STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter on the Commission's own motion, to consider changes in the rates of all the Michigan rate-regulated electric, steam, and natural gas utilities to reflect the effects of the federal Tax Cuts and Jobs Act of 2017: **DTE Gas Company** files an application for determination of Calculation C as described in Order U-18494.	)	Case No. U-20298

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on June 21, 2019.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before July 16, 2019, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before July 25, 2019.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
For the Michigan Public Service Commission

Martin D. Snider

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Date: 2019.06.21 09:50:50 -04'00'

Martin D. Snider
Administrative Law Judge

June 21, 2019
Lansing, Michigan

STATE OF MICHIGAN

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In the matter on the Commission's own motion, to consider changes in the rates of all the Michigan rate-regulated electric, steam, and natural gas utilities to reflect the effects of the federal Tax Cuts and Jobs Act of 2017: **DTE Gas Company** files an application for determination of Calculation C as described in Order U-18494.	)	Case No. U-20298

PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

1. DTE Gas Company (DTE Gas) is a subsidiary of DTE Energy Company, a Michigan corporation with its principal offices located at One Energy Plaza, Detroit, Michigan, 48226. DTE Gas is a public utility subject to the Michigan Public Service Commission's (Commission) jurisdiction and is engaged in the acquisition, storage, transportation, distribution and sale of natural gas and other related services to approximately 1.3 million State of Michigan residential, commercial and industrial customers.

2. DTE Gas provides retail natural gas transportation, storage and distribution to customers under rates, terms and conditions established in the Commission's order in

U-18999. That order approved general service rate relief and other associated matters for service rendered on or after October 1, 2018.

3. As indicated in the Commission's order in U-18494 the Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054 (TCJA) was signed into law on December 22, 2017. The TCJA, among other things, reduced the corporate tax rate, revised the federal tax structure and provides requirements which affect the tax expense and deferred tax accounting methods used by corporations, including utilities like DTE Gas. Most TCJA provisions went into effect on January 1, 2018.

4. To ensure that all utilities account for the TCJA changes in a similar manner, the Commission issued an order in U-18494 directing utilities and interested persons to file comments regarding the calculation of TCJA related revenue requirement changes, and the disposition of rate payer benefits or impacts.

5. In U-18494 Commission Staff (Staff) filed comments in which it proposed a three-step approach to addressing the TCJA changes: Credit A, Credit B, and Calculation C. Following a review of all comments the Commission issued an order in U-18494 which adopted Staff's three-step approach.

6. On March 28, 2018, DTE Gas filed its application with supporting testimony and exhibits, pursuant to the Commission's order in U-18494, for a determination of Credit A. On May 30, 2018, the Commission issued an order in U-20106 approving the settlement agreement determining Credit A for DTE Gas customers.

7. On July 30, 2018, DTE Gas filed its application, with supporting testimony and exhibits, pursuant to the Commission's orders in U-18494 and U-20106 for a

determination of Credit B. After a contested case proceeding, the Commission issued a final order in U-20189 which determined DTE Gas's Credit B.

8. The purpose of DTE Gas Calculation C filing is to capture all remaining impacts of the TCJA changes that were not captured either in Credit A or Credit B filings and subsequent Commission orders.

9. In U-18494 the Commission ordered that any captioned utility that files a new rate case prior to October 1, 2018, may use the rate case for determination of Calculation C (U-18494 Order). The Commission also ordered DTE Gas and other utilities to file applications for Calculation C determinations by October 1, 2018.

10. On September 4, 2018, DTE Gas, in U-20298, filed a motion for extension of time to file its application for determination of Calculation C so that DTE Gas's Calculation C could be accurately derived from rates determined in the then pending final order in DTE Gas's rate case U-18999. The Commission granted DTE Gas's motion and ordered DTE Gas to file its Calculation C application by November 16, 2018.

11. On November 16, 2018 DTE Gas filed an application, pursuant to the Commission's orders in U-18494, U-20106 and U-20189 ,for a Commission determination of DTE Gas's Calculation C.

12. On November 30, 2018, a Notice of Hearing was issued by the Commission's Executive Secretary which set a prehearing for January 9, 2019.

13. On December 11, 2018, the Association of Business Advocating Tariff Equity (ABATE) filed a Petition for Intervention.

14. On December 20, 2018, Attorney General Bill Schuette (AG) filed a Notice of Intervention.

15. On January 2, 2019 the Residential Customer Group (RCG) filed a Petition for Intervention.

16. On January 9, 2018, Administrative Law Judge (ALJ) Martin D. Snider convened a prehearing on this matter. ABATE and RCG's Petitions for Intervention were granted. During the prehearing the parties mutually agreed upon a schedule which, among other things, set a date for cross examination of April 17, 2019.

17. On March 1, 2019 the Commission's Staff (Staff) filed Direct Testimony from Nicholas M. Revere and Brian Welke. Attorney General Dana Nessel (AG) filed Direct Testimony from Sebastian Coppola. ABATE filed Direct Testimony from Christopher Walters.

18. On March 22, 2019 DTE Gas filed Rebuttal Testimony from Margaret A Suchta, Sherri L. Wisniewski, and Kenneth L. Slater.

19. On April 17, 2019, a hearing on this matter was convened. The following Direct and Rebuttal testimony and exhibits were admitted to the record:

DTE Gas:

- Margaret A Suchta, Direct and Rebuttal Testimony and Exhibits A-1 through A-7;
- Theresa M. Uzenski, Direct Testimony and Exhibits A-1 Schedule C-1;
- Sherri L. Wisniewski, Direct and Rebuttal Testimony and Exhibits A-5 Schedule C-8, A-6 Schedule C-8.1;
- Kenneth L. Slater, Direct and Rebuttal Testimony and Exhibits A-8 F1.1, A-8 F1.2, A-8 F2, A-8 F3, A-8 F 5, A-8 F 5.1 and A-9 F6.

Staff:

- Nicolas M. Revere Direct Testimony and Exhibits S-1 Schedule F1.1, S-1 Schedule F1.2, S-1 Schedule F2, S-1 Schedule F3, Schedule S-1 F6 and S-2.
- Brian Welke Direct Testimony.

AG:

- Sebastian Coppola Direct and Rebuttal Testimony and Exhibits AG-1, AG-2, AG-3, AG-4, AG-5,AG-6, AG-7, AG-8, AG-9 and AG-10.

ABATE:

- Christopher Walters Direct Testimony and Exhibit AB-1.

RCG:

No testimony or exhibits were offered, and none were admitted to the record.

20. On May 21, 2019, DTE Gas, AG, ABATE, RCG and Staff filed Initial Briefs. On June 4, 2019 DTE Gas, AG, ABATE and RCG filed Reply Briefs. The record consists of 218 transcript pages and 26 exhibits.

II.

BACKGROUND

DTE Gas is a subsidiary of DTE Energy Company, a Michigan corporation with its principal offices located at One Energy Plaza, Detroit, MI 48226. DTE Gas is a public utility subject to the jurisdiction of the Commission and is engaged in the acquisition, storage, transportation, distribution, and sale of natural gas and other related services to approximately 1.2 million residential, commercial and industrial customers within the State of Michigan.

On March 28, 2018, DTE Gas filed its application for determination of Credit A with supporting testimony and exhibits pursuant to the Commission's order in U-18494. In U-20106 the Commission issued an order approving the settlement agreement determining Credit A for DTE Gas customers. On July 30, 2018, pursuant to the Commission's orders in U-18494 and U-20106, DTE Gas filed its application with supporting testimony and exhibits for a determination of Credit B. After a contested case proceeding, the Commission issued a final order in U-20189 which determined DTE Gas's Credit B.

In the Commission's order in U-18494 the Commission indicated that any captioned utility that files a new rate case prior to October 1, 2018, may use the rate case for determination of Calculation C. The Commission also ordered DTE Gas and other utilities to file applications for Calculation C determinations by October 1, 2018. The purpose of DTE Gas Calculation C filing is to capture all remaining impacts of the TCJA changes that were not captured in the Commission's Credit A or Credit B determinations. Calculation C captures DTE Gas's one-time remeasurement of its net deferred tax liabilities from 11 35% to 21%, (Excess Deferred Taxes) and how they should be returned to DTE Gas customers. The remeasurement occurred at year end 2017.

On September 4, 2018, DTE Gas, in U-20298, filed a motion for extension of time to file its application for determination of Calculation C so that DTE Gas's Calculation C could be accurately derived from rates determined in the then pending final order in DTE Gas's rate case U-18999. The Commission granted DTE Gas's motion and ordered DTE Gas to file its Calculation C application by November 16, 2018.

On November 16, 2018 DTE Gas filed an application, pursuant to the Commission's orders in U-18494, U-20106 and U-20189, for a determination of Calculation C. DTE Gas's application includes Direct Testimony from Margaret A. Suchta, Theresa M. Uzenski, Sherri L. Wisniewski, and Kenneth L. Slater.

