

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
DTE ELECTRIC COMPANY for)
approval of a power supply cost recovery plan and) Case No. U-17920
for approval of monthly power supply cost recovery)
factors for the year 2016.)
_____)

At the January 12, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

History of Proceedings

On September 30, 2015, pursuant to 1982 PA 304, MCL 460.6j *et seq.* (Act 304), DTE Electric Company (DTE Electric) filed an application, with supporting testimony and exhibits, requesting authority to implement a power supply cost recovery (PSCR) plan in its rate schedules for 2016 metered jurisdictional sales of electricity. In its initial application, DTE Electric requested approval of a uniform monthly maximum PSCR factor of (0.20)¹ mills per kilowatt-hour (kWh) for its PSCR customers. DTE Electric also requested approval of its PSCR plan for calendar year 2016. In addition, DTE Electric submitted a 5-year forecast for 2016 through 2020

¹ Also written as “negative 0.20.”

of projected power supply requirements, and the cost of that supply. The company's filing was accompanied by the testimony of witnesses Shawn D. Burgdorf, Markus B. Leuker, Barry J. Marietta, Zachary T. Paquette, Matthew T. Paul, Ryan C. Pratt, Kevin L. O'Neill, James D. Wines, and John O. Yurko.

A prehearing conference was held on November 25, 2015, before Administrative Law Judge Dennis W. Mack (ALJ). The ALJ granted petitions for leave to intervene filed by the ANR Pipeline Company (ANR); the Association of Businesses Advocating Tariff Equity (ABATE); the Great Lakes Renewable Energy Association (GLREA); the Michigan Environmental Council and the Sierra Club (MEC/Sierra); and the Michigan Department of the Attorney General (Attorney General). On March 14, 2016, ANR filed the testimony and exhibits of its witness, Lee Bennett; the Attorney General filed the testimony and exhibits of its witness Sebastian Coppola; GLREA filed the testimony and exhibits of its witness, Geoffrey C. Crandall; and MEC/Sierra filed the testimony and exhibits of its witness, James F. Wilson. ABATE did not offer witnesses or exhibits. The Commission Staff (Staff) participated in the proceedings, but offered no witnesses or exhibits.

On May 2, 3, and 4, 2016, an evidentiary hearing was held. At the hearing, DTE Electric presented additional witnesses, Robert G. Lawshe, Maria F. Scheller, and Michael D. Sloan, along with their accompanying exhibits. On June 6, 2016, ANR, the Attorney General, the Staff, DTE Electric, GLREA, and MEC/Sierra, filed initial briefs. On July 6, 2016, ANR, the Attorney General, DTE Electric, GLREA, and MEC/Sierra filed reply briefs. Also on July 6, 2016, the Staff filed a letter stating that it would not be filing a reply brief. On October 28, 2016, the ALJ issued his Proposal for Decision (PFD). On November 18, 2016, ANR, the Attorney General, DTE Electric, GLREA, and MEC/Sierra, filed exceptions to the PFD. Also on November 18,

2016, the Staff filed a letter stating it would not be filing any exceptions to the PFD. On December 9, 2016, ANR, the Attorney General, the Staff, GLREA, and MEC/Sierra filed replies to exceptions. The record consists of 1,025 pages of testimony and 132 exhibits. Portions of the transcript and exhibits are confidential and not part of the public hearing record. PFD, pp. 1-4.

Proposal for Decision

An overview of the record and the positions of the parties are detailed in the PFD, pages 5-60, and will not be repeated here, except as necessary for clarity. The ALJ identified the following issues concerning DTE Electric's PSCR plan and forecast: 1. whether intervenor objections to cost items related to the NEXUS project can be sustained; 2. whether a Section 7 warning should be issued regarding the 5-year forecast; 3. whether DTE Electric's forecasted expenses related to coal, nuclear fuel, urea, and adjustments related to non-PSCR sales volumes should be reduced; and 4. whether DTE Electric's 2016 PSCR plan and 5-year forecast should include more solar power resources. PFD, pp. 60-92. The ALJ noted that DTE Electric estimated that it would need 47,370,000 kWh of energy to meet the needs of its customers in 2016, and its total system power supply costs would be approximately \$1.4 billion, including total base transmission costs of \$316 million. The ALJ indicated that DTE Electric calculated a PSCR factor of \$0.20 per kWh. PFD, pp. 5-10.

