S T A T E   O F   M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **DTE ELECTRIC COMPANY** for reconciliation of its power supply cost recovery plan (Case No. U-20221) for the 12 months ended December 31, 2019.	))))))	Case No. U-20222

At the September 24, 2021 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Tremaine L. Phillips, Commissioner
Hon. Katherine L. Peretick, Commissioner

ORDER

History of Proceedings

On March 31, 2020, DTE Electric Company (DTE Electric) filed an application, with supporting testimony and exhibits, requesting approval pursuant to Section 6j of 1982 PA 304 (Act 304), MCL 460.6j, to reconcile its power supply costs and revenues collected pursuant to its power supply cost recovery (PSCR) plan for the 12-month period ended December 31, 2019. In its application, DTE Electric asserted that the reconciliation of power supply expenses with the revenues resulted in a total underrecovery of $2,199,749, including interest, for all PSCR customers. Application, p. 2. In addition, DTE Electric noted that the 2019 PSCR reconciliation includes the 2018 PSCR underrecovered amount of $115,018,618, including interest.

A prehearing conference was held on May 14, 2020, before Administrative Law Judge Sally L. Wallace (ALJ), at which the Michigan Department of Attorney General (Attorney General), the Michigan Environmental Council (MEC), and the Residential Customer Group (RCG) were granted intervention. DTE Electric and the Commission Staff (Staff) also participated in the proceeding. The ALJ entered a protective order on June 10, 2020.

On October 27, 2020, the Staff, the Attorney General, and MEC filed testimony and exhibits, and on November 24, 2020, DTE Electric filed rebuttal testimony and exhibits. An evidentiary hearing was held on December 17-18, 2020. DTE Electric, the Staff, the Attorney General, MEC, and RCG filed initial briefs on January 22, 2021. The company, the Staff, the Attorney General, and MEC filed reply briefs on February 12, 2021.

The ALJ issued a Proposal for Decision (PFD) on May 19, 2021. On June 9, 2021, DTE Electric, the Attorney General, and MEC filed exceptions, and the Staff filed a letter stating that it was not filing exceptions. On June 23, 2021, DTE Electric, the Attorney General, and MEC filed replies to exceptions, and the Staff filed a letter stating that it was not filing replies to exceptions. The record in this case is comprised of 560 pages of transcript and 123 exhibits admitted into evidence.

Uncontested Matters

The ALJ noted that no party took issue with the operation of DTE Electric's system or its planned and unplanned outages in 2019. She found that the company "operated its system in a reasonable and prudent manner, and that increased costs associated with outages, if any, should be approved." PFD, p. 15. In addition, the ALJ noted that no party took issue with most of DTE Electric's fuel costs, most of its sorbent and fuel additives expenses, reduced emissions fuel coal,

or with its transmission or purchased power expenses. The ALJ recommended that the Commission approve these costs.

The Commission finds that the ALJ's findings and recommendations regarding the uncontested matters are reasonable and prudent and should be approved. The remaining contested issues are addressed below.

Limestone Inventory Adjustment

DTE Electric stated that its planned 2019 limestone expense at its Monroe Power Plant (MPP) was $2.8 million and that its planned 2019 average cost for limestone consumption was $14.22/ton. According to the company, the actual 2019 limestone expense at MPP was $6.4 million, with an average cost of $35.43/ton for consumed limestone. *See*, Exhibit A-26. DTE Electric stated that "[t]he higher than planned limestone expense was mostly driven by [a] $3.6 million expense resulting from inventory adjustments (based on physical inventory surveys) that were made in 2019." 3 Tr 314.

The Staff noted that limestone costs were first included as PSCR expense in 2015, and that DTE Electric's usage of limestone corresponds with the amount of power generated over the past five years. In the Staff's opinion, "[b]ecause the Company's use of limestone is relatively recent," the "Staff accepted the expense adjustment for the current year" provided that DTE Electric complies with the following conditions:

1. Re-examine the method to track limestone usage in order to improve accuracy.
2. Re-calibrate the weight scale and volume measurement that are used for limestone.
3. Conduct a physical inventory survey annually to avoid future substantial inventory adjustments.

Id., p. 557. DTE Electric did not object to the Staff's recommendations. *Id*., p. 322.

The Attorney General argued that DTE Electric failed to support its $3.6 million limestone expense adjustment and, therefore, she recommended a disallowance of $2,718,762. In support of her proposed disallowance, she noted that the company did not perform a physical inspection of its limestone inventory for at least 10 years. The Attorney General stated that, in April 2019, DTE Electric conducted its first physical survey of its limestone pile since 2009 "and discovered that the physical inventory was 206,240 tons short of book quantities. It was at this point that the Company recorded an adjustment of $3,020,847 to its books, increasing limestone expense for 2019 by this amount and reducing the inventory account for the same amount." Attorney General's initial brief, pp. 8-9. The Attorney General noted that DTE Electric performed two additional physical inventory surveys in 2019. She asserted that the company recorded a loss adjustment in September 2019 for 4,194 tons, at a cost of $65,456, and another loss adjustment in December 2019 of 47,419 tons, for an expense adjustment of $759,034. The Attorney General stated that "[s]he has no expectation of perfect alignment between books and physical inventory when it comes to such materials that are used in bulk. However, neither DTE [Electric]'s process for dealing with limestone over the past decade, nor its stated discrepancy of hundreds of thousands of tons of limestone, are reasonable." *Id*., p. 10.

She also asserted that the company's failure to perform a physical survey of its limestone inventory for a decade is a "highly unusual" business practice. *Id*. The Attorney General contended that utilities "typically perform physical surveys of large inventory items [in their warehouse] at a minimum annually, and often numerous times throughout a year." *Id*. (footnote omitted). Moreover, the Attorney General stated that:

> [T]he 206,240 tons of physical to book limestone discrepancy over the 10-year period is larger than the entire 181,298 tons of limestone that the Company used in 2019, and also more than the average annual volume of 194,501 tons of limestone used by the Company during the five-year period from 2015 to 2019. In other

> words, this is an inventory loss equivalent to more than a year's worth of limestone consumption. This is not a minor inventory adjustment, but one of major consequence to the cost of power that the Company seeks to recover in this reconciliation[.]

Id., pp. 10-11 (footnote omitted). As a result, she requested that the adjustment be limited to one year of limestone loss and that the Commission adopt her proposed disallowance.

DTE Electric disagreed, asserting that:

> (1) there were no "losses" of inventory – only an accounting reconciliation, (3T 320) (2) the Attorney General points to no requirement to "have performed a physical inventory at least annually" and acknowledges that the Company had been regularly using calibrated scales to track inventory (3T 318), (3) only the Company suffered any harm, since the Company provided PSCR customers the value of additional limestone without payment in prior years, (3T 321) (4) there was no impact upon plant operations, no impact to generation, no impact to the ability to remove sulfur dioxide emissions, (3T 319, 331-332) and (5) DTE Electric has agreed to implement Staff's suggestions to improve limestone inventory accounting in the future. (3T 319)[.]

DTE Electric's reply brief, p. 32 (footnote omitted). The company asserted that the Attorney General did not support her recommendation with relevant facts and requested that her proposed disallowance be rejected.

The ALJ found that DTE Electric failed to adequately support the $3.6 million adjustment to limestone expense and did not demonstrate that its past actions were reasonable and prudent. She stated that:

> despite DTE Electric's efforts, the company came up short by 206,000 tons, an amount that not only exceeds annual usage, but is also the amount of inventory ordinarily kept on hand. Yet no one apparently noticed the significant deficit in material until 2019, despite the fact that, as [the company's witness] explained, DTE Electric endeavors to maintain 200,000 tons of limestone on site, and the company uses limestone nearly every day of the year to control emissions.

PFD, p. 20 (footnotes omitted). Although the ALJ agreed with DTE Electric that the Attorney General's reference to the company's inventories of warehouse materials is not relevant, she noted that DTE Electric admitted that it performs annual physical inventories of other bulk items, such as

coal and fuel oil volumes for larger tanks. Therefore, she found the company should have "performed a physical inventory of its limestone pile before 2019, especially considering that at the time the physical inventory was conducted, the limestone pile was only a fraction of what DTE Electric had recorded in its books." *Id*., pp. 20-21. As a result, the ALJ recommended that the Commission adopt the Attorney General's proposed disallowance of $2,718,762.

DTE Electric excepts, contending that it did not perform a physical survey of its limestone inventory until April 2019 "because there was little reason to do so" and "[t]here were no adverse impacts on either plant operations or customers." DTE Electric's exceptions, p. 2. In addition, the company asserts that it provided evidence that there was no bookkeeping error or physical loss of material. Rather, DTE Electric states that "there was a cumulative error relating to the power plant's consumption scale" and that "the adjustments simply reflect the Company updating its records to adjust for previous consumption." *Id*., p. 4, quoting 3 Tr 320. DTE Electric notes that the Staff accepted its $3.6 million adjustment and that the company plans to implement the Staff's recommendations to improve limestone inventory accounting in the future. Thus, DTE Electric requests that the Commission reject the ALJ's recommended disallowance.

The Attorney General asserts that, in DTE Electric's exceptions, the company reiterates the arguments set forth in its testimony and briefing that were refuted by the Attorney General and rejected by the ALJ. She states that "[i]t was neither reasonable nor prudent to fail to perform an inventory of limestone for a decade, a practice DTE [Electric] admits is 'common' for other bulk materials." Attorney General's replies to exceptions, p. 4, quoting DTE Electric's exceptions, p. 4 and Exhibit AG-2, p. 2. Accordingly, she requests that the Commission adopt the ALJ's recommended disallowance.

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.

The Commission notes that, according to DTE Electric, it has been purchasing and using limestone at MPP since 2009 but did not conduct a survey of its inventory until April 2019. 3 Tr 324. The company explained that, in 2019, personnel at MPP observed that the volume of limestone in the field appeared to be less than book value. DTE Electric stated that it began a formal inventory of the limestone because of "[t]he observation by the personnel involved and [the] shipping season. It was late March yet so [the] shipping season may not have commenced at that time. So it's a matter of consumption, observed pile available, and because it does not – it's not a supply chain issue 365 days a years [sic], we had to be cognizant of when our shipping season was going to resume." *Id.*, p. 331. As a result of the survey, the company discovered that it had 206,000 tons less limestone than was recorded on its books. *Id.*, p. 332. DTE Electric asserted that the discrepancy had accumulated over a 10-year period and was most likely due to consumption scale inaccuracies or a problem with the weigh feeder. *Id.*

The company acknowledged that, for the last 10 years, it has been "perform[ing] annual surveys of the fuel oil volume in its large oil storage tanks" that are greater than 250,000 gallons.[1] 3 Tr 333. DTE Electric also admitted that, for the last 40 years, it has conducted an annual physical inventory of its coal pile at MPP. *Id.*, pp. 332-333. The company stated that it had been

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[1] The company noted that for fuel oil tanks less than 250,000 gallons, the "booked inventory is managed through material receipts less consumption." 3 Tr 333.

visually inspecting the limestone in the field and that it did not conduct a formal physical inventory "because there was little reason to do so." DTE Electric's exceptions, p. 2. The Commission disagrees.

As noted by the company, limestone is essential for reducing sulfur dioxide emissions at MPP. 3 Tr 336, 339-340. DTE Electric's goal is to maintain approximately 200,000 tons of limestone on site to ensure that plant operations and emissions reduction are not interrupted. *Id.*, p. 329. In addition, the company acknowledged that the limestone arrives at MPP by vessel and that delivery dates and supply are dependent on the shipping season. *Id.*, pp. 327-329. For these reasons, the Commission finds that, pursuant to MCL 460.6j(1)(b), it is not a reasonable and prudent policy or practice for DTE Electric to fail to accurately inventory and account for its supply of limestone, annually, since 2009. Without a more exact inventory of limestone and a more precise measurement of annual usage at MPP, DTE Electric may have been inaccurately utilizing and charging its customers for the use of limestone. The Commission finds that the ALJ's recommended disallowance of $2,718,762 is reasonable and should be adopted. In addition, the Commission finds that the Staff's recommended conditions would ameliorate, or fully eliminate, future disallowances for limestone expense.

Trona Expense

DTE Electric stated that it planned to use 11,396 tons of trona[2] in 2019, at a cost of $2,401,228. According to the company, the actual 2019 usage of trona was 4,902 tons, at a cost of $1,970,873. *See*, Exhibit A-6.

[2] Trona is a sorbent that is "used to control emissions of mercury and acid gases to meet emission limits set forth by the EPA [Environmental Protection Agency] Mercury and Air Toxics Standards (MATS)." Direct Testimony of Barry J. Marietta, p. 4, filing #U-20222-0002.

The Attorney General noted that actual 2019 trona usage decreased 57% compared to the forecasted volume, but the actual 2019 trona expense only decreased 18% from the projected expense. After performing an assessment of DTE Electric's actual trona usage for 2019, she asserted that, despite the company's 2019 estimate, DTE Electric requested 32% more trona from the vendor. *Id*., p. 441. In the Attorney General's opinion, this higher volume of trona unreasonably increased costs and, therefore, the Commission should disallow trona expenses of $218,160. However, following DTE Electric's explanation in rebuttal, the Attorney General withdrew her recommendation.

Next, the Attorney General noted that the company's planned 2019 trona expense was $2,401,228, which results in a cost of $211/ton. She stated that, "[i]n contrast, the actual expense of $1,970,873 reflects a cost per ton of $402." 3 Tr 438 (footnote omitted). The Attorney General asserted that, in discovery, DTE Electric was "asked to provide the calculations and components of both the planned and actual [trona] expense for 2019." 3 Tr 437. She noted that the company provided schedules showing the volume of trona consumed at each power plant by month and the respective total expense. However, the Attorney General stated that "the Company neglected to provide the cost components of the Trona expense, such as product costs, fixed costs, and freight and transportation costs, to allow for an in-depth analysis of the volume and expense variances between actual and planned amounts." *Id*. The Attorney General conducted her own analysis and determined that a reasonable expense for trona freight and transportation is $110/ton. 3 Tr 440. She recommended that the Commission disallow $439,023 for unreasonable freight and transportation expenses.

DTE Electric disputed the Attorney General's recommendation, explaining that:

> There are numerous factors that can impact freight and transportation costs for shipping trona the nearly 1,500 miles from the supplier in Wyoming to the

> Company's plants. These factors include, but are not limited to, weather, fuel cost, trucking company availability, and rail line interruption. Additionally, trona cannot be efficiently stored in volume at the Company's power plants because it rapidly degrades and the trona delivery requirements are heavily weighted to periods of high electrical demand when the use of higher sulfur coal to meet power demand dramatically increases the short-term delivery requirements. This variability will increase freight and transportation costs as the delivery infrastructure is taxed.

Id., p. 354. The company averred that it adequately supported its 2019 trona expense and requested that the Attorney General's recommended disallowance be rejected.

In reply, the Attorney General asserted that, despite multiple discovery requests, DTE Electric failed to disclose specific freight and transportation costs for trona. Attorney General's initial brief, pp. 22-23. The Attorney General argued that, using the limited information provided, she recommended a reasonable disallowance and that the company did not dispute any of the values or calculations. Attorney General's confidential brief, p. 24. Additionally, she asserted that the burden is on the company to provide evidence that sufficiently demonstrates that the costs requested for recovery are reasonable and prudent.