DTE Gas's proposed Calculation C calculated a re-measurement of deferred taxes resulting from the TCJA and proposes that the excess tax will be returned to customers through an amortization of the tax regulatory liability. The impact of the proposed amortization of the deferred tax re-measurement is a $12.2 million reduction in the DTE Gas's recently approved revenue requirement. DTE Gas proposes that the amortization begin as soon as the Commission's order is received, and new rates are established to account for the reduction in federal deferred tax expense.

III.

POSITION OF THE PARTIES

A. Staff

After Staff's review of Calculation C**,** Staff recommends the Commission require:

- DTE Gas to meet an annual reporting requirement;
- That differences in DTE Gas actual and estimated protected and unprotected excess (Accumulated Deferred Income Tax) ADIT expense be included in a regulatory liability or regulatory asset;
- That DTE Gas's Calculation C amounts should be allocated to customers on the basis of rate base; and

- DTE Gas's Calculation C should result in a credit effective until the next rate case, rather than modified rates, for most rate schedules.

Staff witness Brian Welke B.B.A., testified regarding Staff's (Staff) position regarding DTE Gas's proposed TCJA Calculation C. 2 Tr. 176. Witness Welke testified that DTE Gas remeasured its net deferred tax liabilities and determined that $333,000,000 should be reclassified as Excess Deferred Income Taxes (EDIT). DTE Gas recorded that amount as a regulatory liability. 2 Tr. 177.

Witness Welke testified that the return of EDIT to customers depends on how the EDIT is classified. Protected EDIT are subject to Internal Revenue Service normalization provisions which require that any federal tax benefits related to the remeasurement of deferred taxes from certain plant differences (i.e., depreciation method and life differences versus book accounting) be returned to customers no faster than the remaining average regulatory (book) life of the assets. The return of federal EDIT subject to normalization faster than the remaining average regulatory life would result in a "normalization violation." 2 Tr. 176. Witness Welke testified that if DTE Gas committed a normalization violation then it would lose the ability to take all future accelerated tax depreciation. If EDIT is classified as unprotected, then the Commission has discretion on how to refund to customers. DTE Gas's $333.7 million regulatory liability consists of $238,062,000 of protected and, $94,975,000 of unprotected EDIT. DTE Gas's Calculation C proposes to refund ratepayers $94,975,000 of unprotected EDT over a time period ranging from 34 to 13 years. *Id.*

DTE witness Suchta testified that DTE Gas proposes to return the unprotected EDIT to ratepayers through updated rates approved in U-18999 to reflect the Calculation

C customer benefit. Witness Welke testified that Staff agrees with DTE Gas Calculation C proposal but recommends the following:

- The Commission require that any differences between the actual amount of EDIT expense in a given year and the estimated amount included in rates be recorded as a regulatory liability or asset and be reflected in customer rates over a period agreed to by the Commission in DTE Gas's next general rate case;
- DTE Gas should file a letter to this docket by March 31 of each year until the EDT are completely refunded to ratepayers. The letter should provide:
  1) the beginning refundable balances;
  2) the yearly amount refunded;
  3) the over/under regulatory asset/liability DTE Gas has recorded which is calculated as the differences between the actual amount of EDIT in a given year and the estimated amount included in rates; and
  4) the ending refundable balances.
- The over/under regulatory asset/liability should include EDIT that were unrefunded in calendar year 2018.

Witness Welke testified that the entire EDIT regulatory liability and the over/under regulatory asset/liability should be included in DTE Gas's capital structure as zero cost capital. 2 Tr. 177-178.

Witness Welke testified that prior to the TCJA, deferred federal income taxes that resulted in regulatory assets and liabilities were included in the capital structure as zero cost capital. Staff recommends for the sake of consistency Calculation C regulatory assets and liabilities should remain in the capital structure at zero cost .*Id*.

Staff witness Nicholas Revere, B.A. testified regarding the allocation of TCJA Calculation C amounts, Staff's calculation of rates based on Staff's proposed allocation, the imputed credit associated with those rates and Staff's recommendations on how DTE Gas should return Calculation C amounts to customers. 2 Tr. 169. Witness Revere sponsored the following exhibits:

- Exhibit S-1, Schedule F1.1, STAFF Cost of Service Study for Calculation C Based on U- 18999 Order;
- Exhibit S-1, Schedule F1.2, STAFF Allocation Schedules for Calculation C Cost of Service Study;
- Exhibit S-1, Schedule F2, STAFF Summary of Calculation C Proposed Gas Revenue Decrease & STAFF Comparison of Rates:
- Exhibit S-1, Schedule F3, STAFF Calculation of Proposed Calculation C Rates;
- Exhibit S-1, Schedule F6, STAFF Calculation C Derivation of Transportation Cost of Service Rate;
- Exhibit S-2, STAFF Calculation C Credits;

Witness Revere testified that Staff does not agree with DTE Gas's proposed allocation of the Calculation C amount because it is based on Net Operating Income (NOI). *Id.* According to witness Revere DTE Gas's Deferred Federal Income Taxes (DFIT), which constitutes the majority of the basis of Calculation C, are included in the capital structure as a cost-free source of capital. The benefits of DTE Gas's DFIT accrues to customers through a lower overall rate of return applied to rate base. DTE Gas's Calculation C also includes a change to the overall capital structure by DTE Gas's removal of the amortized portion of DFIT from its capital structure. This approach also accrues to customers through a change in the overall rate of return applied to rate base. Witness Revere testified that the appropriate allocation basis for Calculation C amounts is rate base, because this approach is consistent with the way the pre TCJA benefits of DFIT accrued to customers. 2 Tr. 170.

Witness Revere testified that Staff used DTE Gas's Cost of Service Study (COSS) and moved the Calculation C related adjustment amounts from FIT to State/Local taxes . Staff is neither proposing Calculation C amounts be treated as State/Local Taxes, in this case nor in future rate cases. Witness Revere recommends that the amortization of DFIT be listed as a separate line item in DTE Gas's COSS and be allocated on rate base. Staff included these amounts in State/Local Taxes because an adjustment was already made to this line item and it is currently allocated on the same basis as Staff's recommended Calculation C amounts. Exhibit S-1, Schedule F1.1. provides Staff's modified COSS. Witness Revere testified that DTE Gas's rate design method is reasonable and uses the same rate design method as Staff. Exhibit S-1, Schedules F3 and F6 provides Staff's modified rate design. 2 Tr. 170-171.

Staff recommends that DTE Gas's Calculation C rate reductions be returned to customers through a credit, rather than revised rates with the exception of the off-system transportation rate, which should be put into place as the modified rate rather than a credit. 2 Tr. 171. Witness Revere testified that a credit would clarify the Calculation C impact to customers. Staff recommends that in future rate cases the amounts for all rates should be included as part of base rates and not separately identified. Exhibit S-2 provides Staff's calculation of imputed credits based on the calculated rates and a comparison of Staff's and DTE Gas's proposed rates and imputed credits*. Id.*

B. Abate

Christopher C. Walters, B.S., M.B.A., Senior Consultant, Brubaker and Associates, testified on behalf of ABATE regarding DTE Gas Calculation C proposal. Witness Walters testified DTE Gas's Exhibit A-6 Schedule C8.1, identifies a total of $333.0 million in excess Accumulated Deferred Income Tax(ADIT), before gross up for income taxes. 2 Tr. 208. This amount represents a regulatory liability that DTE Gas must return to customers. Witness Walters testified that DTE Gas proposes to return this money back to customers over various time periods depending on how the excess ADIT funds are characterized using the following three ADIT categories: protected plant, unprotected plant, and non-plant. Witness Walters summaries the DTE Gas ADIT amounts for each category in the following table:

Summary of Excess ADIT Balances
$ Millions

Description	Excess ADIT	(Refund)/ Collection Period
Protected Plant	$ (238.1)	ARAM
Unprotected Plant	$ 1.3	34
Non-Plant	$ (96.2)	13
Total DTE	$ (333.0)	

See 2 Tr. 208 & Exhibit A-6 Schedule C8.1.

Witness Walters testified that DTE Gas identified a Protected Plant excess ADIT liability of $238.1 million, before gross up. 2 Tr. 209. Return of the protected plant excess ADIT are subject to IRS normalization rules and are required to be returned to customers under the Average Rate Assumption Method (ARAM). DTE Gas identified unprotected plant excess ADIT asset of $1.3 million, before gross-up. *Id.* Unprotected balances are not subject to normalization rules and may be collected, or returned over any period of time as determined by the Commission. DTE Gas's Calculation C proposal would collect this amount from customers over 34 years. DTE Gas's Calculation C proposal identifies a Non-Plant excess ADIT liability of $96.2 million, before gross-up for income taxes. DTE Gas proposes returning this amount to customers over a 13-year period. *Id*. DTE Gas witness Wisniewski testified that the 13-year period is the average life of the largest cumulative timing differences that make up most of the total balance.

