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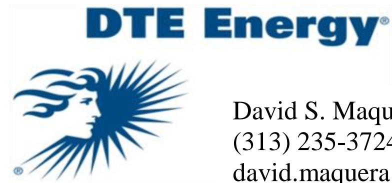

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August 15, 2018

Ms. Kavita Kale
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
Lansing, Michigan 48917

Re: In the matter of the Application of DTE Electric Company for Authority to Implement a Power Supply Cost Recovery Plan In Its Rate Schedules for 2018 Metered Jurisdictional Sales of Electricity
MPSC Case No. U-18403 (Paperless e-file)

Dear Ms. Kale:

Attached for electronic filing in the above referenced matter is DTE Electric Company's Reply Brief in the subject case. Also attached is the Proof of Service.

Very truly yours,

David S. Maquera

DSM/lah
Attachments.
c: Service List

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of	)	
DTE ELECTRIC COMPANY	)	
for Authority to Implement a Power	)	Case No. U-18403
Supply Cost Recovery Plan in its	)	
Rate Schedules for 2018 Metered	)	
Jurisdictional Sales of Electricity	)	

DTE ELECTRIC COMPANY'S

REPLY BRIEF

Dated: August 15, 2018

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I. INTRODUCTION

On July 18, 2018, DTE Electric Company ("DTE Electric," the "Company," or "Applicant") filed its Initial Brief in this case. Initial briefs were also filed by the Michigan Public Service Commission Staff ("Commission Staff"), the Great Lakes Renewable Energy Association and Residential Customer Group (collectively "GLREA/RCG"), the Michigan Attorney General ("AG"), and the Michigan Environmental Council and Sierra Club (collectively "MEC/SC").

DTE Electric's Initial Brief outlined this case's history and record support for the Company's two primary requests: 1) review and approval of DTE Electric's PSCR Plan for 2018 ("2018 PSCR Year");[1] and 2) review and approval of DTE Electric's expense for transportation capacity on the NEXUS pipeline.[2] Therefore, this Reply Brief will focus on the primary arguments raised by GLREA/RCG, the AG, MEC/SC, and the Commission Staff; generally in the foregoing order and as presented in the briefs, although issues may be addressed in the most logical sequence, and related issues may be addressed collectively or cross-referenced.

DTE Electric's overall position is that to the extent the Intervenors' and Commission Staff asserted issues are even within the lawful scope of this case, the controlling law and evidence fully support the Company's positions and compel rejection of contrary proposals. To minimize repetition, DTE Electric incorporates by reference and relies upon its testimony, exhibits, legal authorities and arguments presented in its Initial Brief. Any failure to separately address every issue suggested or position indicated by the Intervenors should not be considered as agreement by DTE Electric with any such issue or position.

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[1] See *In re DTE Electric Co*, MPSC Case No. U-18403, DTE Electric Initial Brief, Dkt. No. 122, § III, "DTE Electric's PSCR Plan for the 2018 PSCR Year."

[2] See *In re DTE Electric Co*, MPSC Case No. U-18403, DTE Electric Initial Brief, Dkt. No. 122, § IV, "DTE Electric's Long-Term Contract for the Transportation of Natural Gas on NEXUS."

II. DTE ELECTRIC'S REPLIES TO INTERVENORS

A. GLREA/RCG'S RECOMMENDATION SHOULD BE REJECTED BECAUSE THE COMMISSION HAS PREVIOUSLY CONSIDERED AND REJECTED SUCH RECOMMENDATION, WHICH IS ALSO MOOT

GLREA/RCG makes a single recommendation in this proceeding. Specifically, GLREA/RCG suggests that DTE Electric "…should be instructed to provide in this PSCR plan and forecast, as well as in future plan and forecast PSCR cases, a comprehensive analysis and discussion concerning the solar energy impacts in its service territory, and provide a review of the benefits of such a strategy." (GLREA/RCG Initial Brief, p. 10) The basis for GLREA/RCG's recommendation is that DTE Electric "…does not consider the impact of commercial and industrial customer-owned renewable generation in its PSCR Plan and five-year forecast." (GLREA/RCG Initial Brief, p. 10) GLREA/RCG's recommendation and underlying rationale should be rejected for reasons discussed below.

The Commission noted in DTE Electric's last (2017) PSCR Plan case that GLREA/RCG's recommendation has been repeatedly suggested, reviewed, and rejected in every DTE Electric PSCR Plan case beginning with Case No. U-17319.[3] Consequently, the Commission held that:

> "…Act 341 now provides a different avenue for consideration of renewable energy resources, i.e., the integrated resource plan (IRP) under Section 6t of Act 341, MCL 460.6t."[4]

The Commission further held that:

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[3] See *In re DTE Electric Co*, MPSC Case No. U-18143, Order dated Dec. 20, 2017, Dkt. No. 143, pp. 10-12.

[4] *Id* at p. 12.

> "…in light of the new legislative framework provided in the IRP for consideration of renewable energy resources, the Commission adopts the ALJ's recommendation on this issue and rejects GLREA's request."[5]

Based on the foregoing, the doctrine of *collateral estoppel* effectively bars any further consideration of GLREA/RCG's recommendation.[6]

The doctrine of *collateral estoppel* is generally defined as follows: "An affirmative defense barring a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one."[7] More specifically, *administrative collateral estoppel* is defined as "[e]stoppel that arises from a decision made by an agency acting in a judicial capacity."[8] The Michigan Court of Appeals has previously opined that:

> ***Collateral estoppel bars relitigation of an issue in a new action arising between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding***." *Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006), citing 1 Restatement Judgments, 2d, § 27, p 250. In contrast to res judicata, "[c]ollateral estoppel conclusively bars only issues 'actually litigated' in the first action."
>
> However, ratemaking is a legislative, rather than a judicial function, and thus the doctrines of res judicata or collateral estoppel "cannot apply in the pure sense." *Pennwalt Corp v Pub Serv Comm*, 166 Mich App 1, 9; 420 NW2d 156 (1988). Even so, ***issues fully decided in earlier PSC proceedings need not be "completely relitigated" in later proceedings unless the party wishing to do so establishes by new evidence or a showing of changed circumstances that the earlier result is unreasonable***.[9] (Emphasis added.) (Internal citations omitted.)

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[5] *Id*.

[6] The doctrine of *collateral estoppel* will not be found anywhere in the evidentiary record; nor should it be found in the evidentiary record because it is a legal doctrine and not a factual basis for expert witness testimony. See MRE 703.

[7] *Black's Law Dictionary* 256 (7th ed 1999).

[8] *Id.*

[9] See *Attorney General v Mich Pub Serv Comm (In re Consumers Energy Co for Rate Increase)*, 291 Mich App 106, 122; 804 NW2d 574 (2010).

Collateral estoppel is warranted when the following three prerequisites are satisfied: 1) an issue was actually litigated and determined by a valid and final judgment, 2) the same parties had a full and fair opportunity to litigate the issue, and 3) there was mutuality of estoppel.[10] In addition, the doctrine of *collateral estoppel* is generally applicable to administrative agency proceedings.[11] An issue fully decided in an earlier Commission proceeding is barred by the doctrine of *collateral estoppel* from re-litigation in a subsequent proceeding unless the party wishing to do so establishes by new evidence or a showing of changed circumstances that the earlier result is unreasonable.[12]

In this case, all three prerequisites for *collateral estoppel* are satisfied. The first prerequisite of *collateral estoppel* is satisfied because GLREA/RCG's issue has been previously considered and rejected by the Commission.[13] The second prerequisite of *collateral estoppel* is satisfied because all the parties to this 2018 PSCR Plan case had a full and fair opportunity to litigate this issue in the 2017 PSCR Plan case. The third prerequisite for *collateral estoppel* is satisfied because all the parties to this 2018 PSCR Plan case were the same parties in the 2017 PSCR Plan case in which the Commission considered and rejected GLREA/RCG's issue. Finally, GLREA/RCG have not presented any new evidence or shown any change in circumstances since the Commission issued its final order in Case No. U-18143 regarding this very same issue. Accordingly, GLREA/RCG's recommendation must be rejected by pursuant to the doctrine of *collateral estoppel*.

[10] *Estes v Titus*, 481 Mich 573, 585; 751 NW2d 493 (2008).

[11] *Storey v Meijer, Inc*, 431 Mich 368, 373; 429 NW2d 169 (1998).

[12] See *In re Consumers Energy Co for Rate Increase*, 291 Mich App at 122.

[13] See *In re DTE Electric Co*, MPSC Case No. U-18143, Order dated Dec. 20, 2017, Dkt. No. 143, p. 12.

Notwithstanding the fact that GLREA/RCG's issue should be barred by the doctrine of *collateral estoppel*, the evidentiary record shows that there is no basis for GLREA/RCG's recommendation. As DTE Electric witness Mr. Leuker testified:

> "DTE Electric models its commercial and industrial classes using regression analysis based on historical data. All current customer-owned generation and its lasting impacts are implicitly considered when producing the load forecast for these classes. What would not be included in the five-year forecast is future incremental customer-owned generation, which if included, would be deminimis relative to total forecasted sales." (3T 464)

Thus, contrary to GLREA/RCG's assertions, DTE Electric's five-year forecast already addresses the impact of commercial and industrial customer-owned renewable generation in a PSCR Plan and five-year forecast. Consequently, GLREA's recommendation should be rejected under the doctrine of mootness.[14]

No other party in this PSCR proceeding filed an initial brief supporting GLREA/RCG's recommendation. Therefore, GLREA/RCG's recommendation should be rejected consistent with the Commission's prior rejections of the same recommendation in DTE Electric's prior four (4) PSCR Plan cases.[15] Accordingly, the ALJ should find, and the Commission should determine, that

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[14] The "mootness doctrine" is defined as "[t]he principle that American courts will not decide moot cases – that is, cases in which there is no longer any actual controversy." *Black's Law Dictionary* 1025 (7th ed. 1999).

[15] See *In re DTE Electric Co*, MPSC Case No. U-18143, Order dated Dec. 20, 2017, Dkt. No. 143, pp. 10-12; see also *In re DTE Electric Co*, MPSC Case No. U-17920, Order dated Jan. 12, 2017, Dkt. No. 128, p. 12 (where the Commission held that "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."); *In re DTE Electric Co*, MPSC Case No. U-17680, Order dated Jan. 19, 2016, Dkt. No. 106, p. 4 (where the Commission held that "[t]he Commission remains reluctant to make the changes suggested by GLREA. The Commission anticipates legislative changes in the area of resource planning, and encourages GLREA, in the meantime, to participate in the REP forecasting cases."); *In re DTE Electric Co*, MPSC Case No. U-17319, Order dated May 14, 2015, Dkt. No. 170, pp. 14-15.

the Company's Load Forecast for its 2018 PSCR Plan is reasonable and prudent by a preponderance of the evidence.[16]

B. THE AG's RECOMMENDATION FOR THE COMMISSION TO INSTRUCT THE COMPANY TO ADJUST ITS PSCR FACTOR DURING THE 2018 PSCR YEAR SOLELY DUE TO THE IMPACT OF FEDERAL TAX LEGISLATION ON TRANSMISSION COSTS SHOULD BE REJECTED

The AG Makes two recommendations in his initial brief. The AG's first recommendation is "…that the Commission instruct the Company to adjust the PSCR factor during 2018 as soon as the Company has the required information from ITC" regarding transmission cost reductions arising from the impact of the federal Tax Cuts and Jobs Act ("TCJA"). (AG Initial Brief, p. 9) However, DTE Electric witness Mr. O'Neill provided several reasons why the AG's recommendation should be rejected.

First, the Company's PSCR factor should not be adjusted during the PSCR year for any individual expense item because the PSCR factor is based upon an aggregate of all PSCR expense items. Consequently, whether a PSCR factor is adjusted during the PSCR year depends upon the total over-recovery or under-recovery amount on a monthly basis (3T 442).