DTE Electric disagreed, arguing that:

> ***unless the Commission disallowed certain portions of the electric utility's PSCR plan, the presumption in the PSCR reconciliation proceeding is that the Commission-approved PSCR plan is reasonable and prudent, and the costs incurred consistent with execution of the Commission-approved PSCR plan are recoverable. MCL 460.6j(12). In addition, if the electric utility incurred additional costs for reasonable and prudent actions not precluded by the Commission's PSCR plan order, then the electric utility shall recover those additional costs from customers. MCL 460.6j(15).***

DTE Electric's reply brief, p. 35 (emphasis in original). Moreover, DTE Electric asserted that it used less trona and spent $430,355 less than was projected in its 2019 PSCR plan. Thus, the company contended that its 2019 trona usage and reconciled costs are reasonable and prudent and should be approved.

The ALJ found that DTE Electric's "reading of the statute is incomplete, overlooking the mandate contained in Section 6j(12) that the Commission 'shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review.'" PFD, p. 24, quoting MCL 460.6j(12). In addition, she stated that costs may be reviewed for reasonableness in a reconciliation even if the costs do not exceed those projected in the PSCR plan.

The ALJ agreed with the Attorney General that DTE Electric did not fully support its trona expense. She noted that the actual unit cost for trona was significantly higher than the projected unit cost, and consequently, she questioned whether other costs, in addition to transportation costs, were included. She stated that:

> Although the company's claim, that it is required to pay actual shipping costs for trona, which may vary depending on the degree to which the delivery system is taxed, is supported by the record (and not really at issue), it is impossible to determine whether the freight and transportation costs disputed here were reasonably and prudently incurred because DTE Electric refused to identify these costs for each shipment of trona.

PFD, p. 25 (footnote omitted). The ALJ recommended that the Commission adopt the Attorney General's proposed disallowance of $439,023 and asserted that, "[t]o avoid a disallowance in future proceedings, DTE Electric should be more forthcoming in its responses to discovery to allow other parties a reasonable opportunity to review the company's actual costs, including all cost components." *Id*., pp. 25-26.

In its exceptions, DTE Electric objects to the ALJ's recommendation, asserting that the company demonstrated that its trona expense is reasonable and prudent. DTE Electric explains that it provided testimony and evidence that the trona supply contract requires the company to pay freight and transportation costs and that those costs can vary. According to DTE Electric, the ALJ's recommendation disregards the record and it "effectively constitutes retroactive contract

micromanagement (or suggested contract breach), contrary to MCL 460.6j(12)." DTE Electric's exceptions, p. 10. In addition, the company asserts that "[t]he PFD offers no explanation of why DTE Electric allegedly was unreasonable or imprudent in following a contract with variable costs that are driven by real-time trona demand," and does not demonstrate how the trona expenses are unreasonable or excessive. *Id.*, p. 11. Therefore, the company requests that the Commission reject the ALJ's recommended disallowance.

In reply, the Attorney General reiterates that DTE Electric failed to explain or support the unidentified costs that are included in the trona expense. Moreover, the Attorney General "is unclear what is meant by 'retroactive contract micromanagement' and neither the ALJ nor [the Attorney General] is instructing DTE [Electric] that it should breach its contracts." Attorney General's replies to exceptions, p. 10, quoting DTE Electric's exceptions, p. 10. Rather, the Attorney General asserts that she is requesting the components and detailed calculations of the 2019 planned and actual trona expense so that she may determine whether the actual expense was reasonable and prudent.

Section 6j(12) of Act 304 states that:

> Not less than once a year, and not later than 3 months after the end of the 12-month period covered by an electric utility's power supply cost recovery plan, the commission shall commence a proceeding, to be known as a power supply cost reconciliation, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. **The commission shall permit reasonable discovery before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause.** At the power supply cost reconciliation the commission shall reconcile the revenues recorded pursuant to the power supply cost recovery factors and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of power supply by the utility. **The commission shall consider any issue regarding the reasonableness and prudence of**

> **expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review.**

MCL 460.6j(12) (emphasis added).

As set forth above, reasonable discovery is required in this proceeding to assist interested persons in obtaining evidence regarding the reasonableness and prudence of expenses collected pursuant to the PSCR clause, including the trona expense. In this case, the Attorney General made several discovery requests for detailed information about the cost components of the trona expense. However, during discovery, DTE Electric did not provide the requested information and, in exceptions, simply responded that "[t]he trona contract requires the Company to pay actual freight and transportation costs." DTE Electric's exceptions, p. 10. The Commission finds that the information provided by the company regarding the cost components of the trona expense was not sufficient to allow the Attorney General or the Commission to determine that the amount recovered pursuant to the PSCR clause is reasonable and prudent.

The Commission finds that it is undisputed that DTE Electric must pay freight and transportation costs for the trona used at its plants. And it is undisputed that, in 2019, the company used less trona than planned, which resulted in reduced trona expense. However, as noted by the Attorney General and the ALJ, the actual unit cost for trona in 2019 was significantly higher than the projected unit cost. *See*, 3 Tr 438-439. Without detailed information about the cost components for the trona freight and transportation costs, it is unclear whether other costs, in addition to transportation costs, were included, and the Commission is unable to determine that the trona expense is reasonable and prudent. As a result, the Commission finds that the ALJ's recommended disallowance of $439,023 should be adopted.

<u>Coke Oven Gas and Blast Furnace Gas Expense</u>

In its 2019 PSCR plan, DTE Electric forecasted a coke oven gas (COG) expense of $2.8 million, with a unit cost of $1.75 per thousand British thermal units (MBtu). The company stated that the actual COG expense for 2019 was $2.3 million and the unit cost was $1.64/MBtu. 2 Tr 187; Exhibit A-8. Additionally, in its 2019 PSCR plan, DTE Electric forecasted a blast furnace gas (BFG) expense of $1.3 million, with a unit cost of $1.68/MBtu. The company's actual 2019 BFG expense was $0.8 million, and the actual unit cost was $1.56/MBtu. *Id*. DTE Electric explained that:

> COG and BFG expense were both lower than forecasted primarily due to lower than planned generation at River Rouge Power Plant [RRPP], which was primarily due to increased reserve shutdown periods. Overall, the Company continued the consumption of low-cost COG and BFG to reduce fuel expense. The unit costs of COG and BFG expenses were lower than forecasted primarily because the River Rouge unit cost of coal expense (which the unit costs of COG and BFG expenses are based upon) was lower than forecasted . . . .

2 Tr 187.

MEC asserted that COG is produced by EES Coke Battery, L.L.C. (EES Coke), a subsidiary of DTE Energy Services, and BFG is produced at United States Steel's (U.S. Steel's) Great Lakes Works facility. MEC stated that "DTE Electric has been receiving these waste gases at RRPP for many years under agreements with DTE Energy Services, priced at a discount to the power plant's coal cost." 3 Tr 518 (footnote omitted). MEC contended that the company failed to demonstrate that the 2019 prices it paid for COG and BFG were at or below market cost and did not show that compensation to the company's affiliate for COG and BFG is consistent with the Commission's Code of Conduct as set forth in Mich Admin Code, R 460.10101 *et seq.* (Code of Conduct).

MEC noted that, according to DTE Electric, if the company does not purchase the gases, they could be flared; and, if the gases are flared, there will likely be a penalty. *See*, 3 Tr 520. In MEC's opinion, "[i]f there are no parties willing to pay to take the gases, and if DTE Electric does

not take them they would be flared and incur penalties, the market price for the gases is approximately equal to the penalties that would be avoided. That is, DTE Electric should be *paid* to relieve the producers of these waste gasses [sic] and help them avoid the penalties." *Id*. (emphasis in original). In addition, according to MEC, if the market value of the gases is the avoided cost of the penalty to flare, DTE Electric should bear the cost of the pipelines to RRPP to receive COG or BFG. However, because there is no record evidence of any entity willing to pay for COG or BFG, and without any cost details about the penalties for flaring, MEC contended that the appropriate price for the gases is zero.

MEC also averred that, when DTE Electric filed its integrated resource plan (IRP) in March 2019, the company noted there was an opportunity to negotiate a lower fuel price for COG and BFG. MEC stated that:

> For the purposes of calculations in support of the IRP, the Company assumed the cost of COG and BFG would be 30% of the RRPP natural gas price, estimated to be approximately $.90/MMBtu [million British thermal units], which is well below the prices actually paid for the gasses [sic], in 2019, noted above. Therefore, it is clear that DTE Electric considered renegotiating the prices for COG and BFG before the March 1, 2019 opt-out deadline; anticipated that it could lower the prices paid if it were to renegotiate the arrangements at that time; but ultimately failed to act in time, and as a result paid the higher prices for COG and BFG shown in [DTE Electric's witness] Mr. Bence's testimony and Exhibit A-8.

3 Tr 522 (footnote omitted). According to MEC, if DTE Electric had renegotiated these contracts in March 2019 and paid 30% of its average natural gas price for these gases from June through December 2019, rather than the actual price paid, the company could have saved its customers $758,000.

Further, MEC argued that DTE Electric has the burden of demonstrating that the purchase price of the gas produced by its affiliate complies with the price cap in the Code of Conduct. MEC contended that, pursuant to the Code of Conduct, "the price for an affiliate's provision of services

or products to a utility is capped at the lower of market price or 10% over fully allocated embedded cost." MEC's initial brief, p. 46, citing Mich Admin Code, R 460.10108(4) (Rule 8(4)) (footnote omitted). In MEC's opinion, DTE Electric should not be permitted to recover the costs of COG and BFG because the company purchases these gases from its affiliate and because DTE Electric failed to demonstrate that cost of the gases is at or below market price as required by Rule 8(4) of the Code of Conduct.

In response, DTE Electric argued that there is no visible, liquid market for the gases because there is no other entity that is willing to purchase the gases. The company stated that "[i]n the absence of a visible market . . . the market price should be the delivered cost of alternative fuels consumed at River Rouge Power Plant. There is no visible market for COG and BFG; therefore, there is no reasonably discernible fair market value for COG and BFG except by comparison to alternative fuel sources." 2 Tr 192. DTE Electric noted that, at the time the COG and BFG agreements were executed, the primary alternative fuel source consumed at RRPP was coal and that COG and BFG were priced at a discount to coal during that time. In addition, the company asserted that "[t]he current BFG and COG agreements have been in place since 2009 and 2013, respectively, and the related pricing conventions and expenses have been accepted by the Commission in PSCR Plan proceedings since 2010 and 2014, respectively." *Id*., p. 193.

The company also objects to MEC's claim that it should have renegotiated lower COG and BFG rates in 2019. DTE Electric explained that:

> the Company first proposed extending the operation of River Rouge from 2020 to 2022 by burning natural gas, COG, and BFG in the Company's Integrated Resource Plan (IRP) case (U-20471) that was filed at the end of March 2019. The IRP presented a proposed course of action to reduce COG and BFG prices starting in June 2020, and the Company worked toward that goal throughout 2019 and into 2020. In the summer of 2019, River Rouge performed various tests while operating on the proposed future fuel mix of natural gas, COG, and BFG. In the fall of 2019, Fuel Supply engaged EES Coke in negotiations to amend the terms of the existing

> COG and BFG agreements, including the price structures of the agreements. In December 2019, US Steel announced that it would be idling a portion of its Great Lakes Works operation, resulting in the elimination of BFG as a fuel source at River Rouge. As a result, it was necessary for River Rouge to perform additional tests while operating on only natural gas and COG in January and February 2020. Fuel Supply continued negotiations with EES Coke to amend the terms of the existing COG agreement in the spring of 2020, ultimately amending the COG agreement in April 2020. In summary, DTE Electric renegotiated the COG agreement in a reasonable timeframe, and [MEC]'s assertion that DTE Electric should have amended the contracts in 2019 is unreasonable.

Id., p. 195. DTE Electric also averred that, pursuant to the COG agreement, customers have benefited by an average annual savings of $470,000 through 2019, and that pursuant to the BFG agreement, customers have benefited by an average annual savings of $260,000 through 2019. *Id*., p. 196.

Furthermore, the company disagreed with MEC that its COG and BFG agreements do not comply with the Code of Conduct. DTE Electric stated that:

> The Company's 2009 COG agreement with EES Coke was addressed and the associated fuel expenses have been recovered and the pricing convention has been accepted as reasonable and prudent since the 2010 PSCR Plan, Case No. U-16047. The Commission has never found a violation of the pricing provision of the code of conduct with respect to the COG agreement notwithstanding the existence of a code of conduct pricing provision throughout the existence of the COG agreement. The 2020 amendment to the COG agreement establishes an even lower purchase price for COG than in the Commission-accepted pricing convention in the original agreement.
>
> The fuel expense and pricing convention in the BFG agreement was first accepted by the Commission in the 2014 PSCR Reconciliation Case, U-17319-R. The Commission has never found a violation of the pricing provision of the code of conduct with respect to the BFG agreement notwithstanding the existence of a code of conduct pricing provision throughout the existence of the BFG agreement.

2 Tr 193-194.

The ALJ was not persuaded by DTE Electric's claim that the costs of COG and BFG should be approved for recovery because the costs have been included in PSCR plans and reconciliations for many years without objection from a party or the Commission. She stated that "these costs

have never been expressly evaluated by the Commission for either reasonableness and prudence or for compliance with the Code of Conduct." PFD, p. 32. In addition, the ALJ found that DTE Electric did not demonstrate that its COG and BFG costs comply with the market-based pricing requirement in Rule 8(4) of the Code of Conduct.

The ALJ also noted that the Commission recently addressed COG and BFG costs in the April 8, 2021 order in DTE Electric's 2020 PSCR plan case, Case No. U-20527 (April 8 order). She stated that, because "the evidence and arguments regarding BFG and COG in this case are substantially similar to those presented in Case No. U-20527, this PFD finds persuasive MEC's argument that the market price of COG and BFG is $0.00 and that $3.1 million in BFG and COG costs should be disallowed from 2019 PSCR expense." PFD, p. 33. Regarding MEC's proposed disallowance of $758,000 for DTE Electric's failure to renegotiate the COG contract in 2019, the ALJ found that the record was insufficient to support the proposed disallowance.

In its exceptions, MEC states that it agrees with the ALJ's finding that the cost of the waste gases is zero. However, MEC contends that, "[i]f the Commission does not adopt this recommendation, then in the alternative, the Commission should disallow $758,000 as excessive costs that may have been avoided in 2019 had DTE [Electric] appropriately managed its affiliate fuel supply contracts, as required by Act 304." MEC's exceptions, p. 8.

DTE Electric excepts to the ALJ's finding that, because there is no market for COG and BFG, the price of the gases should be zero. The company states that, "[t]o the contrary, fuel is plainly not free (as proposed by MEC and recommended by the PFD), and the alternative fuel (coal) would have cost more." DTE Electric's exceptions, p. 14. The company reiterates that the proper process for establishing the market price of COG and BFG is to compare the cost of the alternative fuel source that would have been used at RRPP. Furthermore, DTE Electric asserts that, in the

February 7, 2019 order in Case No. U-18403 (February 7 order), the Commission "relied on a similar comparison to *actual* alternatives . . . ." *Id*., p. 15, citing the February 7 order, pp. 42-43 (emphasis in original).

Next, DTE Electric objects to the ALJ's reliance on the April 8 order. The company notes that, in the April 8 order, the Commission addressed "changed circumstances during the plan year," which involved new pricing of COG and BFG beginning in June 2020. DTE Electric's exceptions, p. 16, quoting April 8 order, p. 32. DTE Electric argues that:

> the PFD's assertion that the record in this 2019 PSCR reconciliation case is "substantially similar" to the record in U-20527 is incorrect as there were no "changed circumstances" concerning COG or BFG during 2019, this is the final case that includes all COG and BFG pricing being tied to coal, and there is no sound basis to now revisit the long-established COG and BFG pricing tied to coal.

DTE Electric's exceptions, p. 16.