NEXUS Project

Perhaps the greatest area of controversy in this proceeding was DTE Electric's proposed long-term contract with NEXUS Gas Transmission (NEXUS) for natural gas transportation over its pipeline from the Appalachian basin. Extensive input on the subject was submitted by ANR, the Attorney General, DTE Electric, and MEC/Sierra. NEXUS is partly owned by a DTE Energy Company affiliate, and this fact appeared to be at the very root of the many objections presented

by ANR, the Attorney General, and MEC/Sierra. Resolute allegations of violation of the Code of Conduct, lack of arm's length negotiations, failure to consider viable alternative pipeline companies, failure to obtain economic pricing, and failure to have an appropriately transparent contractual process, were vehemently denied by DTE Electric. PFD, pp. 78-92; ANR, Attorney General, the Staff, DTE Electric, and MEC/Sierra briefs; ANR, Attorney General, DTE Electric reply briefs; ANR, Attorney General, and DTE Electric exceptions; ANR, Attorney General, the Staff, and DTE Electric replies to exceptions. However, the expenses arising related to the proposed NEXUS contract are expected beginning 2017. PFD, p. 78. Thus the contract has no effect on DTE Electric's 2016 PSCR plan and does not affect the Commission's decision of whether to approve the 2016 PSCR plan.

On page 79 of his PFD, the ALJ stated that:

[E]xamination of NEXUS must begin with the legal issue of what Act 304 allows in regards to the treatment of projected expenses in a 5-year forecast.

First, Act 304 requires [that] a utility file:

[A] 5-year forecast of the power supply requirements of its customers, its anticipated sources of supply, and projections of power supply costs, in light of its existing sources of electrical generation and sources of electrical generation under construction. The forecast shall include a description of all relevant major contracts and power supply arrangements entered into or contemplated by the utility, and such other information as the commission may require. MCL 460.6j(4).

Upon receipt of the forecast, the Commission:

[S]hall evaluate the decisions underlying the 5-year forecast filed by a utility pursuant to subsection (4). The commission may also indicate any cost items in the 5-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or power supply cost recovery factors established in the future. M 460.6j(7).

The ALJ reasoned that “[u]nder these provisions, a 5-year forecast should ‘provide insights into load, fuel, and power supply trends and options in a more forward-looking manner.’”² The ALJ indicated that, “in light of express provisions providing for a comprehensive review of a [PSCR] plan relative to a 5-year forecast, along with the significant difference in the effect of the ultimate determination, Act 304 does not allow for the ‘approval’ of a 5-year forecast, or a cost item in that forecast.” PFD, p. 81.

In his PFD, the ALJ found that DTE Electric’s plan to contract with the NEXUS pipeline appeared to be reasonable and prudent based on the information provided at the contested proceeding. He also found that there appeared to be no basis for issuing a section 7 warning. His reasons for doing so were set forth and well-supported in the PFD’s discussion of the matter. PFD, pp. 78-94.

Exceptions to the PFD and replies to those exceptions notwithstanding, the Commission agrees with the PFD and adopts the ALJ’s analysis and decisions. However, the issues raised by the intervenors merit the close and thorough discussion undertaken in this proceeding. Pursuant to 460.6h(7), the Commission may indicate any cost items in the 5-year forecast that, on the basis of present evidence, the Commission would be unlikely to permit an electric utility to recover from its customers in rates, rate schedules, or power supply cost recovery factors established in the future. As it did in the November 22, 2016 order Case No. U-17691,³ the Commission finds that costs associated with NEXUS should not be recoverable absent a transparent evidentiary presentation examining the full nature of the NEXUS arrangements. Only under such circumstances will the Commission be prepared to determine the viability of said costs. The

² See, the March 6, 2014 order in Case No. U-17319, p. 12.

³ See, page 18 of the order in Case No. U-17691.

Commission prefers to examine these issues more holistically and therefore refrains from issuing a Section 7 warning.

