if such proxy access proposal receives the affirmative vote of a majority of the shares of stock present in person or by proxy and entitled to vote on the proposal, the proxy access proposal would apply in place of proposed Rule 14a-11. In this regard, we would note that it would be possible for shareholders to vote affirmatively that they don't want proxy access, or they could vote on procedures that would provide a level of proxy access that is more or less restrictive than under proposed Rule 14a-11, and they would be free to make that decision. We believe that requiring shareholder approval of a board's proposed proxy access procedures should alleviate concerns that boards might attempt to overreach in proposing such procedures, as shareholders would refuse to ratify such board proposed proxy access procedures. We believe this approach appropriately balances the Commission's concern of ensuring proxy access is available to shareholders of public companies who desire it, while enabling companies and their shareholders to make appropriate choices as to the form of proxy access best suited to their individual company.

III. Nominee Requirements.

A. The Nominee Should Meet Valid Bylaw Qualifications and Director Guidelines. The Proposed Rules require a representation that, to the knowledge of the nominating shareholder, the nominee meets the objective criteria for independence set forth in the rules of the relevant national securities exchange or national securities association. However, most state laws permit companies to establish qualifications for directors in their bylaws. Many companies, including DTE Energy, have adopted such additional non-discriminatory director qualifications in their bylaws. Many of these bylaw provisions are different from and, in some cases more stringent than, the objective criteria of the applicable securities exchange or association. We believe that such non-discriminatory director qualifications set forth in a company's governing documents are valid as a matter of state law with respect to all directors. We therefore believe it is appropriate that such eligibility standards be applicable to all shareholder nominees.

We also believe that the shareholder nominee, once elected to the board, should be required to comply with a company's non-discriminatory board service guidelines, such as mandatory retirement age, share ownership requirements and the maximum number of other boards and board committees on which directors may serve. Once elected to the board, a shareholder-nominated director has the same fiduciary obligations to the company's shareholders as any other director; and, as noted above, we see no basis for any distinction among directors with respect to valid, non-discriminatory board service guidelines. We therefore recommend the Commission make these principles clear in the final rules.

B. The Nominee Should Complete a Company's Standard Directors' and Officers' Questionnaire. As noted above, we believe it is important for a shareholder nominee to meet the company's non-discriminatory director qualification and service requirements. Accordingly, we believe that proxy access shareholder nominees should be required, at the request of the company, to complete the company's standard "director and officer questionnaire" prior to the printing and mailing of the proxy statement. The questionnaire would provide the company with information to help the company determine if the nominee is independent based upon the stock exchange rules and the company's own corporate governance guidelines. This is the same purpose for which companies collect information each year from their current directors, and thus would not impose upon the shareholder nominee any obligations that are not imposed on the company's board-nominated directors. If, based on the information provided in the questionnaire, the board determines that the nominee does not meet the applicable stock exchange's independence standards or the company's own corporate governance guidelines, we believe it would be important, and appropriate, for the company to notify shareholders of that fact in the proxy statement. While the lack of independence may not be a disqualifying factor for board service, it is important for shareholders to know how many of their directors are independent and whether they can serve on the audit, compensation or nominating committee. Independence will also affect the governance quotients that companies receive from board evaluation services (such as RiskMetrics)

and the voting recommendations that are made by RiskMetrics and others. Finally, a board's determination that the proxy access candidate lacks independence may also inform the nominating committee and full board at the time it finalizes the board slate of directors of the balance of independent and non-independent directors and the company's compliance posture with respect to the independence requirements under stock exchange listing rules and the Sarbanes-Oxley Act.

C. Nominees that Count Against the Proxy Access Director "Cap".

(i) Proxy Access Shareholder Nominee Status Should Continue Even If Endorsed By the Board. Under proposed Rule 14a-11, a nominating shareholder is required to represent that no relationships or agreements exist between the nominee and the company and its management, and between the nominating shareholder and the company and its management. If any such agreement exists, the nominee would not count towards the maximum number of nominees that could be nominated pursuant to proposed Rule 14a-11. We believe if, at any time prior to the shareholders' meeting, the board decides to endorse the nominating shareholder's nominee and include the nominee on the board's slate, the nominee should nevertheless continue to be treated as a proxy access shareholder nominee for purposes of determining the maximum number of proxy access shareholder nominees to be included in the company's proxy materials for that year. This will help facilitate discussions between boards and nominating shareholders, as a board may be more likely to come to an accommodation concerning a nominating shareholder's nominee knowing that, if it were to do so, it would not need to then begin the process of negotiating all over with yet another nominating shareholder because the "endorsed" nominee will not count towards the cap on proxy access shareholder nominees. If proposed Rule 14a-11 is adopted as currently proposed, we believe it is likely to have a chilling effect on desirable negotiations between nominating shareholders and boards or nominating committees regarding shareholder nominees.