In response to the ALJ's finding that the company failed to demonstrate that its COG and BFG agreements comply with the Code of Conduct, DTE Electric contends that "nothing in the Code of Conduct prohibits affiliated companies from doing business together" and that "[s]ometimes, as in this case, working with an affiliated company provides the best deal possible for the utility's customers and the public at large." *Id*.

In its replies to exceptions, MEC avers that DTE Electric erroneously contends that its waste gas costs should be compared to its alternative fuel costs. MEC states that, "[a]lternative fuel prices are not the same as a market price or fully embedded costs. DTE [Electric]'s average price for coal does not shed light on the market price for waste gases." MEC's replies to exceptions, pp. 2-3. In addition, MEC asserts that, contrary to DTE Electric's claim, the company's proposed cost comparison can be distinguished from the comparison approved in the February 7 order. MEC explains that:

> In U-18403, the Commission approved DTE [Electric]'s 2014 comparison of <u>*NEXUS*</u> *transport* <u>*costs*</u> to *alternative* <u>*gas*</u> *transport costs* at the time of the contract. That is different than comparing the price of one kind of fuel (waste gas) to the price of a different kind of fuel (coal). DTE [Electric] is attempting to use this method to price out the differences between one fuel source relative to another.

Id., p. 8 (emphasis in original) (footnote omitted). MEC asserts that this comparison is "non-sensical" and should not be accepted by the Commission. *Id*. Moreover, MEC argues that DTE Electric is "apply[ing] a standard that the cost must be less than an alternative fuel that may be burned at the same unit." *Id*., p. 3. MEC asserts that this is an "arbitrary and artificial" standard that should be rejected by the Commission. *Id*., p. 4.

Although MEC agrees with DTE Electric that "nothing in the Code [of Conduct] prevents an unregulated affiliate from making a profit from an arrangement with a regulated affiliate," MEC asserts that affiliate transactions must meet the requirements of the Code of Conduct, which includes complying with the price cap. *Id*., p. 12 (footnote omitted). MEC claims that "DTE [Electric] failed to show that its 2019 waste gas costs were lower than the market price or 10% over fully allocated embedded costs." *Id*., p. 13. As a result, MEC requests that the Commission find that the cost of the waste gases does not comply with the Code of Conduct.

MEC also disputes DTE Electric's contention that the COG and BFG agreements should be approved because they have been in place for many years and have been included in the company's previous PSCR cases. MEC argues that Commission precedent requires that approval of an agreement must be express, not implied. According to MEC, prior cases that involved the COG and BFG agreements ended in stipulated agreements and, therefore, the Commission has never reviewed or specifically approved the agreements. In addition, MEC asserts that the company "has an ongoing obligation to show the transactions are reasonable and that it is [sic] in compliance with the Code [of Conduct]." *Id*., p. 5 (footnote omitted).

Finally, MEC disagrees that the ALJ inappropriately relied on Case No. U-20527 in making her recommended disallowance. Rather, MEC asserts that:

> she reviewed the record as a whole, historical context, and DTE [Electric]'s and MEC's arguments, and made a recommendation. The ALJ states that although BFG and COG have been included in PSCR plan and reconciliation cases in the past, these costs have never been expressly evaluated by the Commission for either reasonableness and prudence or for compliance with the Code of Conduct.

Id., pp. 9-10. In MEC's opinion, there are similarities between this case and Case No. U-20527, and MEC argues that it was "reasonable and consistent with [Commission] caselaw" for the ALJ to apply Case No. U-20527 to the facts of this case. *Id*., pp. 11-12.

In her replies to exceptions, the Attorney General states that "the ALJ's analysis and recommendation on the $3.1 million disallowance is well-reasoned, appropriate, and should be adopted by the Commission." Attorney General's replies to exceptions, p. 12 (footnote omitted).

As discussed in the section above, MCL 460.6j(12) states that "[t]he commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review." The Commission notes that the COG agreement was a part of the settlement agreement approved in the August 10, 2010 order in Case No. U-16047 (August 10 order), and the BFG agreement was a part of the settlement agreement approved in the January 19, 2016 order in Case No. U-17319-R (January 19 order). In this case, DTE Electric admitted that the August 10 order, the January 19 order, and the associated settlement agreements did not explicitly address whether the COG and BFG agreements comply with the affiliate price cap in the Code of Conduct. 2 Tr 211-213. The Commission agrees. Accordingly, in this case, the Commission must review and determine whether the COG and BFG expenses are market-based and whether the expenses comply with the affiliate price cap in the Code of Conduct.

In the PFD, the ALJ stated that "the evidence and arguments regarding BFG and COG in this case are substantially similar to those presented in Case No. U-20527" and she agreed with MEC that the market price of COG and BFG should be $0.00. PFD, p. 33. Although the Commission acknowledges that there are some similarities between the COG and BFG issues presented in this case and those presented in Case No. U-20527, there are several details that distinguish the April 8 order from the facts and circumstances in the immediate case.

In the April 8 order, the Commission stated:

> ***Considering changed circumstances during the [2020] plan year***, the Commission finds that DTE Electric will need to demonstrate that its affiliate COG contract complies with the pricing provisions under Rule 8(4) in the corresponding reconciliation proceeding for this case. The Commission also finds both affiliate contracts (COG and BFG) are subject to this Code compliance demonstration in the reconciliation, particularly considering this expense issue being raised in this case and having not been previously adjudicated by the Commission on the merits under the Code or under Act 304, despite recovery of expense approval for both COG and BFG in the past. ***The Commission further finds it appropriate to caution DTE Electric that, as stated by the ALJ and based on present evidence, the company may not recover its COG and BFG costs as part of its annual reconciliation of 2020 PSCR costs. MCL 460.6j(7), (12); PFD, pp. 47-49.***
>
> That being said, the Commission acknowledges that benefits can be realized with the use of alternative fuels, particularly waste gases like these that would otherwise end up being flared; however, in the context of this case and the reconciliation, the Commission finds that DTE Electric needs to prove, with transparent and thorough evidentiary support, that, aside from reliance on cost savings, these affiliate expenses meet the requirements of applicable statutes and rules in order for the company to be able to recover them from PSCR customers. ***Specifically, the Commission, as part of its more scrutinized review of these affiliate expenses, is looking for DTE Electric to submit in reconciliation,*** at minimum, transparent and thorough evidence as to how the price for these contracts was established, along with substantiation that the prices established with affiliates resulted in prices that that were reasonably and prudently paid for the benefit of the company's PSCR customers during 2020.

April 8 order, pp. 32-33 (emphasis added) (footnotes omitted).

The Commission finds that, in Case No. U-20527, there were "changed circumstances" during the 2020 PSCR plan year (i.e., DTE Electric negotiated a new price for COG) that will be

addressed in the 2020 PSCR reconciliation. April 8 order, p. 32; citing 3 Tr 161 in Case No. U-20527. These circumstances did not occur in the 2019 PSCR plan year and are not a part of the immediate case. Additionally, in the April 8 order, the Commission did not determine that the market price for COG and BFG should be zero.

Furthermore, in the April 8 order, the Commission issued a warning pursuant to MCL 460.6j(7) (Section 7 warning) that, based on the evidence provided in the company's 2020 PSCR plan case, DTE Electric may not be permitted to recover its COG and BFG costs in the 2020 PSCR reconciliation. The Commission notes that no Section 7 warning was issued in the company's 2019 PSCR plan case, Case No. U-20221, and the record in this case was closed by the time the Section 7 warning was issued in Case No. U-20527, denying the company an opportunity, if it so chose, to supplement the evidence in this case.

Considering these distinguishing facts, the Commission finds that the April 8 order in DTE Electric's 2020 PSCR plan case has little precedential value in this 2019 PSCR reconciliation. However, the Commission emphasizes the Section 7 warning issued in Case No. U-20527 and strongly encourages DTE Electric to comply with the recommendations set forth in the April 8 order if it seeks to recover 2020 BFG and COG costs in Case No. U-20528.

Turning to the immediate case, the Commission notes that, according to MEC, DTE Electric failed to present persuasive testimony that the price the company pays for COG and BFG is the market price or fair market value for the gases and, therefore, the price does not comply with the affiliate price cap mandated in the Code of Conduct. MEC first asserted that the market price for the gases should be approximately equal to the penalties avoided by not flaring the gas. However, because there is no record evidence of any entity willing to pay for COG or BFG, and without any cost details about the penalties for flaring, MEC contended that the appropriate price for the gases

is zero. *See*, 3 Tr 521. MEC asserted that, in the alternative, "[t]hrough a Request for Proposals [RFP], EES Coke and U.S. Steel could potentially identify entities willing to take the COG and BFG for a price. Perhaps there would be proposals from companies that could make some use of the energy value of the gases, and that might offer an above-zero price for the gases. Then that would be the fair market value." *Id*., p. 520.

The company responded that "[MEC] inaccurately suggests, without any evidence to support the suggestion, that DTE Electric would have achieved a different outcome through an RFP from the counterparty. The more reasonable conclusion is that the availability of COG and BFG is known to local industry and no RFP would have changed present circumstances." 2 Tr 193. DTE Electric explained that BFG and COG have been used at RRPP since the 1950s and the 1990s, respectively, and there is no other local industrial user or buyer for the gases. The company asserted that if there was any party interested in purchasing the gases, it would have made its interest known to the producer and the company. *Id*., pp. 202-206.

The company noted that, historically, to determine a fair market price for COG and BFG, DTE Electric and its affiliate would engage in a bilateral negotiation, in which one bidder would be DTE Electric and the other bidder would be the supplier. The company stated that "both would know their alternatives and that would lead to a discussion about a negotiated price based on the market inputs of both parties." 2 Tr 207-208. DTE Electric averred that, as a result of the negotiations, the market price for COG and BFG was set at a discount to coal: "the discounted price on a per MMBtu basis [was] 80% of the actual unit cost of coal expense for COG and 77% of the actual unit cost of coal expense for BFG at RRPP." *Id*., p. 196. The company asserted that the COG and BFG agreements have been in place since 2009 and 2013, respectively, and

customers have benefited by an average annual savings of $470,000 and $260,000, respectively, through 2019.

The Commission finds that DTE Electric demonstrated by a preponderance of the evidence that, other than the company's use of the gases from the 1950s through 2019, there was no alternative local buyer for COG and BFG. Without an alternative buyer for the gases, the Commission finds that it was reasonable and prudent for the company to establish a market value for the gases by discounting the price to coal, which would have been burned in the absence of COG and BFG. *See*, 2 Tr 192-193, 202-206. In addition, the Commission finds that the COG and BFG prices paid to affiliates were reasonably and prudently paid for the benefit of the company's PSCR customers because they resulted in reduced use of coal at RRPP and annual savings for customers.

As discussed above, the Commission acknowledges that, based on the evidence presented in this case, historically, there has been no visible market for COG and BFG and, therefore, the reasonable method for setting the fair market value for COG and BFG has been to compare them to alternative fuel sources. Therefore, the Commission finds that DTE Electric established a fair market value for COG and BFG in 2019 and that it complies with the affiliate price cap in Rule 8(4) of the Code of Conduct. However, as noted in the April 8 order, in Case No. U-20528, the Commission will be conducting a "more scrutinized review of these affiliate expenses" and directs the company to provide "transparent and thorough evidence as to how the price for these contracts was established, along with substantiation that the prices established with affiliates resulted in prices that that were reasonably and prudently paid for the benefit of the company's PSCR customers." April 8 order, p. 33.

MEC also argued that, rather than waiting until 2020, DTE Electric should have renegotiated its COG contract in 2019 and saved customers $758,000. 3 Tr 521-522; MEC's initial brief, pp. 58-59. The company responded that MEC "paints an incomplete picture of the activities that needed to occur to renegotiate the contracts, and [its] timeline is unreasonable. The Company successfully renegotiated the COG agreement once it completed a rigorous process that began with the identification of the opportunity in the IRP case in March 2019." 2 Tr 138-140, 195. The Commission agrees with the ALJ that there is insufficient evidence on the record to support MEC's proposed disallowance.

In conclusion, the Commission finds that DTE Electric's purchase of the waste gases from its affiliate in 2019 complies with Rule 8(4) of the Code of Conduct, was just and reasonable under current market conditions, and that the company took appropriate actions to minimize its waste gas costs to ratepayers in 2019. *See*, 2 Tr 135, 148-150. The Commission declines to adopt the ALJ's recommended disallowance and approves a COG and BFG expense of $3.1 million for 2019.

<u>NEXUS and Texas Eastern Appalachian Lease Supply and Transportation Costs</u>

1. DTE Electric Company

In its 2019 PSCR plan, DTE Electric forecasted a natural gas expense of $73 million, with a unit cost of $3.43/MBtu. The company stated that the actual natural gas expense for 2019 was $85 million and the unit cost was $3.11/MBtu. 2 Tr 25-26; Exhibit A-8. DTE Electric asserted that the "actual net generation at the Company's gas-fired plants was higher than forecasted. The increased net generation compared to the forecast led to increased natural gas consumption compared to the forecast, and in turn, higher than forecasted natural gas expense." *Id*., p. 26. The company claimed that the actual unit cost of natural gas expense was lower than forecasted due to lower natural gas commodity prices.

DTE Electric noted that it has "traditionally focused primarily on procuring coal due to the nature of the Company's generation fleet." *Id*., p. 29. However, the company became "increasingly aware of the likelihood of future baseload natural gas-fired generation capacity (i.e., a Combined Cycle Gas Turbine, or CCGT)" and "recognized the need to provide reliable, cost-effective natural gas supply to its future plant." *Id*., p. 28. In late 2013, DTE Electric began discussing natural gas supply strategies with DTE Gas Company (DTE Gas). The company stated that DTE Gas was "a valuable resource for DTE Electric" because DTE Gas had "experience in identifying and procuring economic and reliable gas supply." *Id*., p. 29. According to DTE Electric, in 2012, DTE Gas had submitted a bid to NEXUS for natural gas transportation capacity during NEXUS's open season and, by 2013, DTE Gas was already in the process of evaluating the economics of constructing the NEXUS pipeline to supply natural gas to Michigan, Ohio, and Ontario.

DTE Electric explained that:

> NEXUS Gas Transmission, LLC, is a joint venture of DTE Electric's affiliate, DTE Gas Storage & Pipelines (wholly owned by DTE Energy), and Enbridge Inc. (formerly Spectra Energy Partners, LP). The approximately 255-mile NEXUS pipeline is designed to deliver approximately 1.5 billion cubic feet per day (Bcf/d) of growing supplies of Utica and Marcellus shale gas to customers in the U.S. Midwest and Ontario, including MichCon CityGate and the Dawn Hub.

Id., p. 27.

DTE Electric averred that, to evaluate the economics of constructing the pipeline, DTE Gas performed a landed cost analysis in July 2014. *See*, Exhibit A-34. According to the company, DTE Gas's landed cost analysis showed that a contract for transportation capacity on the NEXUS pipeline would likely result in some of the lowest landed costs between competing alternatives. In addition, DTE Electric claimed that because the NEXUS pipeline would be a greenfield pipeline, it

was expected to increase gas deliverability, to introduce new supply into the region, and to lower gas prices in the demand region.

The company stated that, in 2014, it began to prepare for a purchase of future natural gas transportation capacity from NEXUS, recognizing "the changing gas supply dynamics in the prolific Utica and Marcellus shale basins and the opportunity to support a greenfield pipeline that would both increase natural gas deliverability into Michigan as well as reduce gas supply costs for its customers through the infusion of low-cost gas into the market." *Id*., p. 28. DTE Electric contended that it purchased future natural gas transportation capacity from NEXUS pursuant to a precedent agreement, which was executed on July 31, 2014. In addition, the company asserted that it executed a pro forma agreement with NEXUS on September 14, 2016, which described the transportation rate. DTE Electric stated that "[s]ubsequently, the Pro Forma Rate Agreement was superseded by the NEXUS Negotiated Rate Agreement Rev 1 (Exhibit A-30), which was executed on September 10, 2018 and revised again on October 26, 2018 (NEXUS Negotiated Rate Agreement Rev 2, Exhibit A-31)." *Id*., p. 28.