Second, Mr. O'Neill testified that the Company projects to have a PSCR under-recovery by the end of 2018 PSCR Year. Therefore, it would be unreasonable and imprudent to lower the PSCR factor based upon the AG's recommendation because the likely result would be an even greater under-recovery amount by the end of the 2018 PSCR Year (3T 442).

Third, Mr. O'Neill explained that DTE Electric already has sufficiently strong financial incentive to lower the PSCR factor should it become necessary at any time during the 2018 PSCR Year. Specifically, if the average monthly PSCR balance is an over-recovery, then the Company

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[16] See *In re DTE Electric Co*, MPSC Case No. U-18403, DTE Electric Initial Brief, Dkt. No. 122, § III.A. "Proposed Finding of Fact No. 1."

must calculate and record an interest liability at its approved return on equity (currently 10.0%). Conversely, if the average monthly balance is a PSCR under-recovery, then the Company calculates and records an interest receivable at DTE Electric's short-term cost of debt (currently approximately 1.5%).[17] In other words, "[t]his asymmetrical interest in the PA 304 statute is a strong incentive for DTE Electric to return refunds to PSCR customers as soon as it makes sense." (3T 443-444)

Finally, given that the 2018 PSCR Year will likely be over by the time a final Commission order is issued in this PSCR Plan proceeding, Mr. O'Neill testified how the Company's 2018 PSCR reconciliation is the more appropriate proceeding for reviewing any material refund arising from the impact of TCJA on transmission expense (3T 444). For all of these above reasons, the ALJ should recommend rejection of the AG's first recommendation.

C. THE AG'S RECOMMENDATION TO DIRECT THE COMPANY TO PERFORM AN ECONOMIC ANALYSIS OF THE DTE SOLARCURRENTS PROJECT SHOULD BE REJECTED

The AG's second recommendation is that the Commission direct DTE Electric to perform an economic analysis of the Company's Solar Currents project to determine if continuing to operate the program or terminating it is in the best interest of customers. (AG Initial Brief, p. 10) The apparent basis for the AG's recommendation is the claim that the cost per Megawatt hour ("MWh") of the utility-owned SolarCurrents program being recovered by the PSCR is high. (AG Initial Brief, p. 10) However, DTE Electric witness Christopher Payne explained that such costs reflect $/MWh transfer prices approved by the Commission in annual Renewable Energy Plan Reconciliation orders that adjust each year over time. Thus, the cost for renewable energy is recovered through the PSCR at Commission-approved transfer prices (3T 525).

[17] See MCL 460.6j(16).

Mr. Payne further explained that 26 of the 28 solar sites were approved under the Case No. U-15806 transfer price schedule while the remaining two were approved under Case No. U-16656. Furthermore, the Demille/Turrill/O'Shea project was approved under the Case No. U-17632 transfer price schedule. Thus, the transfer prices in effect depend on project approval timing and differing methods of transfer price calculations. Consequently, these transfer price schedules differ and should not be used for comparative analysis (3T 525).

In summary, Mr. Payne's testimony shows why the AG's above recommendation is not appropriate in a PSCR case. The Commission has already approved Renewable Energy Plans, associated SolarCurrents renewable energy projects, and approved the pricing for these SolarCurrents projects in Renewable Energy Plan and Reconciliation cases. In fact, the Commission has clearly stated its intention to fix the pricing for these renewable energy projects specifically to eliminate the kind of retroactive analysis contemplated by the AG when it stated back in Case No. U-15800 that *"**Provider-owned projects will have transfer prices set in vintages. Doing so ensures that the economic viability of projects that have been committed to will not be jeopardized by transfer prices that change in future years**."*[18] (Emphasis added.)

No other party in this PSCR proceeding filed an initial brief supporting the AG's recommendation on this issue. Therefore, the AG's recommendation that the Commission direct DTE Electric to perform an economic analysis of the DTE SolarCurrents project in a PSCR proceeding should be rejected.

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[18] See *In re On the Commission's Own Motion to Implement 2008 PA 295 Through Issuance of a Temporary Order as Required by MCL 460.1191*, MPSC Case No. U-15800, Order dated Dec. 4, 2008, Dkt. No. 1, p. 25.

D. MEC/SC'S RECOMMENDATIONS REGARDING DTE ELECTRIC'S TIER 2 PLANTS SHOULD BE REJECTED AS A MATTER OF LAW AND FACT

A complete understanding of why the MEC/SC position concerning operation of the Company's Tier 2 power plants is incorrect and unjustified starts with an examination of the law of facts. MEC/SC misconstrues not only Act 304, but also its purpose within the overall legislative framework applicable to Michigan electric utilities. For the reasons discussed below, MEC/SC's recommendation should be rejected.

1. The Plain and Ordinary Language of Act 304 Limits the Scope of a PSCR Proceeding to a Review of PSCR Costs for Reasonableness and Prudence

Act 304, MCL 460.6j, *et seq*, provides the legal framework used to review DTE Electric's proposed Plan for the 2018 PSCR Year and 2018-2022 five-year forecast. Specifically, PSCR proceedings concern the recovery of an electric utility's "power supply costs" on an annual basis. Accordingly, MCL 460.6j(1) relevantly provides that:

"As used in this act:

> '***Power supply cost recovery clause***' means a clause in the electric rates or rate schedule of a utility which ***permits*** the monthly adjustment of ***rates for power supply*** to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by ***the utility incurred under reasonable and prudent policies and practices***.
>
> 'Power supply cost recovery factor' means that element of the rates to be charged for electric service to ***reflect power supply costs incurred by an electric utility*** and made pursuant to a power supply cost recovery clause incorporated in the rates or rate schedule of an electric utility."[19] (Emphasis added.)

[19] MCL 460.6j(1)(a) and (b).

Act 304 further provides that DTE Electric must annually file a PSCR plan, which shall "include the utility's evaluation of the reasonableness and prudence of its decisions to provide ***power supply*** in the manner described in the ***plan, in light of its existing sources of electrical generation***..."[20] (Emphasis added.) Act 304 further provides that contemporaneously with the PSCR plan filing, DTE Electric must provide "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."[21] (Emphasis added.)

The first rule of statutory construction is to give effect to the legislative intent through reasonable interpretation in light of the statute's purpose.[22] Language not defined within a statute should be given its plain and ordinary meaning.[23] If the plain and ordinary meaning of statutory language is clear and unambiguous, then judicial construction is neither necessary nor permitted.[24] In this instance, the determiner "its" is defined as "belonging to or associated with a thing

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[20] MCL 460.6j(3).

[21] MCL 460.6j(4).

[22] *Consumers Power Co v Dep't of Treasury*, 235 Mich App 380, 384; 597 NW2d 274 (1999); *Attorney General v Public Serv Comm*, 161 Mich App 506, 517; 411 NW2d 469 (1987).

[23] *Consumers Power*, 235 Mich App at 385.

[24] *In re Consumers Energy Co*, 278 Mich App 547, 553; 753 NW2d 287 (2008).

previously mentioned or easily identified."[25] In addition, the adjective "existing" is defined as "in existence or operation at the time under consideration; current."[26]

Based on the above rules of statutory construction, the plain and ordinary meaning of the above provisions of Act 304 is that both the PSCR Plan and five-year forecast concern only DTE Electric's projected PSCR costs for its existing sources of power generation. Notably, **Act 304's above definition of PSCR costs does not include capital and O&M costs**.[27] Therefore, it is inappropriate to consider either capital or O&M costs in determining whether DTE Electric's proposed PSCR costs are reasonable and prudent. The Commission recognized the narrow scope of a PSCR proceeding when it recently held that:

> "However, this decision should not be construed as an opportunity to embark on fishing expeditions that stray from the bounds of the issues articulated in MCL 460.6j . . . ***The Commission emphasizes, however, that a PSCR plan proceeding is a narrow proceeding, limited to the issues prescribed in MCL 460.6j.*** These issues include the projected sources and costs of anticipated power supply (fuel) during the plan period, the duration of and costs associated with major power supply contracts and arrangements for that period, computation of the PSCR factor, and the reasonableness and prudence of the power supply plan in light of the utility's existing sources of generation. MCL 460.6j(3). In evaluating the PSCR plan, the Commission will consider the cost and availability of generation available to the utility, the cost of short-term purchases, whether the utility has taken all appropriate actions to minimize the cost of fuel, and the availability of interruptible service, among other relevant factors. MCL 460.6j(6). The Commission expects PSCR plan proceedings to be handled in an expeditious manner to allow for timely recovery of fuel and purchased power expenses. ***This scope is outlined in the statute and interpreted by the Commission in prior orders and the fact that the plan is limited to the current year make the proceeding an inappropriate vehicle for holistic long-term resource planning.*** While the review of the utility's five year

[25] See *New Oxford American Dictionary* 924 (3d ed 2010); see also *Allstate Ins Co v Freeman*, 432 Mich 656, 698; 443 NW2d 734 (1989) (where the Michigan Supreme Court held that a court may look to the definition of the word given in a recognized dictionary).

[26] See *New Oxford American Dictionary* 607 (3d ed 2010); see also *Allstate Ins Co v Freeman*, 432 Mich 656, 698; 443 NW2d 734 (1989) (where the Michigan Supreme Court held that a court may look to the definition of the word given in a recognized dictionary).

[27] MCL 460.6j(1)(a).

forecast filed simultaneously with the PSCR plan can provide insights into load, fuel, and power supply trends and options in a more forward-looking manner, the Commission cautions against protracted litigation of policy and technical matters that would delay the PSCR proceeding and be better handled in a traditional rate case, certificate of need proceeding, or a collaborative planning effort among the Commission and stakeholders"[28] (Emphasis added.)

The Commission also correctly held in its final order for DTE Electric's 2013 PSCR Plan case that:

> "The Commission agrees with the Staff and Detroit Edison that contested issues regarding ***capital costs* must be litigated in a *rate case*. An Act 304 proceeding is not the appropriate forum to determine issues related to the company's long-term capital investment decisions.** Therefore, the Commission finds that a Section 7 warning is not warranted in this PSCR plan proceeding."[29] (Emphasis added.)

Likewise, the Commission also correctly held in its final order for DTE Electric's 2014 PSCR Plan case that:

> "The Commission reiterates that the plan and forecast provisions of Act 304 refer to 'existing sources of electric generation.' MCL 460.6j(3); MCL 460.6j(4). As such, the ***inclusion of sorbents in a plan and forecast is appropriate***. However, the Commission acknowledges that the costs for sorbents and associated capital investments are included in DTE Electric's pending rate case, Case No. U-17767, and ***it is preferable to examine both the operations and maintenance costs and capital costs for DSI and ACI in that [rate case] proceeding***. Adjustments can be made in future PSCR proceedings based on the Commission's determinations in the rate case."[30] (Emphasis added.)

Both of these final PSCR Plan case orders are consistent with the Commission's earlier order that recognized the narrow scope of a PSCR proceeding.[31] Even MEC/SC's reliance upon the

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[28] See *In re DTE Electric Co*, MPSC Case No. U-17319, Order dated March 6, 2014, Dkt. No. 73, pp. 11-12.

[29] See *In re The Detroit Edison Co*, MPSC Case No. U-17097, Order dated Dec. 4, 2014, Dkt. No. 91, p. 11

[30] See *In re DTE Electric Co*, MPSC Case No. U-17319, Order dated May 14, 2015, Dkt. No. 170, p. 10.

[31] See *In re DTE Electric Co*, MPSC Case No. U-17319, Order dated March 6, 2014, Dkt. No. 73, pp. 11-12.