Witness Walters testified that DTE Gas is not required to return to ratepayers the unprotected excess ADIT over the average life of cumulative timing differences. Only DTE Gas's protected plant related excess ADIT has to be normalized. Because there are no normalization requirements for the refunding of DTE Gas's unprotected excess ADIT balance DTE Gas's unprotected excess ADIT may be returned to ratepayers over any time periods found appropriate by the Commission*. Id.*

Witness Walters testified that DTE Gas's proposed 13-year amortization period for its unprotected excess ADIT liability is unreasonably long . Witness Walters recommends the Commission direct DTE Gas to return its excess ADIT liability to rate payers over a period of 10 years or less Witness Walters provided the following reasons why DTE Gas 13-year amortization period is unreasonable:

- A shorter refund period returns excess ADIT to ratepayers faster and minimizes intergeneration inequities in that the ratepayers that contributed to the excess ADIT are more likely to be the same ratepayers to whom the return of excess ADIT would be provided.

- The refunding of excess ADIT balances reduces the portion of zero-cost capital which if all else is equal, will increase the relative portions of debt and equity capital in the ratemaking capital structure, increasing the overall rate of return on rate base, and future earnings.
- A shorter amortization period will eliminate DTE Gas's ADIT liability from DTE's books in a shorter amount of time.
- An amortization period of 10 years more equitably balances the interests of all stakeholders than DTE Gas's proposed 13-year amortization.

2 Tr. 210-211

Witness Walters testified that the use of a 10-year amortization for the return of excess ADIT is common and has been approved by several public utility regulatory commissions.

- In Texas, Docket No. 48401, Texas New Mexico Power Company agreed to a five-year amortization period for the unprotected excess ADIT.
- In Nevada, Docket No. 18-05031, Southwest Gas proposed a five-year amortization. However, the Nevada Public Utilities Commission ordered Southwest Gas Corporation to re und the unprotected excess ADIT liability back to customers over a six-year period.
- In Indiana, Cause No. 44967, Indiana Michigan Power Company agreed to a six-year amortization of the unprotected excess ADIT liabilities.

- In its Calculation C case (U-20317), Indiana Michigan Power Company is proposing a 10-year amortization for its unprotected excess ADIT in its Michigan jurisdiction.
- In Missouri, Case No. ER-2018-0226, Ameren Missouri was required to implement a 10-year amortization for all unprotected excess ADIT liabilities.
- In Missouri, Case No. ER-2018-0145, Kansas City Power and Light was required to implement a 10-year amortization for all unprotected excess ADIT liabilities.

2 Tr. 211-212

Witness Walters testified that he recalculated DTE Gas's Revenue Sufficiency based on a 10-year amortization of DTE Gas's unprotected excess ADIT liabilities. Exhibit AB-1, shows that reducing the unprotected excess ADIT liability amortization from 13 years to 10 years will increase DTE's revenue sufficiency from $12.23 million to $15.13 million, or a net change of $2.90 million in the first 12 months in which the refunds are in effect. 2 Tr. 213.

ABATE in its Rely Brief supports the AG's recommendation that the Commission order DTE Gas to refund the amortized net excess deferred tax liabilities for 2018 and 2019 through Calculation C negative surcharges to customers after a Commission order is issued in this case. See ABATE Relay Brief pp 2-3. ABATE supports AG witness Coppola's recommendation that the Commission order DTE Gas to refund, $31,168,315 to customers over the 12-month period following an order in this case and $16,069,507 beginning in January 2020 and continuing forward until a new appropriate amount is reflected in base rates in DTE Gas's next rate case. *Id.*

C. <u>RCG</u>

RCG neither offered nor entered any witness testimony or exhibits in the hearing record. RCG supports the recommendations of the Attorney General and ABATE that the Commission required DTE Gas to use a 10-year amortization to return of its excess ADIT labiality to ratepayers. RCG Brief p1.

RCG argues that the Commission should follow the precedent established in the Commission's ratemaking treatment of the effects of Tax Reform Act of 1986 (TRA '86). Subsequent to the effective date of TRA86 the Commission opened contested case proceedings regarding the TRA86 impact on customer rates. RCG indicates in its brief that those cases resulted in rate reduction settlements with some utilities (e.g., MPSC Cases U-8638, U-8675, U-8684, U-8676, U-8686, U-8687, U-8691, and U-18692) and contested case hearings in other cases (e.g., MPSC Docket U-8680 and U-8688). RCG Brief p 2. RCG indicates in its brief that the Commission's TRA related orders required utilities to amortize the tax write-downs resulting in ratepayers receiving the benefits of deferred tax accrual write-downs through negative rate surcharges*. Id.* RCG argues that following the reduction of the Vietnam War income tax the Commission issue similar order which required utilities to reduce rate See Michigan Court of Appeals in *Consumers Power Co v MPSC*, 65 Mich App 73 (1975), *lv den* 396 Mich 817 (1976). RCG argues that the Commission's post TRA 86 and Vietnam War income Tax reduction orders are examples of the Commission exercising of its duty to set reasonable rates and balance the interests of ratepayers and utilities by excluding unnecessary and avoidable costs. *See City of Detroit v PSC*, 308 Mich 706; 14 NW2d 784 (1944). RCG Brief pp 2-3.

RCG argues further than in January 2018 it filed a motion in Consumers Energy Company rate case U-18322 supported by affidavits etc., and in U-18322, DTE Electric Company rate case, urging the Commission to promptly adjust rates due to the TCAJ federal income tax reduction. Instead the Commission issued orders providing for a Credit A effective July 1, 2018, Credit B refund to address the differential between the reduced tax rate and existing rates for the first six months of 2018, and then a Credit C Calculation determination to capture any remaining rate adjustments. RCG Brief p 3.

RCG agrees with the AG and ABATE positions that the Commission should order DTE Gas to return the benefits of the TCJA to ratepayers through credits or adjustments over a shorter amortization period than proposed by DTE Gas. RCG argues that this recommendation is consistent with the Commission's orders and precedent following the federal income tax reduction and supports a faster adjustment of rates. RCG Brief pp 3-4. In addition, the Commission's delay in addressing these matters on a prompter basis as recommended by RCG in DTE Case U-18255 in January 2019 further supports a faster approach to reconciling customer rates to reflect the federal income tax reduction adopted by TCAJ. *Id*.

RCG argues that the Commission should disregard DTE Gas's claims that DTE Gas's Calculation C proposal must include an allowance for changes in DTE Gas's capital structure costs. RCG argues that DTE Gas provided no evidence that any additional common equity was provided by DTE Gas's parent company, DTE Energy, or that DTE issued any additional debt because of the adoption of TCJA. RCG argues that DTE Gas provided no evidence that the total sum of zero cost capital reflected in DTE's capital structure related to DTE Gas's deferred federal income tax reserves were decreased in response to the TCJA . Additionally RCG argues the Commission has not approved any post TCJA changes in DTE Gas's capital structure. RCG Brief p 4. Finally, RCG argues that since the January 1, 2018 effective date of the TCJA ,DTE Gas, as of January 1, 2019, has not made a Credit C adjustment for 2019. RCG argues that DTE Gas witness Suchta admitted that DTE Gas's Calculation C proposal will not require a change in DTE Gas's capital structure costs because:

1. No additional debt or equity has been issued due to the adoption of TCJA during this period; and
2. No accounting amortizations or other treatment for Calculation C will be made until on and after the Commission's order.

Given these facts RCG argues that DTE Gas's claim's regarding changes to its capital structure are merely hypothetical mathematical calculations and are not supported by the record evidence. RCG Brief pp 4-5.

RCG argues that DTE Gas's argument is the same argument that some utilities made regarding the TRA 86. That argument was rejected by the Commission and the Courts. RCG believes DTE Gas's witnesses were neither able to discuss the Commission's TRA 86 decisions, nor explain why the Commission's TCJA treatment should be different from TRA 86 precedent. RCG Brief pp 5-6.

D. <u>AG</u>

Sebastian Coppola, M.B.A., Business Consultant, testified for the AG and sponsored the following exhibits:

- AG-1 DTE Gas Discovery Response on Excess Deferred Taxes Calculations;
- AG-2 Refundable Excess Deferred Taxes 2018-2020

- AG-3 Calculation of 2018-2019; Credit C Negative Surcharges
- AG-4 Calculation of 2020 Credit C Negative Surcharges;
- AG-5 Deferred Income Taxes Adjustment in Case U18999;
- AG-6 DTE Gas Discovery Response to Question AGDG-3.28 b;
- AG-7 DTE Gas Discovery Response to Questions AGDG-2.3 and AGDG-2.4;
- AG-8 U-15985 DTE Gas Exhibit A-4, Schedule D1;
- AG-9 DTE Gas Discovery Response to Question AGDG-3.27;
- AG-10 DTE Gas Discovery Response to Question AGDG-3.23 a. and c.