DTE Electric asserted that, in 2015, ICF Resources, LLC (ICF) released an independent evaluation of DTE Gas's landed cost analysis, entitled "Impact of NEXUS Pipeline on Michigan Energy Markets" (ICF report). *Id*., p. 29. According to the company, the ICF report described the benefits of the NEXUS pipeline for DTE Electric customers and Michigan consumers.

> ICF forecasted that the cost of gas purchased at the NEXUS receipt point and delivered to Michigan via NEXUS would average $0.13/Dth [dekatherm] lower than the MichCon CityGate price. Based on the NEXUS contract assumptions at the time, those lower delivered costs would reduce DTE Electric's PSCR expense by $79 million from 2017 through 2037 (see Exhibit A-35, Section 4.3.2). Additionally, the ICF Report forecasted that the construction and operation of the NEXUS pipeline would reduce gas prices at MichCon CityGate by an average of $0.21/Dth from 2017 through 2037 (see Exhibit A-35, Section 2.5.1). This price decrease is driven by the infusion of affordable shale gas that can be accessed via the NEXUS pipeline. DTE Electric's natural gas requirements are expected to

> grow to be much greater than the amount of gas that the Company will deliver via NEXUS. Therefore, the gas purchased from sources other than NEXUS can be expected to benefit from the \$0.21/Dth price reduction at MichCon CityGate. Exhibit A-36 provides a 2016 DTE Electric analysis showing that the \$0.21/Dth price reduction at MichCon CityGate is expected to result in an additional \$271 million reduction in PSCR expense from 2017 through 2037.

Id., p. 30.

DTE Electric stated that, pursuant to its agreement with NEXUS, firm natural gas transportation between the Kensington receipt point in Columbiana County, Ohio (Kensington) and MichCon citygate, which is the interconnect with DTE Gas's system in Ypsilanti, Michigan, was initially 30,000 Dth/day. The company contended that transportation will increase to 75,000 Dth/day when DTE Electric adds a CCGT power plant, which is expected to occur with the commercial operation of the Blue Water Energy Center (BWEC) in June 2022. The company noted that the term for the initial 30,000 Dth/day is 20 years, the term for the additional 45,000 Dth/day is 15 years, and the negotiated transportation rate is \$0.695/Dth with a fuel rate of 1.32%. *Id*., pp. 30-31.

DTE Electric noted that the NEXUS pipeline was placed in service on October 13, 2018. The company stated that "DTE Electric's agreement with NEXUS stipulates that service begins on the first day of the month following when the pipeline was placed in-service; therefore, service under DTE Electric's agreement began on November 1, 2018." *Id*., p. 39. DTE Electric asserted that, in October 2018, it negotiated for an additional receipt point at Clarington in Monroe County, Ohio (Clarington), which is located on the Texas Eastern Appalachian pipeline; the negotiations resulted in the Texas Eastern Appalachian Lease (TEAL) amendment to the NEXUS agreement.

> DTE Electric amended its NEXUS agreement to add the Clarington receipt point in order to gain access to additional supply sources at prices even lower than at Kensington. DTE Electric's analysis showed that contracting with NEXUS for TEAL capacity to access the Clarington receipt point was expected to reduce the Company's natural gas expense by approximately \$2.4 million as compared to

> purchasing at Kensington over the four-year term. Furthermore, DTE Electric's customers benefit from regional diversity of supply with increased supply reliability and mitigated price risk.

Id., p. 32.

The company asserted that it did not contract for TEAL capacity during the initial precedent agreement negotiations because "[t]he natural gas market in the Utica and Marcellus basins has shifted since the NEXUS Precedent Agreement was executed in July 2014." *Id*., p. 33. DTE Electric explained that, prior to 2014, most of the well drilling activity was located in the region around Kensington. However, the company contended that, since that time, the region around Clarington has become more productive. DTE Electric stated that "[t]hese changes have increased the growth in liquidity of the market around Clarington and decreased the growth in the liquidity of the market around Kensington relative to expectations in 2014. In summary, the market conditions that led DTE Electric to contract for TEAL capacity in 2018 did not exist and were not anticipated in 2014." *Id*., p. 34.

According to the company, it attempted to negotiate access to the Clarington receipt point for the entire 30,000 Dth/day transportation capacity; however, NEXUS would only provide 15,000 Dth/day. *Id*., p. 33. DTE Electric stated that it negotiated a discounted rate of $0.15/Dth for this transportation service, plus a fuel rate of 0.6%. *Id*., p. 31; Exhibits A-31 and A-33. In addition, the company contended that "all intrastate pipelines are subject to a FERC [Federal Energy Regulatory Commission] regulated Annual Charges Unit Charge (ACA) charge which varies from year to year. The current rate is $0.0013 per Dth, or $14,235/year . . . for the Company's 30,000 Dth/[day] of NEXUS capacity." *Id*., p. 34. DTE Electric averred that it did not incur any ACA charges during the 2019 plan year but may in the future.

DTE Electric also noted that FERC's tariff reservation rate for the greenfield portion of Kensington to MichCon citygate is $0.8167/Dth/day. The company stated that its "discounted reservation rate of $0.695/Dth/[day] is approximately 15% lower than the applicable [FERC] tariff rate." *Id*., p. 35. For Clarington to Kensington, which is governed by the TEAL amendment, DTE Electric noted that FERC's tariff reservation rate is $0.9664/Dth/day. The company asserted that its "discounted reservation rate of $0.15/Dth/[day] is approximately 85% lower than the applicable [FERC] tariff rate. Furthermore, for both transportation paths, DTE Electric is not subject to the [FERC] tariff usage charge of $0.0057/Dth." *Id*. The company contended that because the Kensington and Clarington transportation charges are below the embedded cost rate established by FERC, the NEXUS agreement and the TEAL amendment comply with Code of Conduct.

In addition, to evaluate compliance with the affiliate compensation provisions of the Code of Conduct, the company stated that:

> Relevant market comparisons need to be analyzed when the contracts were executed -- circa 2014 for the original NEXUS transaction and 2018 for TEAL, respectively. The relevant "market" for a 20-year and 4-year transportation capacity arrangement is not the day-to-day price spreads between Kensington, Clarington, and MichCon. DTE Electric has demonstrated in this and prior testimony that the NEXUS agreement and TEAL amendment would result in lower PSCR costs than the competing alternatives.

Id., p. 36.

Moreover, DTE Electric contended that its negotiated rates align with the rates that other anchor shippers are paying for NEXUS transportation service. In fact, the company stated, "[f]or the greenfield portion of the pipeline, DTE Electric's rate is lower than some other anchor shippers. DTE Electric contracted at a fixed rate, while some other anchor shippers negotiated variable rate contracts with capital cost trackers." *Id*., p. 37. For example, DTE Electric noted that Union Gas contracted for a variable rate and its expected rate for the greenfield portion of the

NEXUS pipeline is approximately $0.73/Dth, which exceeds the company's rate. For the TEAL portion of the pipeline, DTE Electric claimed that it does not have specific knowledge of other contracts except for DTE Gas.

Furthermore, DTE Electric asserted that it "was able to acquire a most favored nations provision in the July 2014 Precedent Agreement" which allowed the company "to match any rate of a similarly situated shipper that has a rate lower than DTE Electric's negotiated rate. Prior to the expiration of this benefit when the pipeline was placed in service, there were no other similarly situated shippers that negotiated rates lower than DTE Electric." *Id*. Therefore, the company concluded that the rates associated with the NEXUS agreement are equal to, or less than, market price and comply with the affiliate compensation provisions of the Code of Conduct.

Next, DTE Electric asserted that, "[o]nce BWEC is operational in 2022, the Company expects to utilize all of its NEXUS capacity to supply its gas-fired power plants." *Id*., p. 38. However, until BWEC is operational, the company will not be using its full NEXUS transportation capacity. As a result, in May 2018, DTE Electric issued an RFP for gas supply and asset management services for the company's NEXUS capacity and, in August 2019, it issued another RFP for the same services. The company explained that it:

> entered into a Gas Supply and Asset Management Agreement (AMA) in order to procure gas supply and fully utilize the NEXUS pipeline capacity. An AMA grants the Company firm rights to utilize NEXUS transportation capacity as needed but allows the marketer to deliver the gas to third parties when it is not utilized by the Company. When the marketer delivers gas to third parties, the marketer provides revenue to the Company based on the value of the pipeline capacity.

Id. DTE Electric asserted that its natural gas power plants consumed approximately 3.5 million Dth of NEXUS gas in 2019. However, because of the AMA, the Asset Manager was able to flow approximately 6.5 million Dth of natural gas on the NEXUS pipeline to third parties, thus reducing DTE Electric's 2019 PSCR expense by approximately $1.1 million. *Id*., p. 39.

Nevertheless, DTE Electric acknowledged that, in 2019, the actual net expense impact of the NEXUS agreement was an increase of $7.37 million, which is approximately 14% higher than the forecast. *See*, Exhibit A-40. The company explained that "[t]he net expense impact of [the] NEXUS [agreement] consists of NEXUS transportation costs plus gas supply cost reductions realized as a result of purchasing lower-priced Utica/Marcellus gas as compared to purchasing at MichCon CityGate." 2 Tr 39. DTE Electric noted that the "[a]ctual NEXUS transportation costs were $8.43 million in 2019, which is approximately 6% higher than the forecasted NEXUS transportation costs of $7.97 million. Actual gas supply cost reductions were $1.07 million in 2019, which is approximately 30% lower than the forecasted gas supply cost reductions of $1.52 million." *Id*., p. 40. According DTE Electric, the difference between the forecasted and actual net expense impacts of the NEXUS agreement is that "the 2019 PSCR Plan did not forecast the cost of the additional Clarington receipt point, because DTE Electric contracted for TEAL capacity after the 2019 PSCR Plan was submitted," and "the actual price benefit of purchasing lower-priced Utica/Marcellus gas as compared to purchasing at MichCon CityGate was less than the forecasted benefit." *Id*.

However, the company explained that there are additional benefits associated with the NEXUS contracts. DTE Electric stated that "[t]he analyses presented in Exhibit A-35 and Exhibit A-36 forecasted that the construction and operation of [the] NEXUS [pipeline] would reduce gas prices at MichCon CityGate and reduce DTE Electric's PSCR expenses by $271 million from 2017 through 2031 . . . ." 2 Tr 40. The company conceded that it has been unable to measure the exact reduction in prices at MichCon citygate. Nonetheless, "DTE Electric continues to expect that the $271 million in savings described in Exhibit A-36 will be realized." *Id*., pp. 40-41.

In conclusion, the company asserted that, as a result of its fuel procurement practices and its NEXUS gas transportation contracts, the company's 2019 natural gas expenses are reasonable and prudent and should be approved. Additionally, DTE Electric noted that, in the February 7 order, "[t]he Commission found that 'DTE Electric Company's decisions regarding natural gas transportation made between November 2013 and the July 31, 2014 precedent agreement with NEXUS, along with the precedent agreement and its subsequent amendments were reasonable and prudent at the time they were made.'" *Id.*, p. 27, quoting the February 7 order, p. 46. DTE Electric requests that the Commission find that the NEXUS agreement and the TEAL amendment provide significant long-term benefits to its customers and that the agreements should be approved.

2. Michigan Environmental Council

MEC argued that the NEXUS agreement and TEAL amendment do not provide value to the company's customers because, nearly every day in 2019, "there was little or no value to moving supplies through the NEXUS pipeline from Kensington, Ohio to Michigan, because market prices were often lower in Michigan . . . . The Supply Zone capacity under the TEAL Amendment, accessing lower-cost gas at Clarington, had more value, but the value was still far below the cost . . . ." 3 Tr 491-492.

MEC acknowledged that, "from about 2012 to 2016, production [of natural gas] grew rapidly in Marcellus and Utica and remained flat in other regions (Exhibit MEC-4). However, over the past three years, Marcellus/Utica production growth has been slower, while other regions have been growing more rapidly." *Id.*, p. 496. MEC asserted that this shift resulted in an increasingly competitive natural gas supply market and reduced prices. According to MEC, this "supply push"

has virtually eliminated the beneficial basis differential between Kensington and MichCon Citygate that was promoted in the ICF report. *Id*., p. 497. MEC explained that:

> The ICF 2015 Study, and the other ICF forecasts shown in Exhibit MEC-6 above, predicted that production in the Marcellus and Utica basins would exceed available takeaway capacity, causing sharply depressed prices in the production region relative to prices outside the region and across the rest of the country, until 2030 and beyond. ICF's predicted chronic excess of production over pipeline capacity would sustain unusually high basis differentials through the life of the NEXUS agreement, making it look attractive.
>
> This flawed assumption has already been disproven in the real world. In response to low prices in the Marcellus/Utica supply basin a few years back, producers slowed the growth in production in that region (focusing more attention on developing production in other promising supply regions), while continuing to support the construction of new pipeline capacity to deliver their supplies, and this moderated the price differentials.

3 Tr 499-500.

MEC averred that the price differentials between the Marcellus/Utica basin and other regions are likely to remain at moderate levels. *Id*., p. 500. MEC stated that:

> Because of these economics, in 2019, much of DTE [Electric]'s contracted NEXUS capacity (40%) was not used at all – DTE [Electric] abandoned [it] because it had no value. A portion of NEXUS capacity (32%) was delivered to supply DTE [Electric]'s electric generation, but at a loss to DTE [Electric] and ratepayers. The remaining capacity (28%) was sold at a loss to third-parties by an Asset Manager.

MEC's initial brief, pp. 3-4. Accordingly, MEC asserted that the gas supply savings provided by the NEXUS agreement are much smaller than predicted by ICF, and the cost of the NEXUS agreement to DTE Electric's customers outweighs the savings.

MEC noted that ICF's 2015 analysis of NEXUS costs and supply benefits projected that the NEXUS agreement would reduce DTE Electric's PSCR costs by $79 million between 2018 and 2038. According to MEC, the measure of value for NEXUS supply is "gas cost savings minus the cost of the capacity[,]" and that "NEXUS provides value if the natural gas price differential from the receipt point to the destination point exceeds the reservation cost plus fuel cost." 3 Tr 501.

MEC calculated the net spread (price differential net of fuel cost) between Kensington and MichCon Citygate and found that it was negative for most of 2019, which indicates that "it is not economical to move gas from Kensington to MichCon Citygate, because prices are actually higher at Kensington, or the price advantage at MichCon does not even cover the fuel cost . . . ." *Id.*, p. 502; MEC's initial brief, p. 13. MEC stated that the transport cost for Kensington was $3.81 million and the gas supply benefit was approximately $176,883; in sum, the net cost of the Kensington supply was about $3.63 million.

MEC asserted that, to flow gas from the Clarington receipt point to MichCon citygate, DTE Electric incurred an additional $0.695/Dth on the greenfield NEXUS segment and, as a result, the rate to transport gas from Clarington to MichCon citygate is $0.845/Dth. 3 Tr 492. MEC noted that the 2019 transport expense for Clarington was $4.63 million and that the $889,000 gas supply benefit of purchasing lower-priced gas at Clarington in 2019 reduced the transport expense for the Clarington segment to a net cost of $3.74 million. MEC's initial brief, p. 15. Although MEC acknowledged that Clarington prices were generally lower than MichCon Citygate, some of the Asset Manager's decisions to move gas from Clarington to Kensington may have been uneconomical. 3 Tr 505-506.