Expenses Related to Coal

DTE Electric projected costs for coal to be approximately \$727 million for 2016 representing over 80% of the total 2016 fuel supply cost. DTE Electric witness Pratt, testified to the methodology used to arrive at the entirety of DTE Electric's fuel costs, including the cost of coal. He indicated that DTE Electric's coal supply will be obtained through long-term contracts of more than one year duration, and spot purchases. Mr. Pratt indicated that DTE Electric expects 91% of the coal it burns to be low-sulfur western coal, while the remainder will be mid-sulfur eastern and low-sulfur southern coal. DTE Electric asserted that blending and burning coal from a variety of regions has allowed it to negotiate competitive pricing. PFD, pp. 10-11; 2 Tr 681, 683, 686; 4 Tr 679-681, 683; Exhibits A-37, A-38.

The Attorney General objected to DTE Electric's projected cost for coal and asserted that the expense is excessive and/or not supported by the record. In its brief, the Attorney General reiterated that DTE Electric's projected use of medium- and high-sulfur coal adds to the coal cost more than is justified by the incremental heat value. The Attorney General also asserted that the Commission should warn the company to fully justify the economic benefit of using other than low-sulfur coal, or face a potential disallowance of the incremental cost incurred. The brief asserted, as well, that \$11.3 million from third-party coal service credits should be included in the 2016 calculation, based on historical figures from recent years. Attorney General brief, pp.1-2, 23-26. These arguments were reiterated in its reply brief.

The PFD rejected both the Attorney General's objections and recommendations, indicating that the Attorney General's witness, Mr. Coppola, did not appear to have the level of expertise on

the subjects as did DTE Electric witness, Mr. Yurko. The ALJ noted that Mr. Yurko explained that one cannot merely compare the costs of two types of coal and advance that to the cost of burning coal. For example, a plant may be designed to burn a particular type of coal, or have the ability to process a specific maximum coal poundage per hour. The market price of electricity and other market conditions enter into the economic feasibility of a particular blend of coal. The ALJ opined that the use of coal is in a downward trend and historical performance is not a reliable predictor for 2016 service credit projections. PFD, pp. 61-65; 4 Tr 694-695, 726-730, 736, 1014-1023. The Attorney General did not file an exception to the PFD on this issue, nor did any other party.

The Commission agrees with and adopts the ALJ's analysis and opinion regarding DTE Electric's 2016 projection for cost of coal. As indicated by DTE Electric's witness, price is only one of many factors that determines whether a fuel generation mix is economical. DTE Electric has provided ample evidence through the course of the contested proceeding to support its 2016 PSCR projection of its cost of coal. As such, the Commission declines to warn the company to fully justify the economic benefit of using other than low-sulfur coal, or face a potential disallowance of the incremental cost incurred as requested by the Attorney General. Accordingly, DTE Electric's 2016 projected coal costs, in concert with other projected costs, provide a reasonable basis for setting the PSCR factor in compliance with Act 304 PSCR requirements.

Expenses Related to Nuclear Fuel

DTE Electric projected costs for 2016 related to nuclear fuel to be approximately \$57 million. DTE Electric's witness, Mr. Wines, testified that the company's nuclear fuel costs consist of the cost for ore, conversion, enrichments services, and fabrication, and are amortized as a PSCR expense over the life of the fuel. He detailed the nuclear fuel cycle process, and provided an

explanation of DTE Electric's contracts to obtain fuels and refueling at Fermi 2. Mr. Wines stated that the 2016 PSCR plan includes planned and unplanned losses in generation. PFD, pp. 11-13; 4 Tr 780-786; Exhibit A-1.

In his brief, the Attorney General argued that DTE Electric, claiming the information was confidential and proprietary, did not provide sufficient information as to how the nuclear fuel expenses were determined and what its components are. As well, the Attorney General asserted, the company did not provide comparable actual expenses for 2014 and 2015. The Attorney General believes that DTE Electric failed to meet its burden of proof that the projected costs are reasonable and prudent, and failed to comply with discovery requirements. Therefore, the Attorney General posits, the nuclear expense projection should be reduced by approximately \$1.38 million. Attorney General's brief, pp. 26-27. This reasoning was restated in its reply brief. The Attorney General did not file an exception to the PFD on this issue, nor did any other party.

The ALJ quoted the testimony of Mr. Wines, and agreed with DTE Electric that the information requested by the Attorney General was the proprietary information of its third-party fuel suppliers and could not be shared with the Attorney General at this time. The ALJ then opined that DTE Electric did not fail to provide information. PFD, pp. 65-67; 4 Tr 790-792.