Commission rate case order from Case No. U-17767 is subject to reasonable disagreement because there the Commission in that proceeding also correctly held that:

> "The Commission finds ***the ALJ's focus on O&M costs to be entirely appropriate as these costs appear to be a key driver of the net present value results as shown in this [rate] case***. However, ***the Commission may not lawfully limit the recovery of sorbent costs in future PSCR proceedings by establishing a hard cap in this rate proceeding***; those PSCR proceedings must follow the dictates of Act 304 and the evidence will be tested in those proceedings as required under MCL 460.6j."[32] (Emphasis added.)

MEC/SC cites the same order to support reviewing refreshed net present value revenue requirements ("NPVRR") analyses in subsequent PSCR proceedings. (MEC/SC Initial Brief, pp. 72,73,78) However, it is clear from the above language from the Commission's Order in Case No. U-17767 that net present value analyses are driven by O&M costs which should be reviewed in rate cases.

In summary, the orders cited above clearly indicate that consistent with the text and purpose of Act 304, only PSCR costs should be reviewed in PSCR proceedings for reasonableness and prudence. In contrast, non-PSCR costs such as capital and O&M are to be reviewed in rate cases.

2. MEC/SC's Assertions Regarding DTE Electric's Tier 2 Coal Units Are Unpersuasive and Lack Perspective

The Commission has considered the status of DTE Electric's "Tier 2" coal-fired power plants[33] over a number of years and in various general rate cases. (eg. MPSC Case Nos. U-16472 Order dated October 20, 2011 pp. 10-11; U-18014 Order dated January 31, 2017; U-18419 Order dated April 28, 2018; U-18255 Order on Rehearing dated June 28, 2018). Thus, the circumstances, economics and rationale surrounding the Company's strategy for such plants is well known to this Commission and the parties to this proceeding. And as the Commission knows, DTE Electric

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[32] See *In re DTE Electric Co*, MPSC Case No. U-17767, Order dated Dec. 11, 2015, Dkt. No. 485, p. 15.

[33] DTE Electric's "Tier 2" plants are River Rouge, St. Clair and Trenton Channel.

intends to retire its Tier 2 power plants in the near future for a variety of reasons and is performing "subsistence" maintenance on them until they are replaced with the Company's now approved 1100 MW Combined Cycle Natural Gas plant. (See MPSC Case No. U-18419 Order dated April 27, 2018). In this light, MEC/SC's repetitive focus on detailed Net Present Value Revenue Requirement (NPVRR) analyses of the Company's Tier 2 power plants is unjustified and the year-to-year NPVRR variances of long-serving DTE Electric power plants are unpersuasive with respect to the reasonableness and prudence of their short-term operation until retirement.

As the Commission is well aware, the Company's rationale for continuing to operate Tier 2 coal-fired generation units such as River Rouge Unit 3 is not primarily based on economics. "Reasonableness and prudence" is not limited solely to economics and the Company has clearly explained in this proceeding (See 3T 344-347), and over a long period of time in other proceedings (Case No. U-18419: 6T 1638-1640; Case No. U-18255: 5T 400-403) that it intends to retire its Tier 2 plants once it is reasonable and prudent to do so based on electrical system conditions. Therefore, irrespective of whether a NPVRR economic analysis might have changed slightly year over year or month over month – the fact remains that it would be unreasonable and imprudent to fail to operate these plants for reliability reasons alone. Furthermore, the Company has consistently explained that its Tier 2 plants are scheduled to retire very soon – *in stages over a period of 2-5 years.* Very recent Commission Orders confirm the reasonableness of the Company's plans and conclusions with respect to these power plants:

> "The Commission has also issued several decisions in rate cases expressing concern over the cost-effectiveness of these marginal units. **The Commission agrees, therefore, that the most reasonable and prudent course of action is to retire the Tier 2 units by 2023 as DTE Electric proposes.**" (MPSC Case No. U-18419 Order dated April 27, 2018, p. 47) (emphasis added)"**The Commission agrees with DTE Electric that, although there is a possibility that one or more of the Tier 2 units might retire early, any plans to do so should await the outcome of the company's 2019 IRP analysis and the results of MISO's Attachment Y reliability study.** Other matters such as workforce and local government tax

> impacts may also be considered in a decision of this magnitude."(MPSC Case No. U-18419 Order dated April 27, 2018, p. 48-49) "**As discussed further in this order, the Commission observes the "power need" may also entail the need for local voltage support and other reliability benefits to address the closing of numerous coal plants and integration of other resources such as wind and solar energy.**" (MPSC Case No. U-18419 Order dated April 27, 2018, p. 49.) (Emphasis added.)

At bottom, DTE Electric has explained the reasonable and prudent reliability rationale for operating Tier 2 power plants in this and other proceedings. In addition, the Commission agrees that for now the Company's Tier 2 power plants should be retired as proposed by DTE Electric, that any early retirements of Tier 2 Units should await the outcome of the Company's 2019 IRP, and that the reliability of the Company's electric system is affected by the Tier 2 units. The Commission has also agreed with the Company that a total disallowance of maintenance costs for one of its Tier 2 power plants, River Rouge Unit 3, cannot be justified. In doing so the Commission stated:

> "The Commission agrees with the utility that, while the unit is in use, reasonable and prudent maintenance costs should be approved to ensure safe operation and a smooth transition to retirement." (Case No. U-18255 Order on Rehearing dated June 28, 2018 pp. 5-6)

In addition, a recent Proposal for Decision in Case No. U-18150 (DTE Electric's Depreciation Case) similarly concludes that determinations (and rates) affected by the proposed retirement dates of, inter alia, DTE Electric's Tier 2 power plants, should be consistent with the retirement determinations in Case No. U-18419.[34] (Case No. U-18150 Proposal for Decision dated April 17, 2018, p. 58) Thus, in proper context, MEC/SC's various assertions concerning the

[34] "The Commission has also issued several decisions in rate cases expressing concern over the cost-effectiveness of these marginal units. **The Commission agrees, therefore, that the most reasonable and prudent course of action is to retire the Tier 2 units by 2023 as DTE Electric proposes.**" (MPSC Case No. U-18419 Order dated April 27, 2018, p. 47) (emphasis added)"**The Commission agrees with DTE Electric that, although there is a possibility that one or more of the Tier 2 units might retire early, any plans to do so should await the outcome of the company's 2019 IRP analysis and the results of MISO's Attachment Y reliability study.** "(MPSC Case No. U-18419 Order dated April 27, 2018, p. 48-49)(emphasis added)

economics of operating DTE Electric's Tier 2 units in 2018 (even if accurate, which DTE Electric disputes) are conceptually unpersuasive, inconsistent with very recent Commission decisions, and should be rejected.

MEC/SC makes the following request and assertions regarding the Company's Tier 2 power plants:

> "MEC/SC submitted evidence showing that DTE's economic analysis is outdated and unreliable; and that the continued operation of most of the Tier 2 coal units through their announced retirement dates is likely to be a money-losing proposition with St. Clair unit 7 (which is projected to break even economically) being the only exception. MEC/SC are not directly requesting a reduction in the PSCR factor based upon this evidence. Rather, MEC/SC request that the Commission require DTE to present data in the reconciliation on the overall economics of these units, and also caution DTE that excess costs associated with their uneconomic operation may be disallowed." (MEC/SC Initial Brief pp. 70-71)

Citing a December 2017 Commission Order, MEC/SC claims that the Commission has *"expressed concern regarding the veracity of DTE's economic projections about the Tier 2 units for some time now."*(MEC/SC Initial Brief p. 74) DTE Electric disagrees with MEC/SC's characterization of the Commission's 2017 Order and submits that, regardless of one's conclusions regarding that 2017 Order, the Commission has made clear ***in 2018*** that DTE Electric's plans for continued operation of the Tier 2 power plants through their planned retirement dates are both reasonable and prudent.

3. MEC/SC's Assertions Regarding DTE Electric's Economic Analysis and DTE Electric's Criticisms of MEC/SC's Approach Rely on Mischaracterizations of DTE Electric testimony and False Precision

The Tier 2 power plants presently exist and have served DTE Electric customers well for decades. The law requires that DTE Electric's PSCR Plan *"include the utility's evaluation of the reasonableness and prudence of its decisions to provide power supply in the manner described in the plan, in light of its existing sources of electrical generation..."* (MCL 460.6j(3))(emphasis added) However, MEC/SC's assertions concerning the economics of the Company's Tier 2 power

plants include costs that are not recovered through the PSCR process and otherwise engage in a theoretical analysis that presumes these plants do not exist or that these plants may be retired and not replaced without reliability consequences:

> "MEC/SC request[s] that the Commission require DTE to present data in the reconciliation on the *overall* economics[35] of these units, and also caution DTE that excess costs associated with their uneconomic operation may be disallowed." (MEC/SC Initial Brief pp. 70-71) (emphasis added.)

As explained, *supra*, there are important considerations that MEC/SC's positions discount in favor of mischaracterizations of DTE Electric testimony and out-of-context mathematical calculations that presume certainty where little exists (See 3T 84-85, 345-347). For example, MEC/SC criticizes Mr. Marietta's refreshed economic analysis as "stale" because it updated the cost of sorbents (and showed a 3.6% higher net present value for the Tier 2 plants) rather than updating all costs (See 3T 486-487; MEC/SC Initial Brief pp. 74-75). However, MEC/SC's criticisms all fundamentally presume that Tier 2 power plants either don't presently exist, could be retired without reliability consequences, or *should* be retired – positions that are either totally theoretical or have (at a minimum through 2018) already been considered by the Commission and deferred for further consideration in another case at a later time.

MEC/SC also harshly criticizes DTE Electric's identification of the shortcomings of its evaluation and mischaracterizes DTE Electric's testimony pointing out those flaws. (MEC/SC Initial Brief pp. 77-85; See, for example, "Company witness Derek Arnold made other arguments that mostly attempt to draw attention from the issue…", "none of Mr. Arnold's arguments *directly* refute the economic analysis of by Mr. Allison" (emphasis added), "Mr. Arnold concludes, 'Witness Allison's recommendation that requests the Company to present Tier 2 fixed and variable

[35] See also "…Mr. Allison drew two key conclusions. First, using historical information on costs and revenues obtained from DTE in discovery, he found that the Tier 2 coal plants *as a whole* have each lost money relative to the market…" (MEC/SC Initial Brief p. 75)(emphasis added)

costs and revenues in a PSCR case bypasses the IRP process and creates duplicative efforts for all parties.' Hardly.")

Mr. Arnold, the Company's Supervisor of the Strategic Merchant Analytics Team within the Generation Optimization Department, holds both a MBA and mechanical engineering degree and has over a decade worth of real world electric utility system experience both in the field and in economic modeling. (3T 317-318) In nine (9) pages of transcript, Mr. Arnold explained that MEC/SC's evaluation was not comprehensive, containing only a single scenario with no additional scenarios or sensitivities. (3T 344-352) Mr. Arnold also explained that MEC/SC's evaluation failed to recognize at least three (3) important capacity market-related factors which should have been included in MEC/SC's effort. MEC/SC fails to account for the reality that capacity market prices generally vary with capacity supply. MEC/SC fails to account for the reality that the Capacity Import Limit (CIL), which represents the ability to move power into a MISO Zone, is forecasted to drop by 17% for MISO Zone 7 where DTE Electric provides electric service. MEC/SC also fails to account for the reality that the Local Reliability Requirement (LRR) is impacted by various factors and has been increasing over the past three years in MISO 7. (3T 345) The details of these failures and how they create uncertainty and risk for electric supply planning and reliability are explained in more detail by Mr. Arnold at 3T 346-351. Mr. Arnold also highlighted the following additional factors which MEC/SC failed to consider:

> *Reliability* under retirement/suspension scenarios is impacted as the bulk electric system has fewer alternatives to mitigate constraints.
>
> *Energy market prices* increase as economic supply decreases. Retiring/suspending operation, especially in a concentrated area, can cause higher locational marginal prices (LMPs).
>
> *Transmission upgrades* may be needed to allow a resource to retire/suspend operations and still meet planning criteria.