Witness Coppola testified that the Commission should adopt the excess deferred tax liability and asset amounts as of December 31, 2017 as shown in Exhibit AG-1 and adopt an excess deferred taxes total refundable amount of $451,264,787. Witness Coppola testified that he calculated this amount based on the direct testimony of DTE Gas witness Sherri Wisniewski and Exhibit A-6, Schedule C8.1. 2 Tr. 187. That exhibit identifies the following:

- $238,062,000 of protected excess deferred tax liability,
- $1,272,000 of non – protected excess deferred tax asset,
- $96,247,000 of non-protected, non-property items and that
- The net amount of these three areas is an excess liability of $333,037,000.

Witness Coppola testified that the amounts above are before tax gross-up basis and the amount refunded, or “flowed-back,” to DTE Gas ratepayers will be after-tax basis and the product of DTE Gas most recent tax multiplier of 1.355 times the total refundable amount as of December 31, 2017 $333,037,000 or $451,264,787. Witness Coppola testified that the Commission should adopt this amount as DTE Gas's excess deferred tax liability and asset amounts as of December 31, 2017. *Id.*

Witness Coppola testified that based on this information provided by DTE Gas, he concluded that DTE Gas reasonably determined its excess deferred tax liability and annual amortization amounts pertaining to the protected property assets as of December 31, 2017. See Exhibit AG-1. Witness Coppola also testified that DTE Gas's proposed 34-year amortization period used to amortize the excess deferred tax asset for the non-protected property is reasonable. 2 Tr. 193.

Witness Coppola testified that the Commission should reject DTE Gas's amortization period of 13 years and related amortization amounts for excess deferred tax liabilities for non-protected, non-property items because the amortization period is not adequately supported and is too long. *Id.* The AG recommends that the Commission approve an amortization period of 10 years or less. DTE Gas's 13-year amortization is based on the amortizable life of the top five timing differences that make up this segment of the excess deferred taxes. *Id*. See exhibit AG-1. Witness Coppola disagrees with DTE Gas's 13-year amortization because:

- It is a simple average of the remaining life of the five timing differences; and
- Includes only five items out of a total of 27 timing differences.

2 Tr. 194

Witness Coppola testified that a weighted average of the amounts of the timing differences is more appropriate and if used would show an average life for the five items of closer to 12 years. In addition, witness Coppola testified that the 22 items not included in DTE Gas's 13-year amortization have amortizable lives of less than 10 years, which if included would further decrease the average life calculated by DTE Gas. Witness Coppola believes that because DTE Gas has not provided sufficient support for its 13-year amortization he recommends the Commission exercise its discretion with regard to DTE Gas's unprotected excess deferred tax liabilities and the pass-through of those tax benefits to customers, and approve an amortization period of 10 years or less*. Id.*

The AG recommends that the Commission order DTE Gas to refund the net amount of the refundable excess deferred taxes for 2018 and 2019 during the year 2019 and continue these refunds for 2020 and future years until DTE Gas next general rate case. *Id.* AG Brief pp 10-11.

1. Amortized Net Excess Deferred Tax Liabilities for 2018 and 2019

Witness Coppola testified that he recommends that the Commission order DTE Gas to refund to rate payers the amortized net excess deferred tax liabilities for 2018 and 2019 through Credit C negative surcharges soon after the Commission's order. See 2 Tr. 192. Witness Coppola also recommends that the Commission reject DTE Gas's proposal to revise customer rates as a means to flow through to customers a portion of the tax benefits for the net excess deferred tax liabilities beginning in 2019 because DTE Gas's proposal avoids refunding to customers the TCJA 2018 tax benefits. 2 Tr. 190. Witness Coppola reviewed DTE Gas Exhibit A-6 and concluded that the annual amortization amounts presented have been adjusted to allocate the amortization of the excess deferred taxes liability of $1,982,218 for 2018 to future years. Additionally, according to witness Coppola, DTE Gas began the amortization of the other tax benefits for the non-protected, non-property items and non-protected plant excess deferred tax assets in 2019 instead of 2018. 2 Tr. 189-190. The AG argues that this delay is neither fair nor reasonable for customers and is not supported by the information provided by DTE Gas*. Id.*

Witness Coppola testified that DTE Gas' proposed revised rates include only $12.2 million per year of grossed-up tax benefits and included a limited amount of the $47 million in excess deferred taxes owed to customers from 2018 through 2020. Witness Coppola recommends that the $35 million difference be returned to DTE Gas customers as soon as possible and that doing so would be consistent with the Commission's order un U-18424. 2 Tr. 190-191. The Commission's order in U-18424 adopted Staff's three guiding principles regarding utility proposal for the return of TCJA benefits to rate ratepayers through Credit A, Credit B and Calculation C.

> The Staff proposes three guiding principles for the Commission to follow: (1) allowing sufficient time for the utilities to calculate customer impacts accurately, (2) ensuring that the benefits inure to ratepayers as quickly as is practicable, and (3) measuring the tax changes to avoid accounting pitfalls, such as unnecessary complexity, large annual rate fluctuations for ratepayers, penalty interest, and cash flow volatility for investors.

See U-18494 Order, p 8.

The AG recommends that the Commission order DTE Gas to refund the amortized net excess deferred tax liabilities for 2018 and 2019 through Calculation C negative surcharges to customers soon after a Commission order is issued in this case. AG Brief p 14. Witness Coppola testified that Exhibit AG-2 provides the three components of 2018 to 2020 excess deferred taxes. 2 Tr. 194-195. Protected property assets were taken from DTE Gas. Exhibit A-1. The $37,411 excess deferred tax asset amount was taken from DTE Gas's amount divided by 34 years. The non-protected, non-property items excess deferred tax liability total was calculated by witness Coppola by taking the annual amount calculated by DTE Gas divided by 10 years, to arrive at the AG's annual amount of $9,624,683. The AG's total for these three components for both 2018 and 2019 is $31,168,315. *Id.*

The AG recommends the Commission order DTE Gas to refund:

- $31,168,315 to customers over the 12-month period following an order in this case; and
- $16,069,507 beginning in January 2020 and continuing forward until a new appropriate amount is reflected in base rates in DTE Gas's next rate case.

2 Tr. 195-196.

The AG argues that because the $30 million refund will occur over a 6-12-month period it is highly unlikely that DTE Gas customers will notice any unusual rate fluctuations on their bills or complain about receiving a credit on their gas bills. The AG argues that Exhibit AG-3 shows that approximately 60% of the refund will go to residential customers and 60% of the additional $19 million that the AG wants to refund to customers in 2019 (above DTE Gas's $12.2 million proposal) roughly $12 million would go to DTE Gas residential customers. AG Brief p 21. The AG divided the $12 million by DTE Gas's 1 million residential customers and determined that each DTE Gas residential customer would be received an $12 per year per customer, or $1 per month. If the Commission ordered DTE Gas to return the AG's recommended $31.2 million, the AG argues that the average DTE Gas residential customer would receive a credit of approximately $1.60 per month. The AG argues that this slight fluctuation in DTE Gas's residential customer bills would neither cause customer confusion nor complaints. *Id.*

Witness Coppola recalculated the Calculation C refund negative surcharge rates that should go into effect in 2019 and 2020. 2 Tr. 195. Exhibit AG-3, provides how $31,168,315 of 2018 and 2019 refundable excess deferred taxes were allocated to the applicable DTE Gas customer rate schedules based on U-18999 (DTE Gas's last rate case) cost of service study (COSS) rate base allocators. *Id.* In Exhibit AG-3, witness Coppola allocates the refundable amount for the general service customer class between Rate Schedules GS-1 and GS-2, based on the U-18999 revenue profile of the two rate schedules. Witness Coppola then aggregated the Rate Schedule XXLT and DIG refund. Tax Credit C negative surcharges were determined by dividing the refund amount allocated to each rate schedule by DTE Gas's U-18999 forecasted annual volumes for sales and transportation. 2 Tr 194-196.

The AG recommends that the Commission approve the above Tax Credit C negative surcharges for 2018 and 2019 and order DTE Gas to implement the applicable credits effective with the first billing cycle, and for the subsequent 12 months, following the Commission's order. Brief p 28.

In its Reply Brief the AG responds to DTE Gas's Initial Brief pages 5-7 reliance on prior Commission orders where DTE Gas requested the recovery of increased taxes. See AG Reply Brief pp- 5-6. The AG argues that the previous Commission cases relied upon by DTE Gas are not analogous to the refund of more than $300 million in this matter because:

- The cases took place in the context of general rate cases or other dockets unrelated to a tax cut such as the TCJA; and

- Dealt with moderate tax increases where a new regulatory asset was created.

Id.