Regarding DTE Electric's projected cost of nuclear fuel, the ALJ was persuaded that DTE Electric's witnesses, Mr. Wines and Mr. Yurko had adequately explained the company's methodology for determining costs without the use of the proprietary information. Again, DTE Electric's witnesses had pointed out that Mr. Coppola's analysis and comparison of costs was flawed in that it failed to take into account numerous market and plant conditions, instead relying erroneously on nuclear fuel capital expenditure alone. The ALJ opined that DTE Electric's

projected cost of nuclear fuel was reasonable and prudent. PFD, pp. 65-70; 4 Tr 782, 784-786, 790-797.

The Commission agrees with and adopts the ALJ's analyses and opinion on both the matter of discovery and the cost of nuclear fuel. The Commission declines to order that the forecasted nuclear fuel cost projection be lowered. Accordingly, DTE Electric's projection for nuclear fuel costs shall remain at the figure stated in DTE Electric's PSCR plan as submitted on September 30, 2015.

Cost of Urea

DTE Electric projected its 2016 cost of urea to be approximately \$12 million. DTE Electric's witness, Mr. Yurko testified in detail to the manner in which its urea expenses was determined, including the fact that its price is volatile, and is primarily influenced by agricultural demand, as opposed to its use by utilities in environmental control processes. He asserted that the price was reasonable and prudent at the time the plan was filed and a later change in price does not mean that the initial projection was not. PFD, pp. 70-72; 4 Tr 736-737; Exhibit A-21.

In its initial brief, the Attorney General argued that discovery from DTE Electric showed what the more accurate forecast of urea should have been: approximately \$1.3 million less than the original forecasted amount. Attorney General brief, pp. 27-28; Attorney General Exhibit-6. This reasoning was restated in its reply brief. The Attorney General did not file any exception to the PFD on this issue, nor did any other party.

The ALJ agreed with DTE Electric, relying on *Attorney General v Public Service Commission*, 161 Mich App 506 at 517, 411 NW2d 469 (1987). He indicated that the company had adequately explained and supported its urea cost forecast for 2016. PFD, p. 71.

The Commission agrees with and adopts the ALJ's analysis and opinion on this matter. Although, the above-referenced Court of Appeals case is a gas cost recovery case rather than a PSCR case, the principle set forth in the order applies here: the Commission is to determine whether projections made by the company were prudent and reasonable at the time the action took place. As previously stated in the May 3, 2016 order in Case No. U-17693, and repeated in the October 11, 2016 order in Case No. U-17928, "this is a plan case and the numbers will ultimately be reconciled based on actuals."⁴ The Commission finds that DTE Electric's projected cost of approximately \$12 million stands.

Proposed Adjustments for Fuel and Transmission Costs for Non-PSCR Sales in 2016

DTE Electric projected non-PSCR sales of 1,980 gigawatt hours (GWh). DTE Electric's witness, Mr. Leuker, explained the formulation of the forecast, which took into account "various economic, technological, regulatory, and demographic factors that have affected them in the past." PFD, p. 73; 4 Tr 820. He discussed additional economic factors that are considered, including motor vehicle production and steel customer operations. *Id.*, p. 831. DTE Electric's witness, Mr. Burgdorf, testified regarding the place that non-PSCR sales have in the formulation discussed by Mr. Leuker. PFD, p. 73; Exhibit A-11.

In his initial brief, the Attorney General argued that DTE Electric had not provided insightful explanations and justifications for the company's proposed adjustments. The Attorney General opined that more discussion and support was needed. Attorney General initial brief, p. 28. This reasoning was restated in his reply brief. No exception to the PFD was filed on this topic by the Attorney General, nor any other party.

⁴ *See*, the October 11, 2016 order in Case No. U-17918, p. 34.

The Commission agrees with and adopts the ALJ's analysis and opinion on this matter. In this area, as in determining the projected cost of coal, DTE Electric has provided ample, persuasive evidence that the calculation of non-PSCR sales projections is a multi-faceted, complex process. The company appeared to fully support its calculations and projections for 2016 non-PSCR sales. Therefore, DTE Electric's projected figure will remain as submitted in its PSCR plan application.