> *Market construct changes* may influence requirements and/or projected economics.[36] (3T 351)

In response, MEC/SC embarked on two hours of cross examination of Mr. Arnold that elicited nothing of consequence. (3T 368-421) MEC/SC now criticizes Mr. Arnold's expert observations regarding the rigor of MEC/SC's work by alleging that MEC/SC's evaluation (which fundamentally relies on the flawed premise that DTE Electric has complete freedom to choose among alternatives to the Tier 2 plants -- i.e. an integrated resource planning-type analysis) is fine because "this is not an IRP case." (MEC/SC Initial Brief p. 79) MEC/SC's argument simply disregards the substance of its position.

MEC/SC further complains that MEC/SC did not conclude that *all* of the Tier 2 generation units are uneconomic and should be shut down – MEC/SC just favors disallowances for the continued operation of all but one Tier 2 generation unit – which would naturally incentivize the early retirement of those units subjected to such a disallowance. MEC/SC claims this is important because if St. Clair Unit 7 runs there is *just enough capacity* to make the math work for its Local Capacity Requirement (LCR) argument. (MEC/SC Initial Brief pp. 80-84) Of course, all of MEC/SC's math assumes that Mr. Arnold's criticisms of MEC/SC's evaluation were inaccurate, that MISO has a well-constructed capacity market (a premise the MISO Independent Market Monitor has seriously questioned), that MISO has properly predicted available capacity and that the rest of the MISO footprint outside of Zone 7 remains static. Reliance on all of these MEC/SC assumptions would not be a reasonable and prudent basis to plan for reliable electric system operation.

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[36] With respect to markets, Mr. Arnold provided a compelling MISO Independent Market Monitor (IMM) criticism of the existing MISO capacity construct which the IMM concludes has "failed, since its inception, to perform efficiently and competitively because its design is fundamentally flawed." (See 3T 351-352)

DTE Electric presented a reasonable and prudent PSCR plan that includes the reasonable and prudent economic dispatch of existing DTE Electric Tier 2 power plants. The costs that are relevant to this proceeding have been demonstrated to be reasonable and prudent and should be approved for recovery by the Commission without MEC/SC's requested directives and cautions.

E. MEC/SC'S RECOMMENDATIONS FOR DISAPPROVAL OF PROJECTED NEXUS-RELATED COSTS SHOULD BE REJECTED

1. Introduction

DTE Electric presented its case for Commission approval of the Company's transportation costs on NEXUS that are expected to commence occurring when the pipeline goes into service in the third quarter of the 2018 PSCR Year.[37] The only party that filed any opposition to NEXUS in their initial brief was MEC/SC. The AG declined to file an initial brief opposing NEXUS. Moreover, the Commission Staff supports the Company in its request regarding NEXUS.

DTE Electric's reply generally addresses the criticisms of NEXUS raised by MEC/SC in the order they were presented in their initial brief. For reasons discussed below, there is no merit to MEC/SC's criticisms. Therefore, the Commission should reject MEC/SC's recommendation for any disallowance or Section 7 warning regarding DTE Electric's transportation costs on NEXUS.

2. DTE Electric's Affiliate Transaction with the NEXUS Pipeline Fully Complies with the Commission's Code of Conduct

At the outset, MEC/SC erroneously asserts that DTE Electric's contractual dealings with NEXUS pipeline violate the Code of Conduct. (MEC/SC Initial Brief, pp. 7-9) At the outset,

[37] See *In re DTE Electric Co*, MPSC Case No. U-18403, DTE Electric Initial Brief, Dkt. No. 122, § VI, "DTE Electric's Long-Term Contract for the Transportation of Natural Gas on NEXUS."

MEC/SC's reliance upon the *Midland Cogeneration* decision[38] for imposing a higher evidentiary standard is misplaced because the underlying case was not a proceeding conducted under Act 304. (MEC/SC Initial Brief, p. 7) In fact, the whole idea of a different evidentiary standard for affiliate transactions that are under review in a PSCR proceeding has no basis in Act 304, MCL 460.6j, *et seq*. Moreover, the Commission has held that:

> "While the Commission normally views utility/affiliate transactions with a heightened degree of scrutiny, Act 304 permits the utility pass through to its ratepayers ***all reasonable and prudent [PSCR] costs***, ***regardless of whether an affiliate is involved in the transaction.***"[39] (Emphasis added.)

MEC/SC is essentially attempting to re-write Act 304, which is impermissible as matter of law.[40]

The meaning of the Act 304 phrase "reasonable and prudent" is settled law. In MPSC Case No. U-7480, both the AG and RRC appealed the Commission's Order by arguing that "reasonable" refers to an evaluation of the adequacy or appropriateness of the **outcome** of gas procurement decisions. (RRC Circuit Court Brief, May 31, 1984, p. 16) However, the Court rejected the RRC's interpretation of the "reasonable and prudent standard" by instead finding that:

> As the [RRC's] argument goes, our legislature, in requiring that costs be recoverable only if incurred under reasonable and prudent practices, must have meant for "reasonable" and "prudent" to each have a separate and distinct meaning all its own. RRC then proceeds to suggest that the legislature intended for "prudent" to apply to the gas procurement decision when made, while "reasonable" was meant to evaluate with the assistance of hindsight, the appropriateness of the gas procurement decision. Thus **RRC claims, cost in excess of market price cannot be reasonable** in effect, and are not recoverable through a GCR clause. **This court does not subscribe to this novel interpretation** of the phrase "reasonable and prudent." If the legislature desired to specifically provide that reasonableness was to be judged by a consideration of effect, with the aid of hindsight based solely on market price, it would have done so. ***The phrase "reasonable and prudent" requires the Commission to evaluate the utility's procurement decisions at the***

[38] See *Midland Cogernation Venture Ltd P'ship v Pub Serv Comm*, 199 Mich App 286, 501 NW2d 573 (1993).

[39] See *In re Mich Consol Gas Co*, MPSC Case No. U-9902, Order dated June 12, 1992, pp. 24-25.

[40] *Lash v Traverse City*, 479 Mich 180, 189; 735 NW2d 628 (2007); *People v McIntire*, 461 Mich 147, 160; 599 NW2d 102 (1999).

> ***time those decisions were made.*** (Opinion Ingham County Circuit Court Judge Brown, dated September 6, 1985, pp. 6-7) (Emphasis added.)

Subsequently, the Court of Appeals in *Attorney General v Public Service Comm*, 161 Mich App 506, 411 NW2d 469 (1987) confirmed that the determination of whether the actions of a utility were reasonable and prudent under Act 304 must be made **"in light of existing conditions at the time its decision to purchase gas was made."**[41] (Emphasis added.)

MEC/SC asserts that DTE Electric's transaction with NEXUS violates the Code of Conduct because the Company will allegedly be paying more than the market price for gas transported over the NEXUS pipeline for the first several years of the transportation agreement. (MEC/SC Initial Brief, p. 9) However, MEC/SC never defines what constitutes the "market." In this case, the market is greenfield pipelines circa July 2014. DTE Electric is not purchasing natural gas from its affiliate. Instead, the Company is contracting for greenfield pipeline capacity designed to **transport** natural gas. It is undisputed that when DTE Electric executed the NEXUS precedent agreement ("NEXUS PA") in July 2014, there were only two other possible greenfield pipeline alternatives to NEXUS: Rover and ANR East. However, DTE Gas's July 2014 Landed Cost Analysis (LCA) showed that NEXUS was the best economic option for DTE Electric at the time the Company made its decision to contract with NEXUS for transportation capacity on the NEXUS pipeline (2T 206).[42]

Notwithstanding MEC/SC's criticisms, Mr. Pratt testified that the Commission's Code of Conduct states that an electric utility shall not subsidize the unregulated business of its affiliates; however, it does not preclude business between electric utilities and unregulated affiliates (2T 215-

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[41] *Id* at 517.

[42] The July 2014 LCA was also Exhibit ANR-9 in Case No. U-17920.

116). Furthermore, the Michigan Court of Appeals has held that a prohibited subsidy occurs only where there is a direct or indirect contribution of money from a regulated utility to an unregulated affiliate.[43] As described above, the NEXUS agreement is expected to significantly reduce DTE Electric's power supply costs over the term of the agreement as compared to the available market alternatives. Therefore, DTE Electric's interest in ensuring the NEXUS pipeline is built is based on the expected benefits (savings of $334 million) for its customers and not for the benefit of the affiliate, much less any direct or indirect contribution of money from DTE Electric to NEXUS. Therefore, DTE Electric's agreement with NEXUS does not subsidize the unregulated business of its affiliate (2T 216). Accordingly, there is no Code of Conduct violation.

Taking the above facts into consideration as a whole, the evidentiary record shows that DTE Electric executed the best deal that the market had to offer for greenfield pipelines from the Marcellus/Utica basin **at the time DTE Electric made its decision** to execute the July 2014 NEXUS PA with NEXUS. Therefore, DTE Electric's affiliate transaction with NEXUS was the best deal at market price at the time the decisions were made to enter into such a transaction. Furthermore, subsequent analyses estimating approximately **$338.4 million** of savings for DTE Electric customers has only vindicated DTE Electric's decision to execute the NEXUS PA back in July 2014. Consequently, DTE Electric's affiliate transaction with NEXUS does not violate the Code of Conduct.

3. The Record Shows That DTE Electric Has Fully Provided a Transparent Evidentiary Presentation of the Full Nature of the NEXUS Arrangement

Next, MEC/SC asserts that DTE Electric has not provided a full and transparent presentation. (MEC/SC Initial Brief, p. 14) However, MEC/SC's assertion is contradicted by the evidentiary record. One only has to review the list of exhibits sponsored by Company witness Mr.

[43] *MEC v Mich Pub Serv Comm*, 311 Mich App 204, 213-214; 874 NW2d 398 (2015).

Pratt, which demonstrates that MEC/SC's assertion is mere hyperbole (2T 188-189; Exhibits A-16 through A-18, A-28 through 38). MEC/SC's reliance on past proposals for decisions and Commission decisions in support of the proposition that DTE Electric (or DTE Gas) has never provided a full and transparent evidentiary presentation are misplaced for the simple fact that not once has the Commission ever issued a Section 7 warning[44] under Act 304 to either utility regarding their respective agreements with NEXUS. (MEC/SC Initial Brief, pp. 10-14)

MEC/SC further asserts that "…the NEXUS arrangement is not the result of arms-length transactions…" (MEC/SC Initial Brief, p. 15). However, MEC/SC does not provide a single citation to the evidentiary record that would support such an assertion. Accordingly, MEC/SC's unsupported assertion violates the Commission Rules,[45] Michigan Administrative Procedures Act ("APA"),[46] and Michigan Constitution.[47] As the Michigan Supreme Court has previously held: "It is not sufficient for a party 'simply to announce a position or assert a claim of error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority to sustain or reject his position.'"[48]

Finally, MEC/SC repeatedly asserts that DTE Electric's NEXUS PA constitutes an "above-market arrangement." (MEC/SC Initial Brief, p. 15) However, as already discussed above, the

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[44] See MCL 460.6j(7).

[45] Commission Rule R 792.10434(3) provides in pertinent part that: "Briefs containing factual allegations claimed to be established by the evidence shall include a reference to the specific portions of the record where the evidence may be found."

[46] See MCL 24.285.

[47] The required connection to the law and record is in accordance with Const 1963, art 6, § 28, which requires the Commission's decision to be "authorized by law," and its findings to "be supported by competent, material and substantial evidence on the whole record."