Additionally, the AG argues in its Reply Brief that the cases cited by DTE Gas are not precedent and a Commission order in this matter which is inconsistent with the Commission's order in the cited cases would not "overturn" prior Commission orders. *Id*. The AG relies on the Commission's order in U-17505, (Consumers Energy's request for authority to reconcile its gas interim refund residual balances,) which provides in pertinent part:

> "[U]tility companies are well aware that prior Commission orders are not binding precedent. Each contested case is decided on the merits of the evidence and the arguments of the parties.";

See U-17505, Opinion and Order, p 8.

The AG also relies the Commission's order in U-17131 (Michigan Consolidated Gas Company GCR Plan case), which provides in pertinent part:

> "The Staff points out that res judicata and other preclusion doctrines do not strictly apply in Commission proceedings....").

See U-17131, Opinion and Order, p 11.

The AG argues that Commission neither set a "precedent" through the orders cited by DTE Gas nor would the Commission overturn or set a precedent through its final order in this Calculation C case.

In its Reply Brief the AG restates its Initial Brief argument that DTE Gas's Calculation C proposal for the return of excess deferred taxes to customers is neither expeditious nor reasonable. The AG argues DTE Gas's proposal is merely DTE Gas's attempt to retain excess deferred tax amounts for decades, rather than timely returning them to customers. Reply Brief p 6.

2. DTE Gas Capital Structure

The AG argues that the Commission should reject DTE Gas's proposed capital structure adjustment and higher cost of capital to reduce the amount of refundable net excess deferred taxes passed through to customers. Brief p 29. DTE Gas, in Exhibit A-7, Schedule D1, recalculates the overall rate of return on capital, based on the proposed pass-through of the amortization of the net excess deferred liabilities to customers in 2019. DTE Gas believes that this will reduce the net deferred income tax balance included in DTE Gas's capital structure. Exhibit A-7 shows that DTE Gas believes that a $9,369,000 reduction in deferred taxes will be replaced by long-term and equity capital so DTE Gas assigned 52% of the amortization amount to equity capital and 48% to long-term debt.

Witness Coppola testified that DTE Gas's proposed revised capital structure would result in the following:

- Increase the overall rate of return from 5.56% to 5.57%.
- An overall rate of return of 5.57% applied in Exhibit A-1, Schedule A-1 decreases the revenue sufficiency.
- A 5.57% overall rate of return results in a revenue sufficiency of $12,229,000.
- If the rate of return remains at 5.56%, the revenue sufficiency would have been $12,695,000, or $466,000 higher.
- The impact on customers is a lower net tax benefit of approximately $500,000.

2 Tr. 197

The AG argues that DTE Gas's capital structure for the calculation of the overall rate of return should be reset in a general rate case because DTE Gas's deferred taxes change often as DTE Gas records new deferred taxes following capital additions. Witness Coppola testified that these additions increase tax depreciation versus book depreciation. AG Brief p 30. Additionally, witness Coppola testified that when DTE Gas's older book/tax timing differences reverse, the reduction is recorded in deferred taxes which reclassifies those taxes as currently payable. 2 Tr. 198. The AG argues that because DTE Gas's deferred income tax balance changes monthly DTE Gas should not be allowed to change its capital structure based on one adjustment. According to the AG, doing so would be unfair to customers. The AG argues that the Commission should only review the entire array of increases and changes to DTE Gas capital structure in a general rate case. 2 Tr 198; AG Brief p 30.

The AG also argues that because DTE Gas does not file for adjustments to the capital structure and the overall rate of return every month or year as the deferred taxes reverse and current taxes are payable to the U.S. Treasury, it should not be allowed to do so in this matter. 2 Tr. 198-199; AG Brief p 31. Witness Coppola testified that if the TCJA had not reduced DTE Gas's federal tax rate from 35% to 21%, then DTE Gas would have paid the excess deferred taxes to the U.S. Treasury, and would not be required to refund or pass those tax savings on to customers through lower rates. Witness Coppola testified that whether DTE Gas pays the deferred taxes to the U S Treasury or returns the TCJA savings to customers DTE Gas is no worse off. Therefore, the AG argues that DTE

Gas should not be allowed to offset the pass-through of excess deferred taxes by $466,000 due to DTE's proposed higher rate of return. *Id.*

The AG also argues that the Commission should reject DTE Gas's capital structure adjustment because in U-18999, DTE Gas's last rate case, the Commission considered DTE Gas proposed deferred income tax balance adjustments which lowered the balance by $38.8 million and increased the long-term debt balance by $18.6 million and the common equity balance by $20.2 million. 2 Tr. 199; AG Brief pp 31-32. DTE Gas adjusted its projected deferred taxes to the new TCJA tax rate of 21%. This adjustment was from January of 2018 to the end of the projected test year, September 2019. Witness Coppola testified that DTE Gas's capital structure deferred tax balance already reflects the reversal of the excess deferred taxes for the relevant 14 percentage point difference. *Id*.

The Commission in its final order in U-18999 accepted DTE Gas's proposed adjustment and adopted DTE Gas's proposed revised capital structure. AG Exhibit AG-5 provides DTE Gas's U-18999 initial projected capital structure, the revised capital structure, and select portions of DTE Gas's Brief, Staff Reply Brief, Proposal for Decision, and Commission order related to DTE Gas's capital structure.

3. <u>Deferred Regulatory Account</u>

The AG argues that the Commission should order DTE Gas to establish a deferred regulatory account to record the excess deferred taxes amortized to expense annually versus the amount estimated in rates, or refunded, with the balance of the account to be reflected in future rates. AG Brief pp 34-36; 2 Tr. 200-201. The AG recommends that the Commission require DTE Gas to file an annual letter by March 31 of each year until the excess deferred taxes are completely refunded to customers which details the regulatory account activity. The AG argues that this would ensure that DTE Gas customers receive TCJA benefits and would protect customers and DTE Gas. The AG recommends the annual letter should include the following for each of the three categories of excess deferred taxes:

(1) The beginning refundable balance;

(2) The yearly amount refunded;

(3) The over/under regulatory asset/liability DTE Gas has recorded, which is calculated as the difference between the actual amount of excess deferred taxes in a given year and the estimated amount refunded or included in rates; and

(4) The ending refundable balance.

Id.

The AG also recommends that the Commission direct DTE Gas that excess deferred taxes, not refunded to customers, should be included in DTE Gas's next rate case. Witness Coppola testified that deferred taxes are considered zero cost capital and are normally included in the capital structure as a source of capital. Pre TCJA, federal deferred taxes (tax rate of 35%), and comparable state deferred taxes, were included in the capital structure. The post TCJA 14% difference in the federal tax rate amounts are deferred taxes that have not been refunded to customers and should be included in deferred taxes in DTE Gas's capital structure at zero cost. 2 Tr. 202.

The AG argues that if the Commission does not direct DTE Gas to complete a transparent annual reconciliation of deferred tax amounts then DTE Gas would retain the difference in the amortization amount versus the amount refunded to customers until its next rate case. AG Brief pp 35-40. The AG believes that the lack of an annual reconciliation would result in DTE Gas either under-refunding the excess taxes, to ratepayers' detriment, or over-refunding, to DTE Gas. The AG argues that an annual reconciliation process would provide clarity and transparency and protect ratepayers and DTE Gas by ensuring deferred tax amounts are refunded to customers. Additionally, an annual reconciliation of deferred taxes would allow Commission Staff, to track DTE Gas progress in refunding excess deferred taxes. AG Brief p 40.

The AG in its Reply Brief restated its support for the return of excess deferred taxes through a credit on customer bills rather than through revised rates. The AG also supports Staff's recommendation for an annual report which details DTE Gas progress in returning excess deferred taxes to customers. See AG Reply Brief pp 6-7.

E. DTE Gas

1. Margaret A Suchta

Witness Suchta provided direct and rebuttal testimony. In her direct testimony she testified regarding the TCJA impact on DTE Gas revenue requirement. 2 Tr. 64. Witness Suchta in her direct testimony sponsored the following exhibits:

- A-1 A1 Revenue Deficiency (Sufficiency) from U-18999 Order
- A-2 B1 Approved Rate Base
- A-4 C2 Revenue Conversion Factor
- A-7 D1 Rate of Return Summary

Witness Suchta testified that witness Wisniewski completed a re-measurement of DTE Gas deferred taxes resulting from the TCJA and how the resulting excess tax will be returned to customers through amortization of the tax regulatory liability. 2 Tr. 64. This re-measurement resulted in a $12.2 million reduction in DTE Gas's current approved revenue requirement Exhibit A-1, Schedule A1 details the $12.2 million revenue sufficiency based on the authorized revenue requirement in U-18999 adjusted for the proposed amortization of the deferred tax re-measurement amount. Witness Suchta testified that the DTE Gas proposed deferred tax re-measurement would not change DTE Gas U-18999 authorized base rate. 2 Tr. 65. See Exhibit A-1, Schedule A1 and Exhibit A-2, Schedule B1. Projected net operating income and the required rate of return were impacted by the proposed treatment of the excess deferred tax. 2 Tr. 66. See Exhibit A-1, Schedule A1. Witness Uzenski provided the net operating income numbers. Net operating income increased to $244.8 million from $235.5 million and federal income tax expense decreased by the proposed amortization of the deferred tax measurement. *Id*.