Based on the above calculations, MEC contended that it is unreasonable to conclude that the NEXUS agreement and the TEAL amendment will ever provide $79 million in PSCR savings:

> Just 14 months into the 20-year contract, [the] NEXUS [agreement] has resulted in a total net cost to DTE [Electric] ratepayers of nearly $8.5 million ($7.37 million in 2019 plus $1.12 million in 2018). These losses are close to the sum of losses ICF projected over the first 8 years of NEXUS service. DTE [Electric] forecasts continuous, substantial, and increasing losses through 2024, with another $61 million in losses through 2024.

MEC's initial brief, p. 17 (footnotes omitted).

Additionally, MEC disputed DTE Electric's claim that the NEXUS agreement and TEAL amendment will result in $271 million in savings to the company. MEC argued that "DTE [Electric] did not present any new evidence supporting NEXUS' potential impact on MichCon prices, and DTE [Electric] again failed to respond to intervenor testimony questioning the impact of NEXUS on MichCon prices." *Id*., p. 31. MEC asserted that the NEXUS agreement is not introducing a low-cost source of supply to MichCon because the 2019 index prices at Kensington were higher or comparable to MichCon. *See*, Exhibit MEC-15C. And, MEC stated that, "[t]o the extent NEXUS introduced gas from Clarington to MichCon in 2019, the recipient gas price was lower than MichCon prices, but not low enough to offset DTE [Electric]'s transport costs." MEC's initial brief, p. 32 (footnote omitted).

Further, MEC noted that, in 2019, total NEXUS transportation costs were $8.43 million, however less than $1 million of the costs were offset by the value of gas flows to third parties. MEC stated that, although "[t]he ICF 2015 Study projected almost the same NEXUS transportation cost, $8.38 million," it predicted "a much greater value of gas flows [to third parties], $7.22 million, for a net cost of $1.16 million." 2 Tr 508. Rather than saving customers money, MEC contended that the estimated net cost of the NEXUS agreement, over the life of the contract, will be $140 million to $187 million. As a result, MEC asserted that DTE Electric should negotiate with NEXUS to terminate the contract, renegotiate the pricing, or reduce the volume. MEC stated that, in the alternative, the company "might be able to reach agreement with a third party, such as a producer or marketer, to take over all or part of the contract quantity or duration." *Id*., p. 509.

MEC also argued that the NEXUS agreement and TEAL amendment do not comply with the affiliate price cap in the Code of Conduct. MEC noted that DTE Electric provided "two market

comparisons to support its NEXUS rates: a comparison to the FERC tariff and a comparison to another affiliate anchor shipper's rate (Union Gas)." MEC's initial brief, p. 35 (footnote omitted). MEC stated that the company also pointed to the "most favored nations" provision in its NEXUS precedent agreement, which allows DTE Electric to match the rate of a similarly situated shipper. *Id*., quoting 2 Tr 37. MEC asserted that "DTE [Electric] offered the same comparisons to support its 2018 costs [in Case No. U-20203], and the Commission concluded the record was insufficient to support cost recovery." *Id*. (footnote omitted). Additionally, MEC argued that these rates are not relevant to the value of the capacity to DTE Electric's customers; rather, the value to customers is the cost and benefit of the capacity. 3 Tr 514. Consequently, MEC averred that DTE Electric failed to demonstrate that its 2019 NEXUS rates comply with the Code of Conduct.

Next, MEC asserted that it is uncommon for power plant owners, such as DTE Electric, to commit to long-term capacity and that DTE Electric is the only power plant owner that committed to a 20-year contract with NEXUS. MEC noted that "the other long-term contracts are for the minimum required under the NEXUS open season, 15 years." 3 Tr 511. In addition, MEC claimed that DTE Electric failed to negotiate for a net back mechanism or a market reopener and, as a result, its customers bear all the price risk for the NEXUS agreement and the TEAL amendment.

In response to DTE Electric's claim that there may be additional benefits associated with NEXUS firm supply, MEC argued that those benefits have not been quantified. Moreover, MEC stated that, "[u]nder the AMA[,] DTE Electric has been supplied from spot commodity purchases, so apparently DTE Electric places little or no value on firmness of supply. Michigan is well-supplied with pipeline deliverability and storage capacity, so it would take bold assumptions to calculate a non-zero value for the firmness of the NEXUS capacity." *Id*., p. 507.

MEC concluded that "DTE [Electric] has not shown that its 2019 NEXUS costs were reasonable and prudent, that it took reasonable and prudent actions in 2019 to minimize NEXUS fuel costs, nor that its compensation to NEXUS in 2019 was below the market price per the affiliate price cap." MEC's initial brief, p. 5. MEC requested that, at a minimum, the Commission should disallow the 2019 costs incurred under the incremental TEAL rate. However, based on the record and the historical context, MEC recommended that the Commission also disallow costs incurred under the NEXUS greenfield rate. In the alternative, MEC requested that the Commission "disallow NEXUS transport costs incurred to transport gas not burned by DTE [Electric] for gas generation (capacity sold to third-parties), and/or transport costs for NEXUS capacity that was abandoned in 2019 because it was uneconomic." *Id*., p. 43.

In response to MEC, DTE Electric disagreed that it should have requested alternative proposals for pipeline capacity. The company asserted that:

> When DTE Electric first considered contracting with the NEXUS pipeline in late 2013, 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. For that reason, DTE Electric did not request proposals for alternatives to NEXUS. DTE Electric did consider Rover and ANR East [pipelines] as alternatives to NEXUS when they held open seasons in July 2014; however, DTE Gas' landed cost analysis (Exhibit A-34) showed that NEXUS was the least cost alternative among greenfield pipelines.

2 Tr 46. Therefore, DTE Electric argued that MEC's criticism of the company's decision to enter the NEXUS agreement is not "valid or compelling." *Id*.

DTE Electric also argued that MEC's estimated cost of the NEXUS agreement of $140 million to $187 million, over the life of the contract, is not relevant. The company stated that this "post hoc analysis" fails to demonstrate that the NEXUS agreement, at the time it was executed, was unreasonable. *Id*., p. 47. DTE Electric reiterated that the 2014 landed cost analysis

demonstrated that transportation capacity on the NEXUS pipeline would result in among the lowest landed costs between competing alternatives, and, as a greenfield pipeline, NEXUS would increase deliverability, introduce new supply into the region, and reduce gas supply costs.

In addition, the company disputed MEC's allegation that, instead of moving gas to MichCon citygate, the Asset Manager should have made the more economical decision to sell gas to third parties at Kensington, which MEC claimed would have garnered higher profits. DTE Electric asserted that this is an incorrect presumption; the higher prices at Kensington were not the prices at which the gas could be sold be sold to third parties. Rather, the company claimed that these were the prices the Asset Manager could *purchase* the gas. *Id*., p. 58. And, the company stated that "[t]here is no guarantee that any other buyers would purchase the gas at the prices suggested by [MEC's witness]. Furthermore, [MEC's witness] produces no reliable, independent evidence of a willing buyer at the prices he assumes." *Id*. DTE Electric contended that, because the Asset Manager did not have the ability to execute the transaction as suggested by MEC, there is no evidence that the company could have procured an additional $410,000 in gas cost savings in 2019.

Responding to MEC's claim that the value of the NEXUS agreement has never been quantified, the company agreed that the "exact value of firmness of supply is difficult to quantify." *Id*., p. 60. However, DTE Electric argued that "firmness of fuel supply is a critically important part of providing electric utility service and will be even more critical once Blue Water Energy Center (BWEC) is online in 2022. . . . With the retirement of several of the Company's coal-fired units, it is imperative that BWEC has firm, reliable fuel supply." *Id*. The company stated that it is using the AMA to reduce some of the capacity demand charges on the NEXUS pipeline until capacity is fully utilized to provide a firm supply of natural gas to BWEC.

Next, DTE Electric asserted that MEC failed to provide evidence that NEXUS would have been willing to renegotiate so that the company could obtain a net back mechanism or a market reopener in the agreement. The company stated that "NEXUS required fixed rates in order to support the more than $2 billion in capital costs to construct a new greenfield pipeline consisting of 36" pipe over more than 250 miles." *Id*., p. 61. DTE Electric averred that, had it not entered the NEXUS agreement and the pipeline had not been developed, the company's customers would not have realized the many benefits.

In response to MEC's claim that the NEXUS agreement does not comply with the Code of Conduct, the company averred that, in the February 7 order and the December 9, 2020 order in Case No. U-20203 (December 9 order), the Commission found that the NEXUS agreement complies with the Code of Conduct and it does not need repeated examination. DTE Electric's reply brief, pp. 22-23. DTE Electric stated that, in any event, it "is paying below the FERC-approved tariff rate for both the greenfield capacity and TEAL capacity. No party has provided any evidence that the NEXUS costs are not in compliance with the compensation provisions of the Code of Conduct." 2 Tr 63.

DTE Electric also objected to MEC's claim that if the costs of the NEXUS agreement exceed the value to customers, it is a subsidy to the company's affiliate. The company explained that it was interested in the NEXUS pipeline because of "the expected reliability and cost benefits for DTE Electric customers, not for the benefit of the affiliate. DTE Electric assessed the market prior to entering into its agreement with NEXUS and determined that the value to DTE Electric customers exceeded the price of NEXUS capacity." *Id*., p. 59.

3. Michigan Department of Attorney General

The Attorney General asserted that, although the NEXUS agreement has been included in several previous PSCR cases, "this 2019 PSCR reconciliation case is the first case where the Commission will have the opportunity to adjudicate the reasonableness and prudency of the NEXUS actual capacity costs and the related gas supply costs for a full year." 3 Tr 443. She noted that, in Case No. U-18403, DTE Electric's 2018 PSCR plan, the Commission directed the company to provide, in its 2018 PSCR reconciliation, a more substantive discussion of the reasonableness of the negotiated $0.695/Dth/day in order to receive full recovery of NEXUS transportation costs. In addition, the Attorney General noted that in the May 8 order in DTE Electric's 2019 PSCR plan case, the Commission issued a Section 7 warning that the costs associated with the NEXUS agreement and the TEAL amendment may not be recoverable in the 2019 reconciliation unless DTE Electric provided adequate support. According to the Attorney General, "in this 2019 PSCR reconciliation case[,] the Company again has failed to provide adequate evidence that the negotiated capacity costs and NEXUS-related gas supply costs meet the Commission's test of reasonableness." *Id*., p. 444.

As an initial matter, the Attorney General disagreed with DTE Electric that the ICF report demonstrates that the NEXUS agreement will provide savings to the company's customers. She noted that the ICF report was issued six years ago and was released after the company agreed to purchase transportation capacity on NEXUS. Moreover, the Attorney General asserted that the ICF report "projected net cost savings in 2024 and earlier, but those net cost savings are still not materializing. It is unclear when, if ever, any of these gas costs [sic] savings will exceed the cost of NEXUS transportation, as the Company continues to claim will happen." Attorney General's

initial brief, p. 38. She argued that, in the meantime, "customers are paying a premium for DTE to transport gas on its affiliated pipeline." *Id*.

The Attorney General explained that the company contracted for 30,000 Dth/day of capacity with NEXUS, which translates into 10,950,000 Dth of capacity for the year. She stated that "[i]n response to discovery request AGDE-1.24a, the Company reported that it only used 3,533,495 Dth of capacity to transport gas supply for its power plants during 2019. That capacity usage represents only 32% utilization of the total contracted capacity." 3 Tr 449 (footnote omitted). The Attorney General asserted that although DTE Electric paid $8,431,592 for the total capacity, the company only realized a benefit of 32%, or $2,698,109. She contended that "[t]he remaining amount of $5,733,483 for the unused capacity was wasted, with only a small portion of this amount recovered from the Asset Manager from released capacity fees and spread value revenue." *Id*., p. 450. The Attorney General stated that, if the $5,733,483 is offset by the capacity optimization fees and spread value paid by the Asset Manager to DTE Electric, the net amount of wasted capacity is $4,662,393. Thus, she argued that DTE Electric has an excess amount of capacity with NEXUS and the cost of this wasted capacity is not in the best interest of the company's customers.

The Attorney General contended that if DTE Electric continues to have contracted capacity with NEXUS, the Commission should direct DTE Electric to:

> develop a more robust and transparent gas purchase acquisition process, whereby the Company requests and evaluates multiple gas supply bids at the Kensington and Clarington receipt points. If the Asset Manager also wants to bid on those gas supply purchases, those bids need to be evaluated against other independent bids received directly by the Company from other gas suppliers. Such a process is followed by DTE Gas and other Michigan gas utilities when acquiring gas supplies, and the competitive bid information is often publicly available with the names of the supplier disguised to enhance transparency.

Id., p. 448 (footnote omitted). The Attorney General also requested that the Commission issue a warning that DTE Electric may not recover the cost of gas purchases under the AMA if the company does not show that it has followed a competitive bidding process to ensure purchases are made at the lowest cost possible with full price transparency.

Next, the Attorney General disagreed with DTE Electric that its NEXUS rates are reasonable and prudent because the company is not paying the more expensive FERC-approved rate and because other shippers on the NEXUS pipeline are paying higher rates. She argued that the company:

> has set up the wrong test to assess the reasonableness of the NEXUS rate paid by [DTE Electric]. The proper test is to compare the NEXUS rate to other pipeline options and their all-in cost to bring gas to the MichCon citygate. This is the proper comparison that other Michigan utilities have made, and the fact that those other utilities have not signed up for NEXUS capacity is a clear confirmation that the $0.695 and $0.845 rates paid by [DTE Electric] are not reasonable against other gas transportation options.

Id., pp. 456-457.

The Attorney General also disputed DTE Electric's claim that the TEAL amendment provides cost savings. She noted that, according to the company, the transportation expenses for TEAL capacity in 2019 were $821,250, and the benefit of purchasing lower-priced gas at Clarington was approximately $889,000, which is the spread value. The Attorney General asserted that the difference between the spread value and the incremental cost of the TEAL amendment at $0.15/Dth/day is $68,000. She stated that the "$68,000 amount does not include the 69.5 cents that the Company paid NEXUS on the same 15,000 Dekatherm per day for transportation capacity from Kensington to the MichCon citygate." Attorney General's initial brief, p. 45 (footnote omitted). The Attorney General contended that if the 15,000/Dth/day is multiplied by $0.695 and 365 days, the total is approximately $3.8 million. Thus, she averred that the total cost of

transporting the 15,000/Dth/day from Clarington to MichCon citygate is $3.8 million plus $821,250, or about $4.6 million. The Attorney General asserted that "on a full cost basis the TEAL contract is *not* a net benefit of $68,000 for 2019, but a loss of about $3.7 million, which is the difference between the $4.6 million and the spread value of about $900,000 . . . ." *Id*., p. 46 (emphasis in original).

In addition, the Attorney General noted that, prior to signing the TEAL amendment, the company believed the capacity agreement would reduce gas supply costs by a net estimated amount of $2.4 million over the four-year term of the agreement, which would indicate a net cost savings of $600,000 for 2019. However, she contended that, in 2019, the Clarington price per Dth was, on average, $0.207 higher than the Kensington price per Dth. 3 Tr 452. The Attorney General stated that:

> if a portion of the spread value is attributed to the TEAL capacity for the gas purchases made by [DTE Electric] from the Clarington and Kensington gas receipt locations to the MichCon delivery location, that amount would be $516,590. This amount of cost savings is significantly less than the incremental cost of the TEAL capacity of $821,250 and, as stated earlier, only a small fraction of the full cost of transportation from Clarington to Michigan of $4,626,375.

Attorney General's initial brief, pp. 36-37 (footnote omitted). Thus, she argued that the TEAL amendment did not provide a net cost benefit to customers in 2019.