[48] *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) 355 Mich 182, 203; 94 NW2d 388 (1959)Mich 147, 161-62, n 8; 528 NW2d 707 (1995) ("Failure to properly brief an issue on appeal constitutes abandonment of the question"); *Isagholian v* Mich App 9, 14; 527 NW2d 13 (1994)..

evidentiary record shows that DTE Electric executed the best deal that the market had to offer for greenfield pipelines from the Marcellus/Utica basin at the time DTE Electric made its decision to execute the July 2014 NEXUS PA with NEXUS. Moreover, subsequent analyses estimating approximately **$338.4 million** of savings for DTE Electric customers has only vindicated DTE Electric's decision to execute the NEXUS PA back in July 2014.

4. The Evidentiary Record Shows that DTE Electric's Contract for Capacity on the NEXUS Pipeline is Expected to Save $338.4 Million For PSCR Customers

MEC/SC's primary argument against NEXUS is that DTE Electric has forecasted a short-term loss under the NEXUS PA for both the 2018 PSCR Year and the 2018-2022 five-year forecast. (MEC/SC Initial Brief, pp. 15-18) The basis for MEC/SC's primary argument is that Company witness Mr. Pratt provided a description of the NEXUS agreement on the fuel expense forecast in Exhibit A-18 based on gas forward prices instead of ICF's modeled projections (2T 196; Exhibit A-18).[49] On this basis, the NEXUS agreement is expected to increase fuel expense by approximately $1.5 million[50] in the 2018 Plan year.[51] On a similar basis, NEXUS is expected to increase fuel expense by $19 million for the five-year forecast period of 2018 through 2022 (2T 196; Exhibit A-18).[52] However, Mr. Pratt explained that the Company's fuel expense forecast and the expenses shown on Exhibit A-18 are based on gas forward prices rather than the forecast provided by ICF (2T 196). As Mr. Sloan explained, gas forward prices are based only upon a market consensus for the short term instead of a fundamental analysis of the market. Thus, gas

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[49] NEXUS transportation costs are also included in the Fuel Expense Forecast, which is summarized in Mr. Bence's Exhibit A-15 (2T 196).

[50] Page 33 of DTE Electric's Initial Brief inadvertently omitted a decimal point from the last sentence whereby the dollar amount of "$1 5 million" should read "$1.5 million" instead.

[51] Transportation costs are expected to be $2.7 million and the reduction in supply costs is expected to be $1.2 million.

[52] Transportation costs are expected to be $41 million and the reduction in supply costs is expected to be $22 million.

forward prices are insufficiently comparable to ICF's updated projections that are based upon fundamental market analysis (2T 75).

In fact, Mr. Pratt utilized ICF's more recent projection to perform an updated analysis with updated assumptions (2T 195; Exhibit A-17). Specifically, Mr. Pratt's updated analysis shows an expected savings of **$67.4 million** from 2018 through 2038 resulting from DTE Electric purchasing gas at NEXUS Kensington receipt point versus MichCon citygate (2T 195; Exhibit A-17). When coupled with the **$271 million** expected savings due to NEXUS driving lower MichCon Citygate prices (2T 194-195; Exhibit A-16), **total savings of $338.4 million are expected to be realized for DTE Electric customers** from 2018 through 2038.

MEC/SC suggests that the Commission cannot consider any information beyond the five-year forecast period for this PSCR proceeding. (MEC/SC Initial Brief, pp 17-18). However, MEC/SC does not cite any legal authority to support such a proposition.[53] To the contrary, Act 304, MCL 460.6j, *et seq*, was amended by 2016 PA 341 to expressly provide the Commission with statutory authority to review long-term firm gas transportation contracts.[54] Consequently, the Commission has statutory authority to consider "other relevant factors"[55] regarding a long-term firm gas transportation contract such as the NEXUS PA including information beyond the five-year forecast period. Thus, the Commission must take into consideration the fact that the total savings of $338.4 million realized for DTE Electric customers from 2018 through 2038 outweigh

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[53] "It is not sufficient for a party 'simply to announce a position or assert a claim of error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) 355 Mich 182, 203; 94 NW2d 388 (1959) Mich 147, 161-62, n 8; 528 NW2d 707 (1995) ("Failure to properly brief an issue on appeal constitutes abandonment of the question"); *Isagholian v* Mich App 9, 14; 527 NW2d 13 (1994)

[54] See MCL 460.6j(1)(a); see also MCL 460.6j(3).

[55] See MCL 460.6j(6).

any short-term loss for either the 2018 PSCR Year and the 2018-2022 five-year forecast in evaluating the reasonableness and prudence of the NEXUS PA.

5. **The Evidentiary Record Shows that DTE Electric's Decisions to Execute the Precedent Agreements with NEXUS and Subsequent Amendments Were Reasonable and Prudent**

Long before NEXUS was introduced to the Commission, it was common knowledge that the Company's electric generation would be undergoing a fundamental shift from relying primarily upon coal-based generation to a more diverse generation including natural gas (2T 197). In fact, in DTE Electric's 2013 PSCR Plan case, MEC/SC filed testimony as early as March 7, 2013, in which its very own witness testified that:

> "The record shows that ***the Company's plans to continue relying on its existing coal fleet ignores fundamental market changes*** that would appear to provide significant opportunities to stabilize and/or minimize future PSCR costs. ***The Company should be exploring and evaluating alternatives such as natural gas combined cycle ("NGCC") capacity***, increased demand side management, and increased renewable energy to take advantage of market conditions and minimize the significantly increasing PSCR costs facing its coal units. Based on the evidence submitted in this proceeding, however, ***DTE Electric has failed to react to changing market conditions and it has not planned for fuel supply diversity***. Instead, it continues to project a primary reliance on coal through 2017. As a result, the Company has failed to reasonably and prudently plan in response to changing market conditions, and it has failed to evaluate alternatives for minimizing its fuel costs. Further, DTE Electric has not provided sufficient evidence that its current strategy of continued investments in coal plants is optimal. (emphasis added)"[56]
> (MPSC Case No. U-17097: 2T 354)

Accordingly, the evidentiary record shows that DTE Electric has been taking steps since the fourth quarter of 2013 to begin diversifying its generation fleet from coal-fired generation to alternative sources of generation such as natural gas-fired generation as suggested by MEC. For reasons discussed below, MEC/SC's criticisms in this PSCR Plan case against DTE Electric's decisions to

[56] See *In re The Detroit Edison Co*, MPSC Case No. U-17097, Direct Testimony of P. Richards on Behalf of the Michigan Environmental Council and Natural Resources Defense Council, Dkt. No. 38, p. 14 of 34, lines 5-18.

implement steps consistent with MEC/SC's earlier recommendations to diversify its generation fleet from coal-fired generation to natural gas-fired generation are meritless and should be rejected.

a. Chronology of Events Leading to DTE Electric's Execution of the July 2014 PA Demonstrates Reasonableness and Prudence of Such Decision

MEC/SC revisits the events leading up to DTE Electric's execution of its contracts with NEXUS. (MEC/SC Initial Brief, pp. 20-30) In fact, the history of events culminating in DTE Electric's contract with NEXUS was well-documented in both DTE Electric's prior PSCR Plan cases and DTE Gas Company's GCR Plan cases as follows:[57]

- **October 2012** – NEXUS announces its open season (MPSC Case No. U-17920: 4T 644).
- **November 2012** – DTE Gas Company ("DTE Gas") submits a bid for 75,000 Dth/d in the NEXUS open season in November 2012 intending to combine that bid with another DTE Energy affiliate bid for 75,000 Dth/d in order to secure Anchor Shipper status (MPSC Case No. U-17920: 3T 416).
- **December 2012** – DTE Gas files with the Commission its 2013-2014 GCR Plan case, which informs the Commission about the possibility of a future affiliate transaction with NEXUS.[58]
- **September 2013** – DTE Gas commences negotiations with NEXUS (MPSC Case No. U-17920: 3T 415).
- **November 2013** – DTE Electric partners with DTE Gas to evaluate taking transportation capacity on the NEXUS pipeline (MPSC Case No. U-17920: 3T 416).

[57] Commission Rule R 792.10428 states in pertinent part that: "Except as otherwise provided by law, the commission and the presiding officer may take official notice of judicially cognizable facts and may take notice of general, technical, or scientific facts within the commission's specialized knowledge."

[58] See *In re Mich Consol Gas Co*, MPSC Case No. U-17131, Application, Dkt. No. 1, pp. EWC 35 – EWC 37.

- **December 2013** – DTE Gas completes an economic analysis (not a landed cost analysis) that DTE Electric relies upon, which indicates that NEXUS was expected to be a good long-term opportunity that would yield access to low cost gas supplies (MPSC Case No. U-17920: 3T 413-417; MPSC Case No. U-18412: Exhibit A-27).
- **December 2013** – Neither a landed cost analysis nor a request for proposal for transportation is solicited at this time because neither Rover, nor ANR East, nor any other comparable alternative greenfield pipeline to NEXUS existed at this time (MPSC Case No. U-17920: 3T 396, 415-416, and 418).
- **December 2013** – ***DTE Gas executes a precedent agreement ("December 2013 PA") with NEXUS*** after nearly four months of negotiations (MPSC Case No. U-18412: Exhibit A-30). However, NEXUS does not execute the December PA due to a change in partnership (MPSC Case No. U-17691: Exhibit ANR-6).
- **July 2014** – Both Rover and ANR East[59] (***the only possible alternative greenfield pipelines to NEXUS at the time***)[60] hold their respective open seasons long after both DTE Gas and DTE Electric had committed to taking transportation capacity on the NEXUS pipeline (MPSC Case No. U-17920: 3T 419; Exhibit ANR-1).
- **July 2014** – Representatives for both ANR and Rover meet with DTE Gas witness Mr. Lawshe on separate occasions and advise him to use their publicly posted rates for the

[59] The owner of the ANR East project, ANR Pipeline Company ("ANR"), conceded during Case No. U-17920 that there are no longer any plans to construct ANR East (MPSC Case No. U-17920: 4T 649).

[60] Unlike existing brownfield pipelines, construction of a greenfield pipeline such as NEXUS would add incremental gas deliverability into the Michigan region and lead to an infusion of affordable Utica and Marcellus natural gas (2T 193). This is a necessary precondition given the paradigm shift underway from a coal-fired generation fleet to a natural gas fired generation fleet not only for DTE Electric, but every other electric utility in the State of Michigan and in MISO, which will result in increasing demand for natural gas.

purpose of performing a landed cost analysis (MPSC Case No. U-17920: 3T 322-324).

- **July 2014** – DTE Gas performs the landed cost analysis ("LCA") that DTE Electric relies upon of both the Rover and ANR East projects compared to the NEXUS pipeline, which shows that the NEXUS pipeline provides lower landed costs than transportation on either Rover or ANR East (2T 183; Exhibit A-38).
- **July 2014** – DTE Electric and DTE Gas execute their respective precedent agreements ("July 2014 PA") with NEXUS (Exhibit A-28; MPSC Case No. U-18412: Exhibit A-31).
- **January 2015** – DTE Electric finalizes its acquisition of Renaissance Power Plant,[61] which is a 732 MW gas-fired simple cycle power plant located in Carson City, Michigan (MPSC Case No. U-17920: 3T 394).
- **September 2015** – DTE Electric executes an amendment with NEXUS, which modifies the transportation capacity and increases the term (2T 191; Exhibit A-31).[62]
- **October 2015** – DTE Electric finalizes its acquisition of Dean Power Plant, which is a 320 MW gas-fired simply cycle power plant located in East China Township, Michigan (MPSC Case No. U-17920: 3T 394).

MEC/SC cites to various internal documents from the fourth quarter of 2013 for the proposition that DTE Electric was not committed to NEXUS. (MEC/SC Initial Brief, pp. 21-27) However, these documents show that DTE Electric's decision to contract with NEXUS was not

[61] See *In re DTE Electric Co*, MPSC Case No. U-17767, Order dated Dec. 11, 2015, Dkt. No. 485, p. 20.