Witness Suchta testified that the DTE Gas required rate of return (ROR) increased from 5.56% to 5.57% because the tax regulatory liability is included with deferred taxes as part of the weighted cost of capital. *Id.* Witness Suchta testified that she updated DTE Gas's capital structure to reflect the amortization impact in the projected period because the balance of the regulatory liability will decrease as it amortizes. 2 Tr. 67. See Exhibit A-7, Schedule D1. Witness Suchta testified that she calculated the updated ROR by calculating the tax regulatory liability. Witness Wisniewski provided the beginning balance of the tax regulatory liability of $333 million and the first year's amortization is $9.4 million. Page 2, line 2, shows the monthly amortization in year 1 of $781,000. Lines 3 through 15 calculate the monthly balances, each reduced by $781,000 from the prior month. Line 16 calculates the 13-month average balance of $328.4 million. Line 17 shows the change in the balance of $4.7 million during year 1. This change is carried to page 1, line 12. See Exhibit A- 7, Schedule D1, page 2. *Id.*

Witness Suchta testified that the change in the tax regulatory liability balance required a change to DTE Gas's capital structure. See Exhibit A-7, Schedule D1, page 1. Because DTE Gas's deferred taxes were reduced witness Suchta increased, permanent capital was by the same amount and the approved debt to equity ratio, 48% of the $4.7 million change is allocated to long-term debt and 52% is allocated to equity. DTE Gas's total capitalization of $4.3 billion is the same amount approved by the Commission. The changes in deferred taxes and permanent capitalization result in a change in the overall weighted cost of capital from 5.56% to 5.57%. This updated rate is carried to Exhibit A-1, Schedule A1, column (e) to calculate the income requirement. *Id.*

Witness Suchta in her rebuttal testified regarding AG witness Coppola and Staff's witness testimony regarding the following:

- AG's proposal to refund the net excess deferred taxes the AG has calculated related to 2018 and 2019 during the year 2019;
- AG's proposal to omit the adjustment to the capital structure and the overall rate of return for the impact of the excess deferred tax amortization;
- AG's proposal to reconcile the actual excess deferred tax amortization to the amount refunded or used to set base rates; and
- AG's and Staff's proposals to require DTE Gas to file an annual letter by March 31 until the excess deferred taxes are completely refunded, using the AG's definition of refund, to ratepayers.

See 2 Tr. 70-79.

Witness Suchta testified that DTE Gas's proposal is consistent with the Commission's order in U-18494 and follows Staff three guiding principles for returning the benefits of the TCJA to customers through Credits A and B and Calculation C. Witness Suchta testified that DTE Gas is not delaying the return of TCJA benefits to customers. 2 Tr. 71. After a final Commission order in U-20106 (DTE Gas Credit A filing) DTE Gas reduced its revenues requirement by $38 million. After a final Commission order in U-20189 (DTE Gas's Credit B filing) DTE Gas will begin refunding $25 million to customers from January 2-19 through June 2019. One year after the TCJA effective date DTE Gas has begun returning $63 million to ratepayers. 2 Tr. 71-73

Witness Suchta testified that the AG proposal to refund excess deferred taxes for 2018 and 2019 during 2019 does not meet Staff's third guiding principles because it would not "avoid accounting pitfalls, such as *unnecessary complexity*, *large annual rate fluctuations for ratepayers*, penalty interest and cash flow volatility for investors." See U-18494 Order p. 8. Witness Suchta testified that the AG's proposal to flow back two years' worth of amortization within one year is unnecessarily complex and therefore contrary to the Commission's U-18494 order. 2 Tr. 73. Additionally, witness Suchta believes that the AG's proposal would result to rate fluctuations and complicated billing because it has a 12-month credit for year one and year two amortization amounts beginning in 2019, and another credit for year three amortization starting January 1, 2020. 2 Tr. 73-74.

In its Reply Brief DTE Gas responds to the AG, ABATE and RCG's recommendation that the Commission order DTE Gas to refund excess deferred taxes for 2018 and 2019 in 2019. DTE Gas restates its position that the intervenors recommendation is unreasonable, complex and inconsistent with the Commission's prior orders and inconsistent with the Commission's DTE Electric's Calculation C order in U-20162. See Reply Brief pp 7-13. DTE Gas argues that its Calculation C proposal is consistent with the Commission's order in U- 18494 because it complies with the Staff guidance included in the Commission order and because it starts the amortization of excess deferred taxes when the Commission's order is issued and not before. See Reply Brief pp 11-13.

a. <u>Capital Structure Adjustment</u>

Witness Suchta testified that the AG's recommendation that the Commission deny DTE Gas's proposed capital structure adjustment is not consistent with the Commission's order in U-18494 because it does not … "capture all remaining impacts of the tax law change in a contested case proceeding pursuant to an application filed by each captioned utility no later than October 1, 2018." Page 8 of that order provides that DTE Gas's Calculation C filing "would address excess deferred taxes, bonus depreciation, and any other impacts not captured through Credits A and B." 2 Tr. 74- 75.; See U-18494, Order p 12.

Witness Suchta testified that deferred tax is a component of DTE Gas's capital structure and a change in the deferred tax balance as a result of amortizing the excess deferred tax liability must, per the Commission order in U-18494, be included in DTE's proposal. *Id.* The capital structure adjustment witness Suchta discusses in her direct testimony addresses the impact of amortization of the excess deferred taxes. Witness Suchta testified that DTE Gas Calculation C proposed capital structure adjustment is related to the re-measurement of the deferred tax balance as of December 31, 2017, and was not included in any calculation in U-18999. 2 Tr. 75-76.

In its Reply Brief DTE Gas argues that DTE Gas's Calculation C proposal adjustment to DTE Gas's capital structure and rate of return (ROR) is reasonable. DTE Gas argues that the change in its capital structure meets the Commission's guidance in both capturing "all remaining impacts" (U-18494 Order at 12) of the TCJA, as well as avoiding cashflow volatility. DTE Gas believes that neither the AG, nor any other party, has proven that DTE Gas has not met its burden of proof on this issue. See DTE Gas Reply Brief pp 13-17.

b. <u>Annual Reconciliation</u>

DTE Gas does not agree with the AG's proposal, on page 20 of witness Coppola's testimony, that "the Company should be required to reconcile the actual amount of excess deferred tax amortization to the amount refunded or to the amount estimated in setting base rates" because the proposal considers a single component of the return of excess deferred tax. 2 Tr. 76. Witness Suchta testified that because deferred taxes are a zero cost of capital DTE Gas customers receive a benefit from a high deferred tax balance. Amortizing lowers a deferred tax balance and creates a need for additional long- term debt of common equity. An imbalance would occur if DTE Gas is required to return to customer every dollar of deferred taxes but not allowed to recover financing cost related to decreasing deferred taxes. *Id*.

Witness Suchta testified that DTE Gas is required in its next rate case, and all subsequent rate cases, to submit detailed tax calculations. She believes that AG witness Coppola's proposal is not consistent with the manner in which deferred taxes were incurred nor with customer and shareholder impacts. 2 Tr. 76-77. The accumulation of DTE Gas's deferred taxes is based on actual accounting activity, not what has been included in rates. Historically DTE Gas has delayed filing rate cases for multiple years so there was no tracking of the deferred taxes included in base rates. The return of excess deferred taxes should occur in the same manner that the deferred taxes were accumulated. *Id.*

Witness Suchta also testified that the AG's proposal is not consistent with the treatment of excess deferred tax regulatory liability in U-20162, DTE Electric Company's pending rate case. 2 Tr. 77. In U-20162 DTE Electric proposes to return excess deferred taxes to customer through an amortization which begins at the date set in the Commission's final order. No intervening party rejected that proposal. DTE Gas argues that the Commission should approve the same approach in this matter as approved in U-20162*. Id.*

c. <u>Annual Letter to the Commission</u>

Witness Suchta testified that the accumulation of deferred taxes is based on actual accounting activity, not what has been included in rates over the many years. Amounts were not always tracked. 2 Tr. 78. DTE Gas witness Wisniewski in Exhibit A-3 6, Schedule C8.1 shows that amortization is dynamic and not static over duration of the amortization. If DTE Gas does not file a rate cases for an extended period of time, then it will have either a lower or higher amortization amount built into rates than what is being recorded on the books depending on the time period involved. Parties to DTE Gas rate cases will receive updated information in all future rate cases. *Id.*

Witness Suchta testified that the annual letter proposed by the AG and Staff is not necessary to keep track of amounts to be filed in future rate cases. She testified that the annual letter amounts remaining to be returned to rate payers and would not perform any ratemaking or regulatory purpose nor provide information not already provided in base rate cases. *Id.* In DTE Gas's most recent base rate case U-18999, DTE Gas's response to the AG's first discovery request included an excel spreadsheet of the rate case model used to calculated rates and included six separate line items, that break out deferred income tax expense and adjustments to deferred income tax effects. Calculation C deferred tax amount information will be provided and listed separately in future rate case filings. 2 Tr. 78. The information provided includes monthly information from the historical test period through any bridge period and includes the projected test year amounts. DTE Gas believes that these rate case filings would provide interested parties the information identified by Staff Witness Welke and AG Witness Coppola. Therefore, witness Suchta believes that the annual letter proposed by Staff and the AG is not necessary. 2 Tr. 78-79.