In conclusion, the Attorney General asserted that the rates for NEXUS capacity paid by DTE Electric are not reasonable and that the company unnecessarily increased its fuel costs in 2019 "to the detriment of PSCR customers and for the benefit of NEXUS, which is partially owned by an affiliated company." 3 Tr 462. Therefore, she requested that the Commission disallow $7.1 million in NEXUS-related costs, calculated as follows:

> In response to discovery, the Company provided the total cost of gas purchases delivered to Michigan in 2019 by marketers under previous gas supply contracts and by the Asset Manager from the Kensington and Clarington receipt points,

> excluding the cost of NEXUS transportation. The total cost of the gas purchases from marketers, other than NEXUS-related purchases, was $31,480,809 for 13,814776 [sic] Dekatherm (Dth) of purchases, or $2.28 per Dth delivered to Michigan.
>
> With regard to NEXUS-related gas purchases, the Company purchased 3,533,495 Dth from the Asset Manager at a cost of $7,763,840, for an average cost per Dth of $2.20. This cost per Dth is *before* the transportation cost paid to NEXUS from Kensington and Clarington gas receipt points, which is in the total amount of $8,431,592. After including this cost and certain credits paid by the Asset Manager, the total cost for NEXUS-related purchases delivered to Michigan is $15,124,342, or $4.28 per Dth. This cost is $2.00 per Dth, or 88%, higher than the $2.28 per Dth that the Company paid for other gas supply costs delivered to Michigan by the gas marketers discussed above. This is not a minor difference that should be dismissed as a small cost to bring a new source of gas supply to Michigan.
>
> By applying this $2.00 price difference to the NEXUS-related volumes purchased from the Asset Manager, the [Attorney General] determined that the Company incurred excessive costs of $7,072,291 for purchasing Marcellus/Utica basin gas and having that gas supply delivered to Michigan through the NEXUS pipeline during 2019.

Attorney General's initial brief, pp. 29-30 (emphasis in original).

In response to the Attorney General's claim that the projected savings set forth in the ICF report are not realistic or achievable, the company stated that she "ignore[s] the fundamental expectation that introducing a low-cost source of supply to a new market will reduce market prices at the delivery location." 2 Tr 48. In addition, DTE Electric contended that it is not necessary to conduct an updated analysis to support the $271 million in savings projected in the ICF report because the forecasted savings would not change. Furthermore, the company disputed the Attorney General's contention that DTE Electric's customers are paying a premium rate for capacity on the NEXUS pipeline. According to the company, the Attorney General's argument "is narrowly focused and does not consider all benefits associated with the NEXUS pipeline, including the expected savings due to the construction and operation of the NEXUS pipeline reducing prices at MichCon Citygate." *Id*.

DTE Electric also disagreed with the Attorney General that the company should not support greenfield gas pipeline projects such as the NEXUS pipeline, and instead, should utilize the lowest cost, reliable gas for its power plants. The company asserted that "[g]reenfield pipelines provide several benefits that existing pipelines do not. Construction of a greenfield pipeline such as NEXUS adds incremental gas deliverability into the Michigan region and led to an infusion of lower-priced Utica and Marcellus natural gas." *Id*., p. 49. DTE Electric averred that the existing Panhandle Eastern Pipe Line, the ANR pipeline, and the Trunkline pipeline do not offer these benefits.

In addition, the company objected to the Attorney General's claim that the NEXUS agreement will provide no benefits to customers over the next five years. DTE Electric stated that:

> It would be myopic to draw conclusions based on these five years alone, and [the Attorney General's witness] continues to demonstrate a short-sighted and narrow view of the Company's NEXUS agreement. The agreement and its benefits must be evaluated over the full term of the agreement – 2018 through 2038 – in order to fairly examine DTE Electric's decision to enter into such an agreement, which the Commission has determined to be reasonable and prudent.

Id., p. 50.

Responding to the Attorney General's claim that the company's arrangement with the Asset Manager does not provide adequate price transparency, DTE Electric asserted that the Asset Manager provided daily price indications that align with the indicative quotes used in the company's analysis of the TEAL amendment. DTE Electric explained that:

> The Company's Asset Manager is an experienced natural gas marketer and expert in analyzing the market at the Kensington and Clarington receipt points in the Appalachian natural gas supply region. The Asset Manager has the relationships with producers in the area to accurately assess the market at the Kensington and Clarington receipt points. Natural gas marketers are experts in gas pricing, as they collectively sell more than 100 Bcf/[day] according to Rankings of top North American natural gas marketers. For context, US dry natural gas production was 92.1 Bcf/[day] in 2019. The Company's Asset Manager is amongst the top few North American natural gas marketers by volume, as determined by NGI [Natural

> Gas Intelligence] for Q2 2020. The Company reasonably and prudently utilized this expertise to provide data in its decision-making process.

Id., pp. 55-56 (footnotes omitted).

DTE Electric also disagreed with the Attorney General that the company's customers only benefit when the gas that is flowed on the NEXUS pipeline is used exclusively at the company's power plants. DTE Electric asserted that "[w]hen the Asset Manager delivers gas to third parties, the Asset Manager provides revenue to DTE Electric's customers equal to the value of the pipeline capacity. These revenues are credited against PSCR expense and thus reduce DTE Electric customer costs." *Id*., pp. 57-58. As a result, the company contended that the correct calculation of pipeline utilization is the amount of gas that the Asset Manager flows from the Clarington receipt point—not the amount of gas that was delivered to DTE Electric's power plants—which includes firmness and deliverability benefits.

Next, DTE Electric asserted that the Attorney General's proposed TEAL transportation rate of $0.845/Dth/day is inaccurate. According to the company, "[a]lthough the total cost to transport gas from Clarington to MichCon Citygate is $0.845 per Dth/day, the TEAL Amendment caused the Company to incur only an incremental cost of $0.15 per Dth/day to transport gas from Clarington to Kensington." *Id*., pp. 53-54. Thus, the company argued that $0.15/Dth/day is the appropriate rate to consider when evaluating the reasonableness and prudence of the TEAL amendment.

Finally, in response to the Attorney General's claim that the TEAL amendment does not provide an overall reduction in the cost of NEXUS gas supply, DTE Electric contended that the TEAL amendment provided access to the Clarington receipt point at prices lower than at Kensington. The company stated that, "[e]ven after accounting for the incremental $0.15/Dth cost, the lower Clarington prices are expected to reduce total gas expense by $2.4 million over the four-

year term." *Id*., p. 54. DTE Electric reiterated that its customers benefit from the TEAL amendment because it provides diversity of supply, increased supply reliability, and mitigated price risk.

4. Residential Customer Group

According to RCG, DTE Electric failed to prove that it reduced its supplier costs, including pipeline transportation and commodity costs, pursuant to the 40% reduction in corporate federal income tax resulting from the federal Tax Cuts and Jobs Act of 2017, PL 115-97; 131 Stat 2054 (TCJA), effective January 1, 2018. RCG explained that:

> in a contemporaneous case pending before the Commission, U-20210, involving DTE Gas Company's Gas Cost Recovery (GCR) Reconciliation for the 12-months ending March 31, 2010 [sic], [RCG] presented in **Exhibit RCG-2**, a discovery response from DTE indicating that the Federal Energy Regulatory Commission (FERC) had commenced proceedings to examine the impact on pipeline supplier costs resulting from the adoption of TCJA, to provide for possible pipeline rate reductions and refunds. RCG also presented **Exhibit RCG-6** in U-20210, another discovery response received from DTE [Gas], which indicated the various pipelines subject to FERC inquiries, including some of the pipelines serving DTE [Electric].

RCG's initial brief, pp. 1-2 (emphasis in original). RCG asserted that DTE Electric has not filed a petition, complaint, or intervention in any FERC case to evaluate whether there should be rate relief stemming from the tax reduction resulting from the TCJA. RCG requested that the Commission "require DTE in PSCR and GCR cases to establish that it has undertaken adequate efforts to minimize its costs by seeking reductions in its pipeline supplier costs, including particularly from its affiliate, NEXUS pipeline." *Id*., p. 3.

DTE Electric disagreed with RCG's contention that the company should have reduced its NEXUS rates consistent with the 40% tax cut resulting from the TCJA. The company stated that:

> RCG, without presenting any evidence whatsoever of its own, suggests an independent obligation to pursue a NEXUS price reduction based, ostensibly, on the assumed impacts of the TCJA on NEXUS' total costs to serve. (RCG Brief) The TCJA is of questionable relevance in any event. It is not reasonable to expect

> rote reconsideration of every supplier contract every time an individual supplier expense might be reduced.

DTE Electric's reply brief, p. 37. In addition, the company noted that the Commission rejected a similar challenge by the Attorney General in the May 8, 2020 order in Case No. U-20235. DTE Electric asserted that the NEXUS agreement was effective after the passage of the TCJA and there is "no basis whatsoever for a disallowance in this proceeding associated with the TCJA." *Id*.

5. Proposal for Decision

The ALJ stated that DTE Electric "bears the burden to show that its actions to minimize the cost of fuel were reasonable and prudent . . . ." PFD, p. 66. To begin, she noted that in the December 9 order, the Commission found that: (1) DTE Electric had not made a meaningful effort in 2018 to demonstrate that the costs incurred as a result of the NEXUS agreement were reasonable and prudent and (2) the company had failed to address changing market conditions through negotiations with NEXUS. The ALJ agreed with MEC that, in this 2019 PSCR reconciliation, "DTE Electric failed to demonstrate that its efforts to reduce transportation costs for the NEXUS pipeline in 2019 were reasonable or adequate based on this record." PFD, p. 65.

The ALJ noted that MEC and the Attorney General asserted that 32% of DTE Electric's supply on the NEXUS pipeline was used at the company's gas-fired plants, 28% was sold to third parties, and 40% was abandoned as uneconomic. She stated that "MEC argues that the definition of 'power supply' under MCL 460.6j(1)(b) only includes transportation and fuel costs for 'fuel burned by the utility for electric generation.' Thus, MEC posits that transportation costs for fuel that was abandoned or released to third parties cannot be included in a PSCR clause." PFD, p. 67. As a result, MEC requested that the 2019 NEXUS costs for capacity not utilized to transport gas to DTE Electric's generating plants should be disallowed.

The ALJ noted that, according to the Attorney General, the Commission directed DTE Electric, in the May 8 order, to demonstrate in future cases "that the level of contracted transportation capacity is in the best interest of its electric customers." *Id*., p. 68, quoting Attorney General's initial brief, p. 34. She stated that, in the Attorney General's opinion, the company is seeking to recover $4,662,393 in costs related to wasted capacity and that the Attorney General's proposed $7.1 million disallowance partially reflects that wasted capacity.

Although the ALJ agreed with the Attorney General and MEC that the $4,662,393 in wasted capacity costs should be disallowed, she rejected the Attorney General's recommendation to disallow $7.1 million and MEC's recommendation to disallow $7.4 million. She explained that: "(1) DTE Electric did use 32% of NEXUS capacity to supply fuel for electric generation; and (2) the Commission has found that asset management arrangements are not necessarily inappropriate, and the Asset Manager was able to dispose of some gas and provide a credit to PSCR customers. Thus, a disallowance of all NEXUS capacity costs is unwarranted." *Id*., p. 70.

Regarding MEC's claim that the NEXUS agreement lacks ratepayer protections or rate adjustment mechanisms, the ALJ stated that "because the NEXUS contract and amendments (except the TEAL amendment) were approved in Case No. U-18403, efforts to revisit these aspects of the original NEXUS contract should be rejected." *Id*., p. 67.

In response to DTE Electric's claim that there are additional benefits to the NEXUS agreement such as firmness of supply and reliability, the ALJ found that "the company does not provide any quantification of the benefit of firm supply, including whether what is effectively a $4.7 million insurance policy, is justified considering the limited amount of NEXUS supply actually used in 2019." *Id*., p. 70. Although there may be value in firm supply when BWEC is

operational in 2022, the ALJ stated that DTE Electric failed to support the amount of contracted capacity for 2019.

Next, the ALJ addressed MEC's argument that DTE Electric should not have waited until 2018 to negotiate the TEAL amendment when it was clear, long before 2018, that production activity was shifting and the market was changing. The ALJ stated that, "although MEC provides some new information about when changes in production activity first became apparent, even MEC acknowledges that '[t]he changing market conditions may not have been foreseen in 2014, when DTE [Electric] executed the original NEXUS contract, or even in November 2015, when ICF produced its NEXUS report.'" PFD, pp. 72-73, citing MEC's initial brief, p. 38 (footnote omitted). In addition, the ALJ asserted that it is unclear how the current circumstances would have changed had DTE Electric renegotiated the NEXUS agreement before 2018. She stated that:

> The fact remains that DTE Electric did renegotiate the contract in 2018 to add the TEAL amendment and Clarington receipt point before the NEXUS pipeline was in service. Beyond that, it is speculative to assume that NEXUS would have been willing to negotiate for more capacity at Clarington had the company attempted to amend the NEXUS agreement sooner.

Id., p. 73.

The ALJ noted that DTE Electric claimed that it is unnecessary to update the ICF report because the company continues to expect the $271 million in savings to be realized from the NEXUS agreement. However, she asserted that, in the December 9 order, the Commission found that the ICF report was "outdated." PFD, p. 75, quoting December 9 order, p. 28. The ALJ stated that, "[r]ecognizing that the Commission's [December 9] order in Case No. U-20203 was issued shortly before the record closed in this case, the PFD agrees, in part, with MEC and the Attorney General that the ICF report, described by the Commission as 'outdated,' should be revised to reflect the significant shift in the market since 2015." *Id*. In addition, she found that "the updated

report should address higher-than-projected net cost of NEXUS over the initial five years, as well as the impact of the TEAL amendment on the $79 million PSCR cost savings." *Id*. The ALJ recommended that the company provide the updated report in its upcoming PSCR plan case.

The ALJ also noted that the Attorney General objected to the AMA and the Asset Manager's purchase and management of gas on the NEXUS pipeline, and that the Attorney General requested that DTE Electric provide more transparency with gas purchasing decisions. The ALJ asserted that this issue was settled in the December 9 order; however, "[t]his PFD recommends that consistent with the Commission's directive [in the December 9 order], DTE Electric provide a detailed review of its supply acquisition process in its next PSCR plan case." PFD, p. 77; December 9 order, pp. 6-7, 40.

Finally, the ALJ stated that "[i]n future PSCR plan and reconciliation cases, DTE Electric should be directed to file updated or revised testimony and exhibits to correct any errors in its initial filing." PFD, p. 78.

6. Exceptions

In its exceptions, DTE Electric noted that, on page 62 of the PFD, the ALJ stated:

> [T]he Commission's findings and conclusions from the December 9, 2020 order in Case No. U-20203 [DTE Electric's 2018 PSCR reconciliation case] should apply here. Specifically, although DTE Electric used more NEXUS capacity for its gas-fired units in 2019, (32% in 2019 compared to less than 10% in the last two months of 2018) the Commission's decision to cap NEXUS and TEAL costs at the original greenfield rate should nevertheless be reaffirmed in this case because "the NEXUS volumes and rate were justified based on 100% utilization of fuel being used at DTE Electric's power plants."

DTE Electric's exceptions, p. 24, quoting PFD, p. 62. The company disagrees and objects to the ALJ's view of the NEXUS agreement. DTE Electric asserts that the NEXUS agreement is a 20-year agreement and, in the February 7 order, the Commission properly applied a long-term view of the contract. The company argues that the Commission should continue to take a long-

term view of the NEXUS agreement, and its benefits should be evaluated over the full term of the agreement.