(ii) Proxy Access Shareholder Nominee Status Should Continue for Three Years Following Election to the Board. The Proposed Rules do not adequately address the situation where management includes in its slate a director who was elected as a shareholder nominee at the previous meeting. We believe that, as drafted, the Proposed Rules may incentivize the nominating committee or the board not to re-nominate the director in order to avoid that person becoming a "management" director and thereby allowing another nominee to be put forth by shareholders under proposed Rule 14a-11. Therefore, we believe that proposed Rule 14a-11 should be revised to provide that any company nominee that was initially elected as a shareholder nominee shall reduce the number of nominees that may be nominated pursuant to proposed Rule 14a-11(d)(1) for a period of three years; provided that such director is nominated by the nominating committee or the board in each such year. Imposing a three-year status as a proxy access director would also have the merit of replicating the practical effect of the proxy access cap at companies with staggered boards, where proxy access directors are elected for three-year terms and retain their status as such for purposes of the proxy access cap under proposed Rule 14a-11. After such three-year period, such director

would cease to have the status of a proxy access director for purposes of the cap and his or her re-nomination would not reduce the number of nominees that may be nominated pursuant to proposed Rule 14a-11(d)(1).

IV. Procedural Requirements.

A. Excluding a Shareholder Director Nominee that Does Not Comply with the Requirements of Rule 14a-11.

(i) No Substitute Proxy Access Shareholder Nominees. If a shareholder nominee is excluded by a company following the receipt of a no-action letter from the staff of the Commission pursuant to proposed Rule 14a-11 or the nominating shareholder withdraws its nominee as a result of the procedure for determining eligibility specified in proposed Rule 14a-11(f), we believe the company should not be required to include a substitute proxy access shareholder nominee in its proxy materials that year, as the company would not have sufficient time to seek to exclude such new nominee if such new nominee fails to meet the requirements set forth in proposed Rule 14a-11.

(ii) Effect of Disqualifying Event. If a disqualifying event occurs after the company's proxy material has been disseminated, the company should be able to issue supplemental proxy material and new proxy cards that remove the disqualified nominee, and the company should be entitled to disregard any votes cast for the disqualified nominee.

B. Liability of the Company. We believe that given the time constraints of the proposed Rule 14a-11, the company's nominating committee will be unable to properly vet a shareholder nominee for inclusion in the company's proxy materials. Even if the nominee provides a director's and officer's questionnaire as discussed above, it often takes several months for large companies with multiple operations and locations to properly vet a nominee and his family members to determine whether the nominee meets the independence standards of the company.

The Proposed Rules indicate that the company would have liability if it "knows or has reason to know that the information is false or misleading." We believe that this is inappropriate, as the company does not have sufficient time to investigate the statements made by the nominating shareholder and the nominee, and it also does not necessarily have the means to determine whether the statements are false or misleading. Furthermore, even if the company had reason to believe – for example, based on information received in the questionnaire – that the information provided by the nominating shareholder or group or the nominee is false or misleading, the company does not have the right under proposed Rule 14a-11 to exclude the information from the proxy statement.

Pursuant to existing Rule 14a-8(1), a company is not responsible for shareholder proposals or supporting statements. The purpose of proposed Rule 14a-11 is to provide

“access” – a means by which shareholders may use the company’s proxy materials to facilitate their nomination of directors. This purpose is not undermined by providing that the company has no liability for the nominating shareholder’s statements that the company is required to include in its proxy materials. To the extent that the “knows or has reason to know” language contained in proposed Rule 14a-11(e) and 14a-19 suggests that companies have some duty to investigate or otherwise confirm the accuracy of the information provided by the nominating shareholder or group, we believe this is an inappropriate shifting of liability to companies for statements made by nominating shareholders or their nominees. There is no compelling reason why a company should have any liability for a nominating shareholder’s or nominee’s statements.

For the foregoing reasons, we believe a company should be entitled to explicitly state in the proxy statement that “the company takes no responsibility for the accuracy or completeness of the information supplied to it by the nominating shareholder or group or the nominee for director.”

### **Proposed Amendments to Rule 14a-8**

We support the adoption of the proposed amendments to Rule 14a-8(i)(8) that would permit shareholders to make proposals regarding the election of directors. We believe that the use of amended Rule 14a-8(i)(8) to allow shareholders to propose and adopt procedures for access to the company’s proxy materials is an appropriate way for companies and their shareholders to determine a proxy access procedure that is tailored for the particular circumstances of the company.

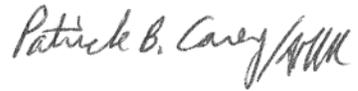
I. Conflict with Proposed Rule 14a-11. As we discussed above, we believe that shareholders should have the full range of options available to them regarding the nature of proxy access at their companies, and, as such, the requirement to include proposals under the proposed amendments to Rule 14a-8(i)(8) should not be limited only to those proposals that would not conflict with Proposed Rule 14a-11.

II. Ownership Requirements. A proxy access proposal will impact a company’s long-term operations significantly. We believe that the existing \$2,000 standard fails to require an interest in the company that is commensurate with this potential impact. As such, the ownership of a shareholder that may require the company to include such a proposal should be significantly beyond the ownership standard for other proposals under Rule 14a-8. We believe that the ownership standard for a proxy access proposal under the proposed amendment to Rule 14a-8(i)(8) should be at least 1% of the company’s voting stock. While this ownership threshold is higher than for other proposals under Rule 14a-8, it is lower than the proposed ownership threshold under proposed Rule 14a-11 in recognition that the shareholder is proposing a proxy access procedure, rather than nominating a particular person as a director-nominee.

**Conclusion**

We appreciate the opportunity to comment on these important proposals and encourage the Commission to carefully consider the comments received from all interested parties before proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Patrick B. Carey" followed by a stylized flourish.

Patrick B. Carey  
Associate General Counsel  
& Assistant Corporate Secretary