It is Reply Brief DTE Gas argues that creating a deferred regulatory account to record the actual excess deferred taxes amortized to expense annually would not provide any value. DTE Gas argues that an annual reconciliation letters would be expensive and confusing. DTE Gas believes that it already makes transparent filings regarding its accounting, so an additional filing is unreasonable and not necessary. DTE Gas Reply Brief pp 20-22.

2. **Sherri L. Wisniewski**

Witness Wisniewski B.B.A, M.B.A., testified regarding DTE Gas's re-measurement of deferred taxes resulting from the TCJA and DTE Gas's proposal to return differed taxes to customers through an amortization of the tax regulatory liability. Witness Wisniewski sponsored the following exhibits: A-5 C8 Projected Federal Income Tax and A-6 C8.1 Projected Tax Reform Regulatory Liability.

Witness Wisniewski testified that book accounting standards under Accounting Standards Codification (ASC) 740 require DTE Gas to record the TCJA changes in the period of enactment. 2 Tr. 24. DTE Gas's deferred taxes were re-measured as of December 31, 2017 to reflect TCJA reduction in federal corporate income tax rate. Witness Wisniewski testified that DTE Gas's re-measurement of deferred taxes resulted in a deferred income taxes reduction of $333 million in DTE Gas's total deferred tax liability. 2 Tr. 25. Consistent with the Commission's order in U-18494 the reduction in the deferred tax liability was offset by a regulatory liability of $333 million. *Id*. See Exhibit A-6, Schedule C8.1, line 3, column (e). DTE Gas's regulatory liability represents the excess deferred income taxes that will flow back to customers. DTE Gas's proposal in this matter details how DTE Gas will return to customers excess deferred income taxes through an amortization of its tax regulatory liability. Witness Wisniewski testified that this amortization for the first 12 months reduces tax expense by $9.4 million. See Exhibit A-5, Schedule C8, line 51, column (g). *Id.*

Witness Wisniewski testified that DTE Gas's tax regulatory liability consisted of Protected Plant, Unprotected Plant, and Non-Plant, and are based on cumulative timing differences that gave rise to the excess deferred taxes*. Id.*

Protected Plant consists of the excess deferred taxes related to the cumulative difference between accelerated tax depreciation and book depreciation. Tax depreciation is calculated by using the Modified Accelerated Cost Recovery System (MACRS), including any bonus depreciation. Bonus and MACRS result in a faster depreciation of the investment as compared to book depreciation. 2 Tr. 26.

Witness Wisniewski testified that the TCJA requires normalization through the use of the Average Rate Assumption Method (ARAM) to flowback to customers the excess deferred taxes related to accelerated depreciation. The ARAM method requires excess deferred taxes pertaining to a particular vintage or vintage account to be flowed to customers as the timing differences in the particular vintage account reverse (i.e. as book depreciation in the particular vintage account exceeds tax depreciation). The ARAM methodology is based on the forecasted reversal of the depreciation timing differences. DTE Gas's amortization of Protected Plant tax regulatory liability follows the ARAM method. *Id.* See Exhibit A-6, Schedule C8.1, column (b).

Witness Wisniewski testified that Unprotected Plant excess deferred taxes are capital expenditures that are deducted when incurred for tax purposes but must be capitalized and depreciated as fixed assets for book purposes. DTE Gas's amortization of the Unprotected Plant tax regulatory liability is calculated on a 34-year straight-line basis. *Id.* See Exhibit A-6, Schedule C8.1, column (c). Thirty-four years represents the remaining book life of DTE Gas's utility assets based on the study approved in U-16769 DTE Gas's last approved depreciation case. *Id.*

Witness Wisniewski testified that Non-Plant excess deferred taxes represents all non-plant cumulative timing differences. DTE Gas calculated the amortization of the Non-Plant excess deferred taxes on a straight-line basis over 13 years. *Id.* See Exhibit A-6, Schedule C8.1, column (d). Thirteen years is the average life of the largest cumulative timing differences making up most of the total. DTE Gas will begin amortization of its

TCJA impacted regulatory liability after the Commission's final order is issued and new rates are established to account for the TCJA reduction in DTE Gas's federal deferred tax expense. 2 Tr. 27.

a. <u>Rebuttal</u>

Witness Wisniewski provided rebuttal testimony regarding the AG's recommendation to accelerate amortization DTE Gas's TCJA regulatory liability and the AG and ABATE's recommendation to reduce the amortization period related to non-plant excess deferred taxes. See 2 Tr. 29-32.

Witness Wisniewski testified that DTE Gas does not agree with AG witness Coppola's recommendation to accelerate amortization of DTE Gas's TCJA regulatory liability because witness Coppola's recommendation is inconsistent with past Commission rate case practice. 2 Tr. 30. Witness Wisniewski testified that DTE Gas received recovery of additional tax expense through prospective amortization of a tax-related regulatory asset in U-15985, U-16864 and U-17999. In U-15985 DTE Gas requested recovery for the impact of the change from the Michigan Single Business Tax to the Michigan Business Tax (MBT). The MBT was enacted in July 2007, became effective January 2008 and required DTE Gas to establish state deferred taxes on all of its cumulative timing differences and create a new tax regulatory asset. *Id.*

In U-16864 DTE Gas requested recovery for the impact of changes in federal tax law by The Patient Protection and Affordable Care Act (PPACA) and changes in the Michigan income tax from the MBT to the Michigan Corporate Income Tax (MCIT). These tax law changes required DTE Gas to re-measure deferred taxes and to create or adjust a tax regulatory asset. *Id.*

In U-17999 DTE Gas requested recovery for the impact of the increase in the City of Detroit corporate income tax rate from 1% to 2% effective January 2012. This tax law changes required DTE Gas to re-measure deferred taxes and to create a tax regulatory asset. 2 Tr 30-31.

In each of these three cases DTE Gas requested recovery for the impact of tax law changes through amortization of regulatory assets and the Commission did not order DTE Gas to accelerate amortization of regulatory assets for the time that had elapsed from when the new tax laws were effective to when a Commission order was received. The AG's recommendation to accelerate amortization of the TCJA regulatory liability is inconsistent with the Commission's past practice. 2 Tr 31.

Witness Wisniewski testified that DTE Gas does not agree with AG Witness Coppola's and ABATE witness Walters' recommendations to reduce DTE Gas's proposed amortization period of the regulatory liability of excess deferred taxes related to non-plant of $96.2 million from 13 years to 10 years. 2 Tr 31. Witness Wisniewski testified that DTE Gas developed the 13-year amortization period by taking the average life of when the largest non-plant cumulative timing differences are expected to reverse. DTE Gas's largest non-plant cumulative timing differences, (those greater than $70 million), are property taxes (expected 2-year reversal), OPEB (expected 7.25-year reversal), Pension (expected 10.25-year reversal) and State deferred (expected 34-year reversal). These cumulative timing differences represent 85% of the absolute value of total Non-Plant cumulative timing differences*. Id.*

Witness Wisniewski testified that that neither AG witness Coppola nor ABATE witness Walters provided any valid support for their recommendation to reduce the amortization period from 13-years to 10-years. 2 Tr. 32. DTE Gas believes that AG witness Coppola's position is not supported and arbitrary. Witness Walters argues that a 10-year amortization period should be used, because other utilities have used 10 years or less. Witness Walter's argument incorrectly assumes that other utilities have the same non-plant timing differences and tax situation/portfolio as DTE Gas. *Id.*

In its Reply Brief DTE Gas argues that none of the intervenors provided any credible evidence or arguments to show that DTE Gas has not met its burden of proof that a thirteen-year period related to amortization for non-plant excess deferred taxes is a reasonable and prudent approach. See DTE Reply Brief pp 4-7. DTE Gas argues it presented evidence that its mathematical approach for the determination of its amortization period is consistent with Commission's guidance in U-18494. DTE Gas indicated in its Reply Brief that Staff supports DTE Gas's 13-year amortization period and argues the Commission should reject the intervenors' recommendations for a shorter time frame and approve DTE Gas's thirteen-year amortization period. *Id.*

3. Theresa M. Uzenski

Theresa M. Uzenski, B.S., M.B.A., testified for DTE Gas regarding the calculation of net operating income as approved in U-18999, and adjusted for the impact of amortizing DTE Gas regulatory liability related to the TCJA. See 2 Tr. 161-162. Witness Uzenski sponsored Exhibit A-3, Schedule C1, Approved Net Operating Income. Exhibit A-3, Schedule C1 provides DTE Gas projected net operating income approved in U-18999. Column (c) shows the projected period without rate relief, totaling $228.8 million. Column (d) adds the approved rate relief of $9 million, with the result in column (e). Column (e) represents the projected income assumed in DTE Gas's rates that went into effect on October 1, 2018. 2 Tr. 161. Witness Uzenski testified that following the TCJA December 17, 20178 effective date DTE Gas re-measured its then existing deferred tax assets and liabilities to reflect a 21% Federal income tax rate (the rate expected to be in effect when the deferred tax unwinds). The difference between the pre TCJA 35% tax rate and the post TCJA rate of 21% resulted in a corresponding reduction in deferred taxes from 35% to 21% and DTE Gas recorded $333 million as a regulatory liability. Witness Uzenski testified that DTE Gas' proposes to return the regulatory liability to customers by including the related amortization credit in base rates. DTE Gas witness Wisniewski testified regarding the regulatory liability balance and amortization. See Exhibit A-6, Schedule C8.1. Witness Wisniewski's Exhibit A-6 reflects the first year's amortization of the regulatory liability of $9.4 million on line 7, column (e). 2 Tr.162.