Solar Resources

GLREA argued in this proceeding that DTE Electric failed to consider the effect of customer-owned solar generation will have on its demand when preparing its 2016 PSCR plan and 5-year forecast. GLREA asserted its belief that, had DTE Electric properly considered the expected increase in customer-owned solar devices and the increasing participation in its net-metering program, its PSCR factor would be lower. PFD, p. 74.

DTE Electric contended that GLREA should be prohibited from bringing its argument to the contested proceeding due to collateral estoppel, insisting that GLREA had brought these arguments before and they were rejected by the Commission. In its reply brief, DTE Electric stated that collateral estoppel is warranted when three prerequisites exist: 1. an issue was litigated and determined to be valid and determined by a valid and final judgment, 2. the same parties had a full and fair opportunity to litigate the issues, and 3. there was mutuality of estoppel. Further, DTE Electric argued, collateral estoppel is applicable to administrative proceedings. DTE Electric's reply brief, pp. 4-6. PFD, p. 75.

The ALJ considered DTE Electric's position, and found that collateral estoppel did not apply because, although GLREA brought identical arguments as had already been litigated and decided upon by the Commission, in this case they proposed specific changes to the PSCR plan and 5-year forecast that had not been raised in prior cases. PFD, p. 76.

Regarding the merits of GLREA's position, the ALJ reasoned that "GLREA's contention that the Commission should require DTE Electric to not only consider customer-owned solar generation in its PSCR plan and 5-year forecast, but also to make adjustments to the PSCR factor accordingly, should be rejected as a matter of law." PFD, p. 78. The ALJ indicated that contested proceedings related to MCL 460.1001 *et seq.*, (2008 PA 295), were a more appropriate place to raise in-depth solar issues. He also cited past cases in which the Commission declined to rule in GLREA's favor in Act 304 cases because "the direction that Michigan will take in addressing future energy is uncertain, thus, the Commission [was] reluctant to make significant changes to the requirements for PSCR plans and forecasts." PFD, p. 77.

GLREA took exception to the PFD, stating that there is no statutory language contained in Act 304 that "supports the ALJ's theory that the five-year forecast should exclude the impact of customer-owned facilities upon DTE Electric's forecasted PSCR costs and rate factors." GLREA Exceptions, p. 5. The Commission agrees with GLREA that there is no specific prohibitory language in Act 304, however, it also agrees with the ALJ that the statutory purpose and language of Act 295 make renewable energy plan contested proceedings the appropriate venue to raise issues of the increasing effect and use of solar energy. The Commission remains reluctant to change PSCR plan and 5-year forecast requirements at this time, especially given that renewable energy issues will be addressed in separate proceedings under the new energy law, Public Act 342 of 2016. Thus, GLREA's argument cannot be upheld and must be rejected in this case. The Commission finds that DTE Electric's inclusion of solar power in its 2016 PSCR plan and 5-year forecast is acceptable for Act 304 purposes.

In summary, the Commission finds DTE Electric's PSCR plan for 2016 and its projections through the year 2020 to be well-supported by the evidence presented in the contested case

proceeding, and to be reasonable and prudent, and in compliance with Act 304 requirements. DTE Electric's requested PSCR factor of \$(0.20) per kilowatt hour for PSCR customers is approved, and its 5-year forecast is accepted.

THEREFORE, IT IS ORDERED that:

A. The power supply cost recovery plan for calendar year 2016, filed by DTE Electric Company, is approved. A factor of \$(0.20) per kilowatt hour is approved.

B. DTE Electric Company's 5-year forecast is accepted.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any person desiring to appeal this order must do so by in the appropriate court within 30 days after the issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION



Sally A. Talberg, Chairman



Norman J. Saari, Commissioner



Rachael A. Eubanks, Commissioner

By its action of January 12, 2017.



Kavita Kale, Executive Secretary

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-17920

County of Ingham)

Gloria Pearl Jones being duly sworn, deposes and says that on January 12, 2017 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Gloria Pearl Jones

Gloria Pearl Jones

Subscribed and sworn to before me
this 12th day of January 2017

Lisa Felice

Lisa Felice
Notary Public, Eaton County
My Commission Expires April 15, 2020

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