[62] The amended precedent agreement provides firm natural gas transportation for 30,000 Dth/d starting in November 2017 and increasing to 75,000 Dth/d starting on the later of May 2020 or when DTE Electric has added the required natural gas generation capacity necessary to utilize the increased volume requirement, which is currently expected to occur in 2022. The term of the initial 30,000 Dth/d is twenty years and the term of the additional 45,000 Dth/d is fifteen years (Exhibit A-31).

rash, but contemplative even while DTE Gas was already executing its December 2013 PA for 75,000 Dth per day of transportation capacity on the NEXUS pipeline (MPSC Case No. U-18412: Exhibit A-30). Moreover, as MEC/SC correctly notes, Anchor Shipper status was only achieved if affiliates from the same company combined to take a total of 150,000 Dth per day of transportation capacity. (MEC/SC Initial Brief, p. 20) Thus, DTE Gas left the remaining 75,000 Dth per day for DTE Electric, thereby qualifying both utilities for anchor shipper status.

MEC/SC's assertion that DTE Electric did not solicit bids from either new or existing pipelines is a misdirection. (MEC/SC Initial Brief, p. 23) The evidentiary record clearly shows that DTE Gas's July 2014 LCA demonstrated that NEXUS provided lower landed costs than transportation on the only other two proposed greenfield pipeline options to transport gas west out of the Utica/Marcellus basin: Rover and ANR East (2T 193; Exhibit A-38). Thus, DTE Gas executed its July 2014 PA on July 23, 2014 (MPSC Case No. U-18412: Exhibit A-31). DTE Electric executed its respective PA shortly thereafter on July 31, 2014 (2T 191; Exhibit A-28). Consequently, both utilities achieved anchor shipper status (2T 209).

Based on the foregoing events, the ALJ in Case No. U-17920 made the following finding in his proposal for decision:

> Based on the foregoing, the July 2014 landed cost analysis prepared by DTE Gas is relevant to DTE's decision to participate in NEXUS. The fact the study used published rates for ANR East and Rover in comparing costs with NEXUS was reasonable, and the methodology utilized in teaching its conclusions were valid. See 2 Tr 320-323. Further, the data used in that study was, at the time it was issued in July of 2014, the best available information. 3 Tr 325-327. **Based on the July 2014 landed cost analysis, NEXUS was the least-cost option relative to ANR East and Rover when the Precedent Agreement was executed on July 31, 2014**."[63] (Emphasis added.)

The ALJ in Case No. U-17920 made the following additional finding:

[63] See *In re DTE Electric Co*, MPSC Case No. U-17920, Proposal for Decision, Dkt. No. 118, p. 87.

> "Based on the foregoing, the import of the July 31, 2014 Precedent Agreement is that the events leading up to it, and the agreement itself, constitute "the decisions underlying the 5-year forecast…." MCL 460.6j(7).23 **As a general principle, Act 304 requires a determination of whether the action under consideration was reasonable and prudent at the time it was made. See *Attorney General v Public Service Comm*, 161 Mich App 506, 517 (1987).** The decisions at issue in this case went to obtaining transportation capacity from the Appalachian Basin, and were made between November 2013 and July of 2014."[64] (Emphasis added.)

Subsequently, the Commission held in its order approving DTE Electric's 2016 PSCR Plan that:

> "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."[65]

The PFD[66] and final Commission order[67] in DTE Electric's 2017 PSCR Plan case did not disturb the above conclusions. In summary, the facts outlined in the above chronology of events leading up to DTE Electric's decision to contract with NEXUS for transportation capacity on the NEXUS pipeline in July 2014 will not change with the passage of time. Moreover, such events demonstrate that DTE Electric's decision to contract with NEXUS in July 2014 was reasonable and prudent.

b. DTE Electric's Amendments, Waiver of Condition Precedent and Absence of Requests for Proposals Are Not Improper

Company witness Mr. Pratt testified that the NEXUS Precedent Agreement has been amended seven times:

- The April 9, 2015, Amendment (Exhibit A-31) changed the date associated NEXUS' condition precedent 7(a)(i) from April 1, 2015, to January 1, 2016.
- The First Amendment to the Precedent Agreement (Exhibit A-32), executed on

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[64] See *In re DTE Electric Co*, MPSC Case No. U-17920, Proposal for Decision, Dkt. No. 118, p. 84.

[65] See *In re DTE Electric Co*, MPSC Case No. U-17920, Order dated Jan. 12, 2017, Dkt. No. 128, p. 5.

[66] See *In re DTE Electric Co*, MPSC Case No. U-18143, Proposal for Decision, Dkt. No. 132, pp. 22-32.

[67] See *In re DTE Electric Co*, MPSC Case No. U-18143, Order dated Dec. 20, 2017, Dkt. No. 143, pp 26-27.

September 9, 2015, increased the volume of the initial commitment from 8,500 Dth/d to 30,000 Dth/d.

- The Second Amendment to the Precedent Agreement (Exhibit A-33), executed on May 27, 2016, changed the date associated with DTE Electric's condition precedent 7(b)(i) from June 1, 2016, to November 30, 2016.
- The Third Amendment to the Precedent Agreement (Exhibit A-34), executed on January 31, 2017, changed the dates associated with NEXUS' conditions precedent 7(a)(ii) and 7(a)(iii) from February 1, 2017, to May 1, 2017.
- The Fourth Amendment to the Precedent Agreement (Exhibit A-35), executed on April 26, 2017, changed the dates associated with NEXUS' conditions precedent 7(a)(ii) and 7(a)(iii) from May 1, 2017, to August 1, 2017.
- The Fifth Amendment to the Precedent Agreement (Exhibit A-36), executed on June 28, 2017, changed the timing associated with NEXUS' conditions precedent 7(a)(v) and 7(a)(vi) from "4 months prior to the Service Commencement Date" to July 1, 2018.
- The Sixth Amendment to the Precedent Agreement (Exhibit A-37), executed on July 27, 2017, changed the dates associated with NEXUS' conditions precedent 7(a)(ii) and 7(a)(iii) from August 1, 2017, to December 1, 2017 (2T 191-192).

In this case, MEC/SC criticizes each of these amendments (MEC/SC Initial Brief, pp. 30-43). However, only the September 2015 Amendment affected the duration of the NEXUS PA. In contrast, all the subsequent amendments and extensions discussed by both MEC/SC and the AG in their respective initial briefs did not affect either the transportation price or duration of the NEXUS PA or the September 2015 Amendment. To the contrary, these subsequent amendments and extensions occurred to navigate the unforeseen procedural delays at both the MPSC and the

FERC. Therefore, these subsequent amendments or extensions are immaterial to this proceeding since they have no bearing on whether the PSCR cost resulting from the NEXUS PA is reasonable and prudent pursuant to Act 304.

MEC/SC takes particular issue with DTE Electric's September 2015 Amendment that increased the duration of the NEXUS PA. (MEC/SC Initial Brief, pp. 32-35) However, MEC/SC is overly dismissive of the fact that DTE Electric had just acquired the increasffected the duration of the NEXUS PA. (MEC/SC Initial Brief, pp. ppMEC/SC takes pariMjust acquired the Renaissance Power Plant[68] in January 2015 (MPSC Case No. U-17920: 3T 394). Furthermore, DTE Electric was in the process of acquiring Dean Power Plant, which was completed by October 2015 (MPSC Case No. U-17920: 3T 394). MEC/SC mischaracterizes these undisputed facts as specious. (MEC/SC Initial Brief, p. 35) However, MEC/SC's argument is disingenuous since rgument is disingenuous sincthe evidentiary record shows that DTE Electric has been taking steps since the fourth quarter of 2013 to begin diversifying its generation fleet from coal-fired generation to alternative sources of generation such as natural gas-fired generation as suggested by MEC. Such diversification has only gained steam despite dsince the Commission recently approved DTE Electric's certificates of necessity for the construction of a new 1,100 baseload generation combined cycle gas turbine plant,[69] which is going to vastly increase the demand for natural gas that will be transported via NEXUS.

None of MEC/SC's criticisms are persuasive for finding that the NEXUS PA, which facilitates **expected savings of $338.4 million for DTE Electric PSCR customers** from 2018

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[68] See *In re DTE Electric Co*, MPSC Case No. U-17767, Order dated Dec. 11, 2015, Dkt. No. 485, p. 20.

[69] See *In re DTE Electric Co*, MPSC Case No. U-18419, Order dated April 27, 2018, Dkt. No. 449.

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through 2038,[70] is not reasonable and prudent. MEC/SC's reliance upon Mr. Clift's testimony for the proposition that there was insufficient consideration or documentation for each amendment is misplaced. (MEC/SC Initial Brief, p. 38) The evidentiary record shows that Mr. Clift's education and employment experience demonstrates that he has no unique education, training, or experience for purposes of offering expert testimony on amendments to any long-term firm gas transportation agreement (3T 646-660).

Mr. Pratt further explained DTE Electric's waiver of its Section 7(b)(i) Condition Precedent regarding MPSC approval of NEXUS transportation costs on December 1, 2016 (Exhibit AG-11). Specifically, DTE Electric negotiated with NEXUS to amend the Precedent Agreement to delay that date by six (6) months since there was no indication that the Company would receive further assurances of Commission approval of NEXUS costs prior to pipeline operation (2T 214-215). Nevertheless, DTE Electric had no reason to walk away from the agreement considering the significant benefits to DTE Electric's fuel expenses that are on the record in this case (2T 215). Furthermore, DTE Electric did receive considerations including the fuel expense savings associated with the construction and operation of the pipeline as well as a letter describing a consideration for additional future natural gas transportation capacity (2T 215). Therefore, the assertion that the Company's waiver of the MPSC approval condition precedent somehow constitutes preferential dealings between affiliates is meritless.

Finally, MEC/SC criticizes DTE Electric for not issuing formal requests for proposal for pipeline capacity and claims that the Company did not enter into any serious negotiations with competitors of NEXUS such as the Rover Pipeline and ANR East Pipeline. (MEC/SC Initial Brief,

[70] Mr. Pratt's updated analysis shows a savings of **$67.4 million** from 2018 through 2038 resulting from DTE Electric purchasing gas at NEXUS Kensington receipt point versus MichCon citygate (2T 195; Exhibit A-17); and also **$271 million** savings due to NEXUS driving lower MichCon Citygate prices (2T 194-195; Exhibit A-16).

pp. 42-43) However, as Mr. Pratt explained, DTE Electric contracted with NEXUS on July 31, 2014 (Exhibit A-28), after determining that it would result in the lowest landed cost of gas among greenfield pipelines (2T 206).[71] Specifically, when DTE Electric began considering NEXUS capacity, there were no other pipelines offering transportation service that would provide the desired benefits of a direct pipeline interconnection with Utica and Marcellus production facilities from a greenfield pipeline that would increase natural gas deliverability into Michigan. Therefore, DTE Electric would only request proposals from existing projects and would not issue RFPs based on speculation of other potential projects. DTE Electric did consider Rover and ANR East as alternatives to NEXUS when they held open seasons in July 2014; however, DTE Gas' landed cost analysis (Exhibit A-38) showed that NEXUS was the least cost alternative. Although MEC/SC incorrectly claims that the landed cost analysis is flawed because it used the published open season rates posted by Rover and ANR East (MEC/SC Initial Brief, p. 28), both Rover and ANR East representatives instructed DTE Gas to use the rates in their respective open seasons for its landed cost analysis (2T 207). Accordingly, the assertion that the absence of RFPs prior to DTE Electric's execution of the NEXUS PA on July 31, 2014, somehow constitutes preferential dealings between affiliates is meritless.