In addition, the company contends that long-term agreements support infrastructure development, which is recognized in the PSCR process set forth in Act 304. DTE Electric states that MCL 460.6j(3) "specifically recognizes that utilities need the ability to enter into long-term contracts to ensure a reliable and reasonably priced fuel supply" so that utilities can make long-term strategic decisions. DTE Electric's exceptions, p. 27. Accordingly, DTE Electric asserts that it is important that the Commission consider that, at the time the NEXUS agreement was executed, there were short-term considerations, such as the Renaissance and Dean gas-fueled power plants; however, the long-term scope and purpose of the agreement is to provide firm supply to BWEC and to deliver a new supply of natural gas to Michigan from a low-cost region.

DTE Electric also argues that the parties were well aware that the short-term economics of the NEXUS agreement may be less than favorable. The company points to the February 7 order, in which the Commission stated that it:

> ***agrees with the ALJ's assessment that there is consensus among the parties that the NEXUS agreement will result in projected losses for the 2018 PSCR year and the five-year forecast, but that, 'against the larger backdrop of the underlying rationale and circumstances' that led the utility to enter into a long-term capacity agreement with NEXUS, the Staff identified cost benefits to DTE Electric and its customers that will result from bringing additional quantities of natural gas into Michigan from the Marcellus/Utica basin, a low cost region").***

Id., p. 28, citing February 7 order, p. 43 (emphasis in original). DTE Electric asserts that this issue has been litigated and should not be revisited in this case.

Next, DTE Electric reiterates that the 2019 costs associated with the NEXUS agreement and the TEAL amendment are reasonable and prudent and comply with the Code of Conduct because they result in lower PSCR costs than competing alternatives. The company states that:

> It is also important to keep in mind that the Code of Conduct plainly calls for comparing the price of one particular thing to the "market price" of the same thing (under the prior Code of Conduct, "services, products or property." Under the current Code of Conduct, "services or products."). A proper "apples-to-apples" comparison also requires actual alternatives, as the Commission previously recognized (February 7, 2019 Order in Case No. U-18403, pp 42-43). It makes no sense to compare "apples-to-oranges," yet DTE Electric continues to find itself subjected to arguments based on the flawed premise of comparing two very different things. The NEXUS Agreement is for *long-term firm transportation* of inexpensive gas from Ohio to the MichCon CityGate. The TEAL amendment similarly concerns gas transportation for a period of years. It is nonsensical and irrelevant, for example, to attempt to compare the cost of firm transportation to the spot market price of gas because, among other things, NEXUS *is not selling any gas* to DTE Electric. The NEXUS pipeline is also broadly driving down gas prices, and provides additional value through reliability . . . .

DTE Electric's exceptions, pp. 32-33 (emphasis in original).

Moreover, DTE Electric argues that it would be narrow-sighted to determine that the only purpose of a long-term contract like the NEXUS agreement is to minimize the cost of fuel. The company avers that "[t]here is no requirement for utilities to only obtain (or for the Commission to only approve) the cheapest short-term fuel sources. MCL 460.6j(6) instead requires the Commission is [sic] to broadly consider numerous factors, including whether the utility has taken '*all* ***<u>appropriate</u>*** *actions to minimize the cost of fuel*' and including the catch-all, '***<u>and other relevant factors</u>***' . . . ." DTE Electric's exceptions, p. 35 (emphasis in original). DTE Electric asserts that, in the February 7 order, the Commission found that the company has already taken all appropriate steps to minimize the cost of fuel. In addition, the company contends that it took "appropriate actions" by executing the TEAL amendment, which is expected to reduce DTE Electric's natural gas expense by $2.4 million over the length of the contract. *Id*., p. 36; MCL 460.6j(6). And, DTE Electric reiterates that there are "other relevant factors" such as the benefits customers will receive from regional diversity of supply, increased supply reliability, and mitigated price risk. *Id*., pp. 35, 37-38.

In response to the ALJ's recommendation that the Commission disallow $4.7 million for unused NEXUS capacity, the company asserts that the Commission rejected a similar argument in the December 9 order and the ALJ did not provide a persuasive reason to revisit the argument. In addition, DTE Electric states that "[t]he 'wasted' capacity argument is also improperly short-sighted and otherwise unsound because it is like saying money spent on insurance premiums is 'wasted' unless you file a claim. Instead, it is often reasonable, prudent, and even necessary to purchase insurance to guard against adverse events in an uncertain future." *Id*., p. 37. The company asserts that the NEXUS agreement and the TEAL amendment ensure long-term fuel supply diversity and reliability at an affordable rate.

Furthermore, DTE Electric objects to the ALJ's recommendation that NEXUS gas transportation costs should be disallowed because the company did not use 100% of the capacity in the first full year of NEXUS operations. *Id*., p. 38. DTE Electric reiterates that NEXUS gas transportation is being utilized by the company's power plants, additional NEXUS gas transportation capacity is being sold to third parties to generate revenue credits for PSCR customers, and much of the capacity will be utilized by BWEC beginning in 2022.

The company also disagrees with the ALJ that the ICF report is outdated. DTE Electric states that, "[a]lthough the NEXUS pipeline was delayed, the analysis remains fundamentally sound." *Id*., p. 40 (footnote omitted). In support, the company reiterates the testimony provided in its direct case. *Id*., pp. 40-41.

Finally, DTE Electric objects to the ALJ's recommendation that the Commission order the company, in future PSCR plan and reconciliation cases, to file updated or revised testimony and exhibits to correct any errors in its initial filing. The company contends that "[t]he suggestion has theoretical appeal but in practice may create unnecessary work and confusion for immaterial

revisions. Administrative efficiency requires that a formal refiling by the Company due to error be evaluated only on a case by case basis considering magnitude, timing, and other relevant factors." *Id*., pp. 41-42.

The Attorney General excepts to the ALJ's recommendation that only $4,662,393 in NEXUS-related costs be disallowed. The Attorney General states that she "agrees with each part of the ALJ's above analysis, as well as her conclusion that disallowance of all NEXUS capacity costs is unwarranted. The ALJ, however, failed to explain how those items led to her recommendation against the AG's proposed disallowance of the $7.1 million in NEXUS-related costs and the AG argues that there is no discernible link." Attorney General's exceptions, pp. 3-4. The Attorney General contends that DTE Electric's NEXUS purchases were 88% more expensive than what the company was paying for other gas supply, which results in excess costs of $7.1 million. She reiterates that DTE Electric failed to show that ratepayers benefit from the excessive price the company is paying to access firm supply and contracted capacity. Therefore, the Attorney General requests that the Commission disallow $7.1 million in NEXUS-related costs.

7. Replies to Exceptions

In response to the Attorney General's proposed $7.1 million disallowance, DTE Electric asserts that the recommendation "unlawfully and unreasonably fails to recognize any value for firm transportation capacity . . . ." DTE Electric's replies to exceptions, p. 8. DTE Electric reiterates the benefits of contracted firm supply and contends that the company demonstrated that the costs of the NEXUS agreement and TEAL amendment are reasonable and prudent. *See*, *id*., pp. 8-15. Additionally, the company reiterates that the Code of Conduct requires the comparison of similar items, and the Commission should not, as the Attorney General requests, compare the

cost of long-term firm transportation to the spot market price of gas. Finally, DTE Electric restates that the ICF report's analysis remains fundamentally sound and should not be updated.

MEC notes that, in DTE Electric's exceptions, the company claims that in previous PSCR cases, the Commission found that the costs of the NEXUS agreement and the TEAL amendment comply with the Code of Conduct and are recoverable, and therefore, those decisions are precedential. MEC contends that, in the immediate case, as compared to previous PSCR proceedings, the Commission is reviewing whether the 2019 NEXUS-related PSCR costs are reasonable and prudent and whether the costs comply with the Code of Conduct. MEC states that these issues have not been "presented to or decided by the Commission because these issues were not ripe until this proceeding." MEC's replies to exceptions, p. 15. In addition, MEC asserts that "[t]he Commission has recognized that Act 304 requires 'a complete annual review' of even long-term fuel contracts." *Id*., p. 21, citing the December 17, 1986 order in Case No. U-8288, pp. 7-11, 17-23; May 13, 2021 order in Case No. U-20528, pp. 13-14 (footnote omitted).

MEC objects to DTE Electric's request that the Commission should employ a long-term view of the NEXUS agreement and the TEAL amendment. According to MEC, the company made a similar request in Case No. U-20203, stating that "NEXUS should be considered over the 20-year period, not limited to the 2018 actual costs" and that the Commission should consider the "long-term reliability value and future savings offered by the NEXUS contract." *Id*., p. 25 (footnote omitted). MEC notes that, "[n]otwithstanding DTE [Electric]'s position, the Commission concluded [in the December 9 order] that DTE [Electric] had not supported the reasonableness of the combined transport rate nor that the utility is taking adequate steps to protect ratepayers given changing market dynamics." *Id*., p. 26 (footnote omitted). MEC contends that, if the Commission conducts a contemporaneous review of the company's 2019 power supply costs, the Commission

will find that the 2019 market conditions are worse than in 2018 and that the company did very little to reduce costs for customers.

In response to DTE Electric's claim that acquisition of the Renaissance and Dean gas-fired plants was part of the short-term purpose of the NEXUS agreement and TEAL amendment, MEC asserts:

> This statement is misleading. It is apparently intended to induce the reader to erroneously conclude that DTE [Electric]'s acquisition of Renaissance and Dean in 2015 justified DTE [Electric]'s decision to amend the NEXUS contract in 2015 to more than triple the near-term NEXUS capacity. In 2013, before DTE [Electric] signed the first NEXUS contract, it recognized that "[t]he numbers of CTs [combustion turbines] in the plans do not increase the gas usage significantly, running at 5-15% Capacity Factor." That is consistent with DTE [Electric]'s August 2015 analysis supporting the increased capacity decision. That analysis recognized that, even with these new peakers, the utility would only burn at least 30,000 Dth/day "on about one-third of days" before a new gas plant was built. Thus, DTE [Electric] knew in 2015 that it would not need 30,000 Dth/day in 2019, notwithstanding the coincident acquisition of the peakers.

Id., pp. 30-31, quoting Exhibit MEC-32, p. 14, and Exhibit MEC-28, p. 29 (footnotes omitted). MEC contends that, rather than considering whether it was reasonable and prudent in the short- or long-term for the company to enter and amend the NEXUS agreement, the question the Commission should consider in this proceeding is whether ratepayers should bear the cost of the unused capacity on the NEXUS pipeline in 2019.

Next, MEC notes that DTE Electric disputes the ALJ's finding that that the company failed to take steps to reduce the cost of fuel in 2019. MEC asserts that:

> The ALJ fully considered the evidence of DTE [Electric]'s efforts to minimize 2019 fuel costs. Notably, DTE [Electric] identifies no evidence that the ALJ failed to consider in the PFD. DTE [Electric] simply does not accept the recommended conclusion, based on the whole record, that this evidence does not meet the standards in Act 304, the Code of Conduct, and the Commission's order in the 2019 plan case.

Id., pp. 31-32. Additionally, in response to DTE Electric's claim that the ALJ failed to consider that the company took "all *appropriate* actions to minimize the cost of fuel" pursuant to MCL 460.6j(6), MEC argues that "'all appropriate actions' is one of several factors the Commission must consider in reviewing PSCR costs. But contrary to DTE [Electric]'s view, MCL 460.6j requires the utility to satisfy each listed factor." *Id*., pp. 36-37 (emphasis in original). In MEC's opinion, DTE Electric failed to demonstrate that it took appropriate action to reduce fuel costs in 2019 pursuant to the requirements in MCL 460.6j(6).

In response to DTE Electric's claim that the ALJ erred in recommending a disallowance for "wasted" NEXUS pipeline capacity, MEC contends that the company failed to demonstrate how the cost for the unused capacity in 2019 benefits customers. MEC's replies to exceptions, p. 38, quoting PFD, p. 70. MEC asserts that in the May 8 order, the Commission directed the company to provide evidence demonstrating that cost for transportation on the NEXUS pipeline is reasonably and prudently linked with power supply costs. MEC notes that, subsequently, in the December 9 order, the Commission capped recovery of the 2018 NEXUS-related costs at $0.695/Dth because DTE Electric was only using a fraction of the contracted capacity for its power plants. MEC avers that, in this case, DTE Electric continues to use a small percentage of its contracted capacity for its power plants, however customers are paying transportation charges that assume 100% utilization of the contracted amount. MEC argues that the company failed to show that, in 2019, the cost of the NEXUS agreement and the TEAL amendment is in the best interest of customers.

Finally, MEC notes that DTE Electric objected to the ALJ's recommendation that the company be required to update testimony and exhibits to correct errors in its initial filing. MEC states that the ALJ's recommendation was adopted at the request of the Staff. In addition, MEC

states that "DTE [Electric] essentially argues that it should be the Company's prerogative to determine when to correct errors in its filing or not, based on whether it would create 'unnecessary work.' DTE [Electric]'s exception should be rejected because the Company offers no authority for its position." *Id*., p. 45, quoting DTE Electric's exceptions, pp. 41-42 (footnotes omitted).

In her replies to exceptions, the Attorney General states that "except for the portion noted in her exceptions, the ALJ's analysis and recommendations regarding NEXUS and TEAL costs are correct and should be adopted by the Commission." Attorney General's replies to exceptions, pp. 12-13 (footnote omitted). In response to DTE Electric's claim that the parties expected losses in the first five years of the NEXUS agreement, the Attorney General asserts that "the losses are greater than projected and DTE [Electric] is now projecting losses beyond the first five years, with no indication as to when those losses might turn around." *Id*., p. 15 (footnote omitted).

In addition, the Attorney General disagrees with the company's comparison of the NEXUS agreement with an insurance premium. She states that "[t]his analogy is inapt. The value of NEXUS derived in the ICF report, which DTE [Electric] has pointed to time and again in numerous filings, is predicated on 100% usage of the pipeline. When 100% usage does not occur, then the 'value' DTE [Electric] keeps stating customers will receive, clearly is not coming to fruition." *Id*., p. 17. The Attorney General requests that the Commission reject this "novel and unreasonable" interpretation of the value of the NEXUS agreement and TEAL amendment. *Id*.

Responding to DTE Electric's objection to the ALJ's recommendation that the ICF report be updated, the Attorney General states that "the market has shifted tremendously since 2015" and an updated report will provide a more accurate reflection of "the current market and related projections." *Id*., p. 18.

Finally, the Attorney General notes that DTE Electric disagreed with the ALJ's recommendation that, in future PSCR cases, the company should be required to file updated or revised testimony to correct errors in its initial filing. The Attorney General states that she "does not read the recommendation to apply to typos and grammatical errors, but rather to address areas of significant revisions or edits, for example such as where the Company discovers, or another party points out, a flaw that changes numbers or otherwise significantly impacts the Company's conclusions." *Id*., p. 19. The Attorney General asserts that the same requirement would apply to all parties to the proceeding, that it would provide a cleaner record, and that it would make briefing easier.

8. Discussion

The Commission notes that DTE Electric has requested, in several recent PSCR cases, that the Commission find that the transportation costs incurred pursuant to the NEXUS agreement and the TEAL amendment are reasonable and prudent. In Case No. U-18403, DTE Electric's 2018 PSCR plan, the NEXUS pipeline was not yet in service, however the company requested approval of projected NEXUS transportation costs. Intervenors in that case argued that DTE Electric failed to demonstrate that the projected costs were reasonable and prudent, and they asserted that the NEXUS agreement did not comply with the Code of Conduct. The Commission stated that it:

> agree[d] with the ALJ's assessment that there is consensus among the parties that the NEXUS agreement will result in projected losses for the 2018 PSCR year and the five-year forecast, but that, "against the larger backdrop of the underlying rationale and circumstances" that led the utility to enter into a long-term capacity arrangement with NEXUS, the Staff identified cost benefits to DTE Electric and its customers that will result from bringing additional quantities of natural gas into Michigan from the Marcellus/Utica basin, a low cost region.