[71] Greenfield pipelines provide several benefits to DTE Electric that existing pipelines (a/k/a brownfield pipelines) do not. Construction of a greenfield pipeline such as NEXUS would add incremental gas deliverability into the Michigan region and lead to an infusion of lower-priced Utica and Marcellus natural gas. According to Company Witness Sloan's analysis (Exhibit A-27), the construction of NEXUS is expected to lead to an average reduction in natural gas prices at MichCon CityGate of $0.21/Dth from 2017 through 2037. These lower MichCon CityGate prices are expected to reduce DTE Electric PSCR costs by $271 million from 2017 through 2037. Furthermore, the addition of incremental natural gas deliverability into Michigan will ensure that Michigan natural gas consumers, including DTE Electric, have access to a reliable, long-term source of gas supply, creating additional supply diversity and reliability. None of these benefits would be realized from contracting for natural gas capacity from existing (or brownfield) pipelines (2T 206-207).

6. MEC/SC's Criticisms of the $338 Million of Estimated Savings for DTE Electric Customers Are Meritless

a. The potential $338 million of estimated savings over the 20-year lifespan of the NEXUS PA for DTE Electric customers are not beyond the scope of this PSCR proceeding

MEC/SC's final set of criticisms is aimed at the **$338 million of estimated savings** that will be realized for DTE Electric customers over the 20-year lifespan of the NEXUS PA. (MEC/SC Initial Brief, pp. 43-65) At the outset, MEC/SC attempts to limit the scope of the Commission's review to just the 2018-2022 five-year forecast period.

The purported basis for such limitation is that evaluation of savings beyond the five-year forecast period is beyond the Commission's jurisdiction. (MEC/SC Initial Brief, p. 43, 45-47) However, there is no merit to MEC/SC's assertions. As noted above, Act 304, MCL 460.6j, *et seq*, was amended by 2016 PA 341 to expressly provide the Commission with statutory authority to review long-term firm gas transportation contracts.[72] Such language is consistent with the Commission's statutory authority to review DTE Electric's major contracts for providing power supply during the 2018 PSCR Year.[73] Furthermore, such statutory authority includes consideration of "other relevant factors"[74] regarding a long-term firm gas transportation contract such as the NEXUS PA including information beyond the five-year forecast period.

Moreover, MEC/SC is estopped[75] against arguing for strict interpretation of Act 304 including the consideration of "other relevant factors" such as the $338 million in savings for DTE Electric customers over the 20-year lifespan of the NEXUS PA. In fact, MEC/SC has successfully

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[72] See MCL 460.6j(1)(a); see also MCL 460.6j(3).

[73] See MCL 460.6j(3).

[74] See MCL 460.6j(6).

[75] Estoppel is defined as "[a] bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true." Black's Law Dictionary 629 (9th ed 2009).

argued in this proceeding that non-PSCR costs (e.g. capital, operations & maintenance) are relevant and may be considered by the Commission in relation to evaluating the economics of DTE Electric's Tier 2 coal units (2T 27). Consequently, a bench ruling was issued that "…in reviewing whether PSCR costs for Tier 2 units will be approved, the overall economics of those units [including non-PSCR costs] should be evaluated (2T 27)." In this instance, MEC/SC cannot have it both ways; MEC/SC cannot argue on the one hand that Act 304 should be liberally construed so that non-PSCR costs can be considered by the Commission while arguing on the other hand that Act 304 should be strictly construed to preclude evaluation of "other relevant factors" such as the $338 million in savings for DTE Electric PSCR customers over the 20-year lifespan of the NEXUS PA. The bench ruling in this proceeding that denied DTE Electric's motion to strike MEC/SC testimony regarding non-PSCR costs has opened the door wide open to evaluation of "other relevant factors" such as the $338 million in savings for DTE Electric customers over the 20-year lifespan of the NEXUS PA (2T 27).

Finally, MEC/SC is also estopped[76] from arguing against Commission evaluation of the $338 million in savings for DTE Electric customers over the 20-year lifespan of the NEXUS PA when MEC/SC argues that the Company should present "…a full and transparent presentation…" (MEC/SC Initial Brief, p. 14) Again, MEC/SC cannot have it both ways in arguing for such a full and transparent evidentiary presentation while simultaneously arguing against DTE Electric's presentation of the savings that DTE Electric customers will realize from the NEXUS PA.

[76] Estoppel is defined as "[a] bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true." Black's Law Dictionary 629 (9th ed 2009).

b. DTE Electric never presented the $338 million of estimated savings as a basis for executing the NEXUS PA

Next, MEC/SC implicitly criticizes DTE Electric's presentation of the estimated $338 million in savings for DTE Electric customers over the 20-year lifespan of the NEXUS PA as post-hoc justification for the NEXUS PA. (MEC/SC Initial Brief, p. 43-44) However, MEC/SC fails to acknowledge that DTE Electric has never asserted that the analysis underlying the $338 million in estimated savings was the basis for the Company's decision to execute the NEXUS PA. To the contrary, if Mr. Sloan's analysis had shown that NEXUS was not going to reduce PSCR customers' costs, then DTE Electric would have exercised its condition precedent rights to exit the NEXUS PA. Accordingly, DTE Electric has consistently presented that DTE Gas's July 2014 LCA was the basis for DTE Electric's decision to execute the NEXUS PA on July 31, 2014 (2T 212; Exhibit A-28). The Company's presentation of the $338 million in estimated savings for DTE Electric customers over the 20-year lifespan of the NEXUS PA not only confirms, but also complies with the Commission's request for a "…full and transparent presentation."

c. MEC/SC's reliance upon market forward prices beyond 24 months is misplaced

MEC/SC's primary argument against NEXUS is that DTE Electric has forecasted a short-term loss of $19 million for the five-year forecast period of 2018 through 2022 (2T 196; Exhibit A-18). (MEC/SC Initial Brief, pp. 49) However, as both Mr. Pratt and Mr. Sloan explained, forward prices are not a good predictor of long-term future gas prices for several reasons (2T 213; 2T 95-97). First, forward prices are correlated to spot market prices that can be overly sensitive to near-term weather conditions (2T 95). Second, forward prices are based on futures contracts that are a risk management tool instead of a forecast tool (2T 95). Consequently, there is decreased market liquidity beyond the forward 24 months (2T 95-97).

Regardless, the NEXUS PA is not a five-year contract, but a 20-year contract instead. Accordingly, Mr. Pratt utilized ICF's more recent projection to perform an updated analysis with updated assumptions (2T 195; Exhibit A-17). Specifically, Mr. Pratt's updated analysis shows an estimated savings of **$67.4 million** from 2018 through 2038 resulting from DTE Electric purchasing gas at NEXUS Kensington receipt point versus MichCon citygate (2T 195; Exhibit A-17). When coupled with the **$271 million** estimated savings due to NEXUS driving lower MichCon Citygate prices (2T 194-195; Exhibit A-16), **total savings of $338.4 million estimated for DTE Electric PSCR customers** from 2018 through 2038.

d. MEC/SC's criticisms of the 3Q ICF forecast underlying the estimated $67 million savings are meritless

Next, MEC/SC asserts several criticisms against ICF's 3Q 2017 forecast as unreliable. (MEC/SC Initial Brief, pp. 54-58) However, MEC/SC's criticisms are meritless.

First, MEC/SC takes issue with ICF's forecasting methodology. Specifically, MEC/SC takes issue with ICF's use of an exogenous approach to determining natural gas pipeline capacity. (MEC/SC Initial Brief, p. 54) However, Mr. Sloan explained that an exogenous approach provides a more realistic, transparent, and technically accuruate representation of how the market for natural gas pipeline capacity than can be obtained by an optimization (endogenous) approach (2T 88-90).

Second, MEC/SC takes issue with the proprietary nature of ICF's decision-making underlying its exogenous methodology. Specifically, MEC/SC asserts that ICF's modeling and data was withheld from MEC. (MEC/SC Initial Brief, pp. 55-56) In support of this position, MEC/SC relies upon two Commission orders from Case Nos. U-16582 and U-17302 as a basis for disregarding Mr. Sloan's modeling and data (MEC/SC Initial Brief, pp. 56-57) However, MEC/SC's reliance on either order is misplaced because both cases are distinguishable from this

case since MEC/SC had filed a motion to strike in both Case Nos. U-16582 and U-17302.[77] In contrast, MEC/SC never filed a motion to strike Mr. Sloan's testimony regarding his modeling and data. Furthermore, when the ALJ asked all the parties if there was any objection to binding in Mr. Sloan's direct and rebuttal testimony, MEC/SC remained silent (2T 52). Therefore, MEC/SC is estopped from arguing that there was anything improper about the proprietary nature of Mr. Sloan's modeling and data.

Notwithstanding MEC/SC's criticisms, Mr. Sloan testified that:

> "ICF's forecasts of pipeline capacity additions are widely accepted by the natural gas pipeline industry. ICF regularly conducts studies of pipeline capacity expansion for the industry using the ICF GMM model. Recent examples include major studies of infrastructure development for both INGAA[78] and API.[79]"

Moreover, Mr. Sloan's forecasts and analyses are widely accepted in the gas industry (2T 82-84).

Based on the foregoing, MEC/SC's criticisms of ICF's 3Q 2017 Study, modeling, and data should be disregarded. Accordingly, the Commission should find that Mr. Pratt's updated analysis showing an estimated savings of **$67.4 million** from 2018 through 2038 resulting from DTE Electric purchasing gas at NEXUS Kensington receipt point versus MichCon citygate is reasonable and prudent.

e. MEC/SC's criticisms of the ICF 2015 Study underlying the estimated $271 million in savings are meritless

MEC/SC's criticisms against the projected $271 million are similar to those leveled against the projected $67.4 million. Therefore, MEC/SC's criticisms of the projected $271 million should

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[77] See *In re The Detroit Edison Co*, MPSC Case No. U-16582, Dec. 20, 2011, Dkt. No. 104, pp. 14-17; see also *In re DTE Electric Co*, MPSC Case No. U-17302, Order dated Dec. 19, 2013, Dkt. No. 103, p. 3.

[78] North American Midstream Infrastructure Through 2035: Leaning into the Headwinds, INGAA, April 12, 2016. http://www.ingaa.org/File.aspx?id=27961&v=db4fb0ca

[79] U.S. Oil and Gas Infrastructure Investment Through 2035, API, April 2017. http://www.api.org/~/media/Files/Policy/Infrastructure/API-Infrastructure-Study-2017.pdf

likewise be disregarded for reasons discussed above. However, while the projected $67.4 million is based upon the ICF's 3Q 2017 forecast, the $271 million is based upon ICF's 2015 forecast. Thus, MEC/SC asserts that ICF's 2015 forecast is outdated and reflects a chronic shortage of pipeline capacity. (MEC/SC Initial Brief, pp. 59-60)

MEC/SC's criticisms of ICF's 2015 forecast are meritless for several reasons. First, Mr. Sloan explained that the conclusions in the ICF 2015 Study have not changed over time. In fact, a more recent ICF projection still supports Mr. Sloan's original conclusion that holding NEXUS capacity provides DTE Electric with a net benefit by reducing the costs of gas purchases (2T 71-72, 87, 92-93).

Second, Mr. Sloan rebutted MEC/SC's assertion that ICF's 2015 Study reflects a chronic shortage of pipeline capacity. Specifically, Mr. Sloan explained why the ICF 2015 Study reflects a realistic assessment of pipeline capacity out of Marcellus/Utica (2T 87-88). Mr. Sloan further testified that if he had changed pipeline capacity additions as suggested by MEC, then the NEXUS pipeline would have looked more attractive in the Rover plus NEXUS case (2T 91-92).

Based on the foregoing, MEC/SC's criticisms of ICF's 2015 Study, modeling, and data should be disregarded. Accordingly, the Commission should find that Mr. Pratt's updated analysis showing an estimated savings of **$271 million** savings due to NEXUS driving lower MichCon Citygate prices is reasonable and prudent.