February 7 order, p. 43, quoting PFD in Case No. U-18403, p. 93. The Commission "further agree[d] with DTE Electric that the words 'other relevant factors' in MCL 460.6j(6) permit the

Commission to consider the long-term benefits of the 20-year contract that the utility presented." *Id*., p. 44; *see also*, December 9 order, p. 27. The Commission also recognized the company's negotiated transportation rate of $0.695/Dth/day as a projected cost and directed DTE Electric to provide a more substantive discussion of the reasonableness of the projected rate in its subsequent 2018 PSCR reconciliation.

In DTE Electric's 2018 PSCR reconciliation case, Case No. U-20203, the Commission noted on page 23 of the December 9 order that, "[f]rom the outset, the Commission recognizes that long-term contracts for natural gas supply can mitigate both reliability and pricing risk." And, although MCL 460.6j(3) sanctions long-term firm gas transportation contracts in PSCR matters, the Commission found that a utility must continue to monitor and respond to market conditions and system needs and shall make good faith efforts to manage existing contracts. These efforts may require "meaningful attempts to renegotiate contract provisions to ensure continued value for ratepayers as market conditions change." *Id*., p. 26 (footnote omitted). In the December 9 order, the Commission determined that, before the NEXUS pipeline was placed in service, DTE Electric had amended the agreement several times, including executing the TEAL amendment. *Id*.

The Commission acknowledged in the December 9 order that the NEXUS pipeline "was in-service for a mere two months at the end of the annual reconciliation period in this case and that market conditions can fluctuate over time. Such near-term fluctuations need not always warrant an immediate response." *Id*., p. 27. However, the Commission found that market conditions had changed since DTE Electric had executed the NEXUS agreement and TEAL amendment:

> Based on the volumes secured and the pricing at both Clarington and Kensington [in 2018], it is clear that market conditions have changed in a meaningful manner with the basis differential in prices not what was expected in order to utilize the full amount under contract. DTE Electric paid the full transportation charge for the full contracted volumes but appears to not have been able to access gas at these

locations at the most economical prices it expected to serve its power generation needs.

Id., p. 26. As a result, the Commission determined that it was appropriate, in that case, to cap recovery at $0.695/Dth/day because DTE Electric failed to demonstrate that the total transportation rate of $0.845/Dth/day, with the incremental expenses for the TEAL amendment, was reasonable. *Id*., p. 28.

In addition, in the December 9 order, the Commission found that a previously approved long-term affiliate contract does not need to be repeatedly examined under Code of Conduct rules. However, the Commission determined that the TEAL amendment should be evaluated pursuant to the market pricing test for an affiliate transaction as set forth in Rule 8(4). Because there was no market price comparison on record in Case No. U-20203, the Commission found that the incremental $0.15/Dth/day should be disallowed. *Id*., p. 29.

In Case No. U-20221, DTE Electric's 2019 PSCR plan, the Commission adopted the administrative law judge's finding that the February 7 order should be given preclusive effect in the case:

1. DTE Electric Company's decisions regarding natural gas transportation made between November 2013 and the July 31, 2014 precedent agreement with NEXUS, along with the precedent agreement and its subsequent amendments were reasonable and prudent at the time they were made. (See February 7, 2019 order, page 46.)

2. DTE Electric's 2014 and 2015 estimates of long-term savings expected from the NEXUS agreements were not speculative or conjectural. (See February 7, 2019 order, page 44.)

3. DTE Electric took all appropriate steps to minimize the cost of fuel by entering the NEXUS agreements reviewed in Case No. U-18403. (See February 7, 2019 order, page 44.)

PFD in Case No. U-20221, p. 42; May 8 order, pp. 3, 5. Regarding the TEAL amendment, the Commission determined that DTE Electric's savings estimates were not well-supported and found

that the "savings analysis and the current utilization data do not reflect the full potential cost of the TEAL amendments." *Id*., p. 8. The Commission issued a Section 7 warning, asserting that the company may not be permitted to recover the full costs of the TEAL amendment in a future PSCR reconciliation proceeding. Regarding the unused capacity on the NEXUS pipeline, the Commission found that "DTE Electric is not precluded from recovering reasonable and prudent gas pipeline transportation capacity costs," however, "the Commission will want to see additional evidence that the transportation capacity costs incurred were reasonably and prudently tied to power supply costs." *Id*., p. 13.

Finally, in response to Code of Conduct concerns in Case No. U-20221, the Commission stated that:

> while DTE Electric is not required to relitigate the original NEXUS agreement decided in the February 7 order, the company does have an ongoing obligation to demonstrate compliance with the pricing provisions of the Code of Conduct in the reconciliation, which in turn will provide the Commission with the required information to determine the amount of affiliate transaction costs DTE Electric may recover. Furthermore, DTE Electric must demonstrate compliance with the Code of Conduct when new evidence or a showing of changed circumstances applies to a question of fact. *Consumers Energy Co v Pub Serv Comm*, 268 Mich App 171, 177-178 n. 3; 707 NW2d 633 (2005).

Id., p. 16. The Commission found that, in the reconciliation, DTE Electric should address the recoverable affiliate compensation and demonstrate compliance with the pricing provisions of the Code of Conduct.

In Case No. U-20527, DTE Electric's 2020 PSCR plan, the Commission accepted the total NEXUS transportation rate of $0.845/Dth/day as a projected cost, but noted the company's obligation "to justify the reasonableness and prudence of these rates in its corresponding reconciliation case (Case No. U-20528). The Commission also finds it appropriate to caution DTE Electric, based on present evidence similar to that in Case No. U-20203, that the company may not

recover the full combined transportation rate of $0.845/Dth under MCL 460.6j(7)." April 8 order, pp. 21-22 (footnote omitted).

Additionally, the Commission found that, for the NEXUS transportation rate to receive Commission approval in the 2020 PSCR reconciliation, DTE Electric must demonstrate compliance with the pricing provisions of Rule 8(4) of the Code of Conduct and provide evidence that the company has taken steps to renegotiate the contracts in order to minimize the cost of gas. The Commission stated:

> This could also include a final landed cost for a set of alternatives to the current NEXUS agreements—including the TEAL amendment—as well as a comparison between those alternatives and the total cost, including commodity costs, of the gas transported on the NEXUS line. In addition, although the TEAL amendment may help to mitigate the higher-than-expected prices at Kensington in the short term, the vast majority of the NEXUS contract is tied to gas supply at the Kensington receipt point. As such, additional information regarding the market outlook at Kensington would be helpful in informing the Commission's review of the ongoing reasonableness over the full life of the NEXUS contract and its amendments.

Id., pp. 22-23.

In Case No. U-20235, DTE Gas's 2020 GCR plan, DTE Gas requested approval of a capacity rate of $0.695/Dth/day at the Kensington receipt point and a capacity rate of $0.15/Dth/day at the Clarington receipt point, which arise from the September 1, 2018 agreement with NEXUS (September NEXUS agreement) and the November 1, 2018 amendment (November amendment) to the September NEXUS agreement. The Attorney General argued in briefing that the costs resulting from the September NEXUS agreement and November amendment are unreasonable and should be disallowed, and she requested that the Commission issue a Section 7 warning. The Attorney General also recommended that the Commission implement a "cost deferral and recovery mechanism that would track the annual value of the price difference between the spot market prices at the MichCon citygate and the spot market prices at Kensington and Clarington,

multiplied by the Company's daily gas purchases for each month at the Kensington and Clarington purchase locations." May 8, 2020 order in Case No. U-20235, p. 3, quoting 2 Tr 241 in Case No. U-20235.

The administrative law judge in Case No. U-20235 found that:

> DTE Gas's negotiated rate in the original NEXUS Agreement is less than the pipeline's maximum rate approved by the Federal Energy Regulatory Commission (FERC), less than the variable rates paid by other anchor shippers, and includes a most favored nation provision. PFD [in Case No. U-20235], p. 17; 2 Tr 158-159. The ALJ found the Amendment to be a reasonable way to reduce future costs, because the Clarington receipt point allows access to more suppliers and lower prices. *See*, 2 Tr 168-169 [in Case No. U-20235]. Based on this evidence, the ALJ concluded that the Attorney General's objections were not well taken, and that no Section 7 warning should be issued.

May 8, 2020 order in Case No. U-20235, p. 4. The administrative law judge also recommended that the Commission reject the Attorney General's proposed cost recovery mechanism.

On pages 5-6 of the May 8, 2020 order in Case No. U-20235, the Commission agreed with the administrative law judge "that there is sufficient evidence on this record to approve the proposed plan and factors." However, the Commission found it appropriate to issue a Section 7 warning associated with DTE Gas's five-year forecast and the Clarington receipt point. The Commission stated that "[t]he company failed to provide information that would allow the projected $4.8 million in alleged net cost savings [from the November amendment] to be verified, and, when asked to support the incremental price, only alluded to these same net cost savings, which themselves were not supported." *Id*., p. 6. The Commission noted that the costs associated with the September NEXUS agreement and November amendment will be examined in the 2020 PSCR reconciliation proceeding and directed DTE Gas to provide adequate support demonstrating the reasonableness and prudence of the costs.

Regarding the Attorney General's cost recovery mechanism proposed in Case No. U-20235, the Commission was "not persuaded that it is appropriate to benchmark a previously approved long-term contract against short-term prices, and agrees with the [administrative law judge] that the Attorney General has not addressed all of the legal and technical questions raised by the proposal." *Id*., pp. 5-6.

To begin, the Commission recognizes that firm transportation capacity provides reliability and resilience, and that Act 304 encourages fuel diversity and firm contracts. In the February 7 order, long-term benefits of the NEXUS capacity agreement, such as diversity of supply and reduced gas prices, were identified; however, the parties agreed that losses were projected for the 2018 PSCR year and the five-year forecast. As noted above, in subsequent PSCR cases, the Commission acknowledged that long-term contracts for natural gas supply can mitigate both reliability and pricing risk, but found that a utility has a continuing obligation to monitor and respond to market conditions and system needs and must make a good faith effort to manage existing contracts, which includes efforts to renegotiate contract provisions.[3] The Commission reaffirms this position.

In this case, DTE Electric's 2019 PSCR reconciliation application was filed on March 31, 2020. As discussed above, on May 8, 2020, the Commission issued a Section 7 warning to DTE Electric in Case No. U-20221 and a Section 7 warning to DTE Gas in Case No. U-20235, directing the companies, in future reconciliations, to provide adequate support for the reasonableness and prudence of the costs associated with the NEXUS agreement and amendment. On December 9, 2020, the Commission issued an order in DTE Electric's PSCR plan case, Case No. U-20203,

[3] *See*, December 9 order, p. 26; June 7, 2019 order in Case No. U-18404, p. 7; June 15, 1989 order in Case No. U-8880, pp. 36-37.

noting that market conditions had changed since the NEXUS agreement and TEAL amendment were executed and finding that "DTE Electric has not demonstrated the reasonableness of the combined transportation rate of $0.845/Dth given the volumes utilized nor has the company demonstrated it is taking adequate steps to renegotiate the agreement for the benefit of ratepayers given changing market dynamics." December 9 order, p. 28. Then, on December 18, 2020, the record in the immediate case was closed. Approximately four months later, the Commission issued a Section 7 warning in Case No. U-20527 on April 4, 2021.

In order to provide DTE Electric adequate time to comply with the Commission's Section 7 warnings issued in Case Nos. U-20221 and U-20527 and the directives set forth in the December 9 order, the Commission finds that it is reasonable to approve the combined transportation rate of $0.845/Dth/day in this case. DTE Electric asserted that its natural gas power plants consumed approximately 3.5 million Dth of NEXUS gas in 2019 and that the Asset Manager was able to flow approximately 6.5 million Dth of natural gas on the NEXUS pipeline to third parties, thus reducing the company's 2019 PSCR expense by approximately $1.1 million. In addition, DTE Electric averred that, once BWEC is operational in 2022, the company expects to utilize all of its NEXUS capacity to supply its gas-fired power plants.

However, the Commission emphasizes that in the company's pending and future PSCR cases, DTE Electric must provide a more robust record to justify the reasonableness of the combined transportation rate of $0.845/Dth/day or evidence of the steps the company took to renegotiate the transportation agreement. These costs will be examined in each reconciliation and the absence of such evidence shall be an indication that the combined transportation rate is unreasonable and should be disallowed.

The Commission also finds that DTE Electric's Kensington and Clarington transportation charges are less than the embedded cost rate approved by FERC and less than the rates paid by other anchor shippers and, therefore, the NEXUS agreement and the TEAL amendment comply with the affiliate compensation provisions of the Code of Conduct. However, the company has an ongoing obligation to demonstrate compliance with Rule 8(4) of the Code of Conduct in future reconciliations, which will provide the Commission with the required information to determine the amount of affiliate transaction costs DTE Electric may recover.

As ordered on page 40 of the December 9 order and as recommended by the ALJ in this case, the Commission directs DTE Electric to provide a detailed review of its supply acquisition process in its next PSCR plan case.

As stated on pages 5-6 of the May 8, 2020 order in Case No. U-20235, the Commission again finds that it is not appropriate "to benchmark a previously approved long-term contract against short-term prices."

In response to MEC's claim that the NEXUS agreement lacks ratepayer protections or rate adjustment mechanisms, the Commission adopts the ALJ's finding that the NEXUS contract and amendments (with the exception of the TEAL amendment) were approved in the February 7 order and these aspects of the original NEXUS contract should not be revisited.

The Commission declines to adopt the ALJ's recommendation that, in future PSCR plan and reconciliation cases, DTE Electric should be directed to file updated or revised testimony and exhibits to correct any errors in its initial filing, finding that such a requirement is not necessary at this time.

RCG requested that the Commission direct DTE Electric, in future PSCR cases, to show that the company adequately minimized its NEXUS-related costs through pipeline rate reductions

resulting from the adoption of the TCJA. The Commission agrees with DTE Electric that a similar issue was adjudicated in Case No. U-20235. Accordingly, the Commission finds that the company's negotiated rate with NEXUS was effective after the passage of the TCJA and, therefore, DTE Electric was not obligated to file a complaint with FERC or intervene in existing proceedings. Moreover, the Commission finds "that the mere passage of the law does not form a basis for finding that the negotiated rate is now unreasonable." May 8, 2020 order in Case No. U-20235, p. 7.

THEREFORE, IT IS ORDERED that:

A. DTE Electric Company's application for approval to reconcile its power supply costs and revenues for 2019 metered jurisdictional electric sales is approved as set forth in this order.

B. DTE Electric Company net underrecovery of $145,023, inclusive of interest, shall be reflected as the company's 2020 power supply cost recovery reconciliation beginning balance.

C. DTE Electric Company shall develop, and make publicly available, a more robust and transparent gas purchase acquisition process moving forward, as set forth in the order.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Daniel C. Scripps, Chair

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Tremaine L. Phillips, Commissioner

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Katherine L. Peretick, Commissioner

By its action of September 24, 2021.

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Lisa Felice, Executive Secretary

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

STATE OF MICHIGAN)

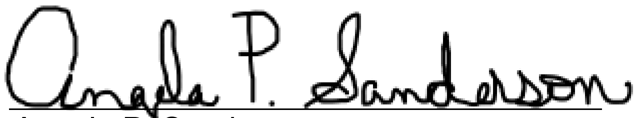
Case No. U-20222

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on September 24, 2021 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Brianna Brown

Subscribed and sworn to before me
this 24th day of September 2021.



Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

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