7. MEC/SC's Reliance Upon AG Witness Coppola For Its Opposition to NEXUS Is Misplaced Since His Testimony Was Thoroughly Rebutted

The AG did not file an initial brief in regard to NEXUS. Nevertheless, MEC/SC's initial brief concludes by making arguments on behalf of the AG. (MEC/SC Initial Brief, pp. 66-70) Specifically, MEC/SC argues that the question is not whether NEXUS should be built, but whether DTE Electric should recover transportation costs through the PSCR. (MEC/SC Initial Brief, p. 66-

67) However, such a question is a truism because the question as to whether NEXUS should be built has already been addressed and decided by the Federal Energy Regulatory Commission ("FERC"). Accordingly, the question of whether DTE Electric should recover transportation costs through the PSCR is properly posed to the Commission pursuant to MCL 460.6j(1)(b).[80] However, Company witness Mr. Pratt testified that:

> "DTE Electric requires firm gas transportation capacity in order to provide reliable and economical supply for new natural gas-fired generation capacity that will replace DTE Electric's retiring coal-fired generation capacity. As described in the Company's PSCR Application (p. 6):
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> > 'Although DTE Electric is not seeking Commission approval of the NEXUS Agreements, the Company is requesting Commission approval to recover the transportation related expense that is associated with DTE Electric's execution of both the Precedent Agreement and Rate Agreement with NEXUS Gas Transmission since such expense is reasonable, prudent and justified in light of the April 16, 2016 implementation of the MATS requirements, the need for DTE Electric to retire aging coal-fired electric generators and the need to facilitate sufficient, economic natural gas supply options for new natural gas-fired electric generation in Michigan.'" (2T 201-202)

For reasons already discussed above, DTE Electric has presented its case as to why the **<u>total savings of $338.4 million estimated for DTE Electric PSCR customers</u>** from 2018 through 2038 support a determination that the Company's transportation costs on NEXUS are reasonable and prudent (2T 294-295; Exhibits A-16 and A-17).

Next, MEC/SC asserts that the AG expressed concerns about DTE Electric's decision-making process that led to the Company's decision to take capacity on the NEXUS pipeline. (MEC/SC Initial Brief, p. 67) However, Mr. Pratt explained that the AG mischaracterized the

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[80] MCL 460.6j(1)(b) states that: "Power supply cost recovery clause" means a clause in the electric rates or rate schedule of an electric utility that permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including ***transportation costs***, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility incurred under reasonable and prudent policies and practices. (Emphasis added.)

documents that the Company produced in discovery and are provided in Exhibit AG-2 (2T 204). Specifically, Mr. Pratt testified that AG Witness Coppola appeared to conclude that "DTEE was a reluctant participant in the process" based on a November 18, 2013, DTE Gas email which requested DTE Electric's support for a planned DTE Gas Risk Management Committee (RMC) meeting (Exhibit AG-2). In the email, a DTE Gas employee referred to "the 75,000/day that will be allocate[d] to DTE Electric." The use of the word "allocate" by a third party, taken out of context, cannot be used to reasonably infer that DTE Electric was a reluctant participant in contracting for NEXUS capacity. DTE Electric was considering contracting for firm gas transportation capacity as it was becoming increasingly aware of the likelihood of future baseload natural gas-fired generation capacity (2T 202, 205).

In addition, Mr. Pratt explained that the AG's concerns appeared to be based on a November 12, 2013, DTE Electric email, which referenced "concerns" and included the statement that "I am not sure at this point how to competitively bid that capacity with the potential alternatives." However, the AG again takes this statement out of context and misunderstands DTE Electric's process to ensure that fuel contracts are reasonable and prudent. While considering whether to enter into a fuel contract, DTE Electric compares that contract to the potential alternatives and evaluates the benefits and risks of the contract. Identifying risks or expressing concerns while considering the NEXUS agreement does not mean that the Company was "concerned with signing up for capacity." As already discussed above, the Company contracted for NEXUS capacity because of the significant fuel cost savings that are expected to be realized from DTE Electric's contract with the NEXUS pipeline and from the construction and operation of the pipeline itself (2T 205-206).

Next, MEC/SC argues that greenfield (new) pipelines such as NEXUS provide no additional value than brownfield (existing) pipelines. (MEC/SC Initial Brief, pp. 67-68) However, Mr. Pratt explained that greenfield pipelines do provide several benefits to DTE Electric that existing pipelines do not. Specifically, construction of a greenfield pipeline such as NEXUS would add incremental gas deliverability into the Michigan region and lead to an infusion of lower-priced Utica and Marcellus natural gas. According to Company Witness Sloan's analysis (Exhibit A-27), the construction of NEXUS is expected to lead to an average reduction in natural gas prices at MichCon CityGate of $0.21/Dth from 2017 through 2037. DTE Electric is expected to require significant natural gas supply over the coming years. Although a portion of DTE Electric's future natural gas requirements will be supplied by NEXUS, a portion will be supplied from other locations such as MichCon CityGate. As described in Mr. Pratt's direct testimony, these lower MichCon CityGate prices are expected to reduce DTE Electric PSCR costs by $271 million from 2017 through 2037. Furthermore, the addition of incremental natural gas deliverability into Michigan will ensure that Michigan natural gas consumers, including DTE Electric, have access to a reliable, long-term source of gas supply, creating additional supply diversity and reliability. None of these benefits would be realized from contracting for natural gas capacity from an existing pipeline (2T 206-207).

As was explained in Case No. U-17920, **the brownfield pipeline alternatives suggested by MEC/SC and the AG are the equivalent of a long-distance airline flight with multiple connections followed by a long bus ride at both ends of the trip**. In contrast, **NEXUS is the equivalent of a direct long-distance airline flight with no connections between the two most convenient airports**.

Finally, MEC/SC echoes the AG's assertions regarding the projected cost of NEXUS during the five-year forecast period based upon forward prices. (MEC/SC Initial Brief, pp. 68-69) However, this issue has already been addressed above. Relatedly, the AG takes issue with Mr. Sloan's forecasting ability.

(MEC/SC Initial Brief, p. 69) However, it is worth noting that the AG's witness Mr. Coppola has no basis to opine on Mr. Sloan's forecasting ability. Mr. Coppola's background is entirely limited to finance and contains no indicia of any experience with long-term firm gas transportation contracts or forecasting (3T 571-584). In contrast, Mr. Sloan has over 35 years of experience in the field of energy economics that is focused on the natural gas and propane markets in North America (2T 55-56, 77-84). Furthermore, Mr. Coppola has never published anything subject to academic peer review (2T 571-584). In contrast, Mr. Sloan has extensively published and delivered presentations at industry forums (2T 82-84). In short, Mr. Sloan is a more credible witness than Mr. Coppola or Mr. Wilson.

F. REPLY TO STAFF

Staff filed testimony in support of NEXUS (3T 594-600). In its initial brief, Staff does not alter its support of NEXUS. However, Staff does introduce a new issue that was not raised in prior Act 304 proceedings in which NEXUS was a contested issue.[81] Specifically, Staff states that "DTE Electric has not provided a discussion of the reasonableness of the 69.5 cents per dth rate on its own basis, only as part of the overall basis." (Staff Initial Brief, p. 8) However, as Mr. Sloan previously explained in the very first Act 304 proceeding where NEXUS was a contested issue, securing "Anchor Shipper" status on NEXUS was desirable because it provided the added benefit of a guarantee by NEXUS that **<u>the rate paid by DTE Gas would be the lowest rate paid by any similarly situated shipper on NEXUS</u>** (MPSC Case No. U-17691: 5T 611-615). (Emphasis added.) Even MEC/SC acknowledges in this proceeding that:

> "In November 2012, during the first open season for NEXUS, DTE Gas submitted a bid for NEXUS transport services. The NEXUS Open Season Notice provided that a bidder could qualify as an "Anchor Shipper" for NEXUS by submitting a bid of 150 MDth/d or greater for a term of 15 years or more, and that "multiple affiliates of a single entity that collectively submit bids in the aggregate totaling at least 150,000 Dth/d [dekatherms per day] will, upon request, all be considered Anchor Shippers." ***<u>Anchor Shipper</u>*** **<u>status, also known as</u>** ***<u>Most Favored Nations</u>*** **<u>status, provides the</u>**

[81] Case Nos. U-17691, U-17920, U-17941, U-18-18143-18143, U-18152, U-18403, and U-18412.Case Nos. U-17691, U-17941, U-185U-

> **right – in the event NEXUS contracts for more favorable rates with similarly situated customers – to match those terms**." (MEC/SC Initial Brief, p. 20) (Bold and underline emphasis added.)

Furthermore, Mr. Pratt testified in this proceeding that DTE Electric shares anchor shipper status with DTE Gas (2T 209). Therefore, DTE Electric's 69.5 cents/dth is the lowest rate paid by any similarly situated shipper on NEXUS.

Moreover, Exhibit ST-2 shows that DTE Electric and NEXUS agreed to a $0.695/Dth negotiated rate while the FERC-approved recourse rate for the same path is approximately $0.88/Dth. Thus, over the course of the agreement, DTE Electric's NEXUS transportation costs would be $85 million higher if the Company had not negotiated a discount to the recourse rate.

IV. RELIEF REQUESTED

Based on its testimony, exhibits, legal authorities and arguments presented in its Initial Brief and this Reply Brief, DTE Electric has clearly demonstrated that its 2018 PSCR Plan and also its request for approval of the expense associated with the Company's executed NEXUS PA is reasonable and prudent by a preponderance of the evidence. Accordingly, DTE Electric requests the following relief from the Commission:

A. Enter its Order approving the implementation of Applicant's proposed PSCR Plan and maximum PSCR Factor in Applicant's rates for 2018 jurisdictional sales of electricity that are subject to the PSCR clause, and otherwise expedite approval of Applicant's request for a levelized 2018 maximum PSCR Factor of a negative 0.87 mills per kWh in customers' bills for the period January 1, 2018 through December 31, 2018.

B. Enter its Order accepting the Company's five-year forecast without issuing any Section 7 warning pursuant to MCL 460.6j(7).

C. Enter its Order continuing the approval of mercury and alkaline sorbents, urea, NO_x and SO_2 allowance expense and approve calcium bromide expense as a recoverable PSCR cost for

the 2018 PSCR Year and thereafter.

D. Enter its Order approving the Transfer Price treatment of renewable energy in DTE Electric's PSCR process as proposed, described and explained in the Company's testimony and exhibits.

E. Approve DTE Electric's request for Commission review and approval of the expense associated with DTE Electric's agreements with NEXUS Gas Transmission, which is a pipeline enterprise partly owned by a DTE Energy affiliate, to provide long-term firm natural gas transportation for 30,000 Dth per day with an assumed in-service date of September 1, 2018, increasing to 75,000 Dth per day when DTE Electric has added a CCGT power plant.

F. Grant Applicant such further additional relief and authority as the Commission mdeem necessary, suitable and appropriate.

Respectfully submitted,

DTE ELECTRIC COMPANY

____

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Dated: August 15, 2018

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of	)	
DTE ELECTRIC COMPANY for	)	
Authority to Implement a Power Supply	)	Case No. U-18403
Cost Recovery Plan in its Rate Schedules	)	(Paperless e-file)
For 2018 Metered Jurisdictional Sales	)	
Of Electricity	)	
______________________________________	)	

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

Estella R. Branson, being duly sworn, deposes and says that on the 15th day of August, 2018, she served a copy of DTE Electric Company's Reply Brief, and Proof of Service upon the persons on the attached service list via electronic mail.

____
Estella R. Branson

Subscribed and sworn to before
me this 15th day of August, 2018.

____
Lorri A. Hanner, Notary Public
Wayne County, Michigan
My Commission Expires: 4-20-2020

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MPSC Case No. U-18403

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