Witness Uzenski testified that Exhibit A-3, Schedule C1, column (g) line 24, shows that DTE Gas's projected income increases from $235.5 million to $244.8 million. Because DTE Gas's income will increase after including the amortization credit, its revenue requirement will decrease. DTE Gas witness Suchta uses the Exhibit A-3 adjusted income amount to calculate the reduction in the revenue requirement on her Exhibit A-1, Schedule A1, column (e). *Id.*

4. Kenneth L. Slater

Kenneth L. Slater, B.S.B.A. testified regarding the impact of DTE Gas's deferred tax re-measurement resulting from the TCJA on DTE Gas's currently authorized Cost of Service Study (COSS). DTE Gas's current COSS was approved by the Commission in its order in U-18999. See 2 Tr. 132-137. Witness Slater testified that DTE Gas's rate design schedules maintain the current monthly service charges and incorporate a reduced commodity distribution charge reflecting the deferred tax re-measurement revenue requirement supported and discussed by DTE Gas witness Suchta. DTE Gas's rate design proposal includes an unbundled rate covering off-system transportation and proposed tariff sheets. 2 Tr. 133.

Witness Slater sponsored the following exhibits:

- A-8 Schedule F1.1, Cost of Service Study for Calculation C Based on U-18999 Order
- A-8 Schedule F1.2, Alloc. Schedules for Calculation C Cost of Service Study
- A-8 Schedule F2, Summary of Calculation C Proposed Gas Revenue Decrease and Comparison of Rates
- A-8 Schedule F3 Calculation of the Proposed Calculation C Rates
- A-8 Schedule F5, Summary of Proposed Tariff Sheets
- A-8 Schedule F5.1, Proposed Tariff Sheets
- A-9 Schedule F6, Calculation C Derivation of Transportation Cost of Service Rate

a. <u>Cost of Service Study</u>

Witness Slater testified that he based his calculations on the revenue requirement impact of the proposed amortization of the deferred tax re-measurement identified by DTE Gas Witness Suchta. Witness Suchta testified that she determined that DTE Gas's post TCJA re-measurement resulted in a $12.2 million reduction (revenue sufficiency) in DTE Gas's recently approved revenue requirement. See Exhibit A-1, Schedule A1. The $12.2 million revenue sufficiency calculated by witness Suchta is based on the revenue requirement authorized by the Commission in U-18999 adjusted for the proposed amortization of the deferred tax re-measurement amount. Witness Slater testified that he used witness Suchta's reduced revenue requirement when preparing his Exhibit, A-8 Schedule F1.1, page 5 of 6. 2 tr. 133.

Witness Slater testified regarding the information contained in the following exhibits:

- **Exhibit A-8, Schedule F1.1**

DTE Gas's deferred tax re-measurement didn't impact Operating Expenses. See Exhibit A-8, Schedule F1.1, page 4 of 6. He testified that the roll-in rate relief granted in U-18999 of $8.974 million increased State/City Income Taxes shown on Line 26 of Exhibit A-8, Schedule F1.1, page 4 of 6, by $0.59 million as calculated on Exhibit A-3, Schedule C1, column d, line 13. 2 Tr.134

- **Exhibit A-8, Schedule F1.2**

This schedule calculates the allocation schedules used in the updated COSS. (Exhibit A-8, Schedule F1.1). Allocators 15, 16, 18, 19, 20, and 22 are the only allocators that changed from the allocators approved in U-18999. *Id.*

- **Exhibit A-8, Schedule F2**

Page 1 summarizes by rate class: (1) projected Test Year volumes approved in U-18999; (2) annual operating revenues under U-18999 approved rates and the rates proposed in this case, inclusive of the cost of gas from the order in U-18999 and the 2019 IRM surcharge approved in U-18999; and (3) the projected decrease of $12.2 million supported in this case. Page 2 summarizes current U-18999 approved rates and proposed rates for the gas sales rate schedules. Page 3 summarizes current U-18999 approved rates and proposed rates for the transportation rate schedules. 2 Tr. 134-135.

- **Exhibit A-8, Schedule F3**

This schedule details the calculation of existing and proposed revenue and increase/(decrease) by rate schedule and the calculation of the proposed rates. 2 Tr. 135.

- **Exhibit A-9, Schedule F6**

Schedule F6 shows the derivation of the transportation cost of service rate reflecting the Order in U-18999 adjusted for the impact of the deferred tax re-measurement resulting from the TCJA. This exhibit provides transportation-related unbundled components of the DTE Gas rate base and revenue and expense items from the cost of service study for the transportation functional group. This schedule identifies the projected gas transportation system costs used in developing DTE Gas's revenue requirement. These costs were taken directly from Exhibit A-8, Schedule F1.1, Cost of Service Study with Updated Tax Rate. The schedule calculates the maximum or cap of the transportation commodity charge that can be included in the market-based rate DTE Gas is proposing to charge off-system or third-party shippers for gas transported on DTE Gas's gas transportation system. As a result of the deferred tax re-measurement resulting from TCJA, the maximum transportation commodity charge has been reduced to $0.295. 2 Tr. 135-136.

Witness Slater testified that he followed the same methodology approved in U-18999 in developing the proposed rates in this case, with one exception. In this case, he did not change any of the monthly service charges from those approved in U-18999 in developing the proposed rates in this case. In this case and in U-18999, adjusted the EUT rate schedules to hit the breakeven points between the EUT rate schedules from U-

18999 and made a small adjustment to preserve the breakeven point between Rates S (Schools) and GS-1 (General Service). *Id.*

b. <u>Proposed Tariff Changes for Sales Customers</u>

DTE Gas is proposing changes to its tariff pages applicable to its sales customers under Section D of DTE Gas's Rate Book. These tariff pages include the proposed Distribution Charges for each rate schedule. The tariff sheet modifications are reflected, in their entirety, in the Summary of Proposed Tariff Changes (Exhibit A-8, Schedule F5) and the revised tariff pages (Exhibit A-8, Schedule F5.1). 2 Tr. 136.

DTE Gas's proposes distribution rate changes in DTE Gas's revised distribution rates. These changes are shown as part of the revised tariff pages included in Exhibit A-8, Schedule F5.1.

c. <u>Proposed Tariff Changes for EUT Customers</u>

DTE Gas is proposing a change to its tariffs for transportation and storage customers under Section E of DTE Gas's Rate Book which incorporate DTE Gas's proposed Transportation Charges for each EUT rate schedule under Section E14 of DTE Gas's Rate Book. 2 Tr.137.; See Exhibit A-8, Schedules F5 and F5.1.

d. <u>Proposed Tariff Changes for Off-System Storage and Transportation Customers</u>

DTE Gas is proposing to incorporate the DTE Gas's s proposed not to exceed rate under Sections E25 and E26 of DTE Gas Rate Book See Exhibit A-8, Schedules F5 and F5.1. *Id.*

e. <u>Rebuttal</u>

Witness Slater provided rebuttal testimony which rebuts Staff witness Revere's and AG witness Coppola's recommendation that DTE Gas's Calculation C rate differences be returned to customers through a credit, rather than revised rates. Witness Slater also disagrees with AG witness Coppola's methodology for calculating the negative surcharge rates. 2 Tr. 139-140.

Witness Slater testified that he disagrees with witness Revere's and Coppola's conclusion that a Calculation C credit on a customer's bill would inform customers regarding the impact of Calculation C. 2 Tr. 139-140. Witness Slater testified that any new line item on a customer's bill would, more than likely, cause confusion and generate additional calls to DTE's Customer Service center. Additionally, witness Slater testified that returning Calculation C rate differences to customers through a credit is not consistent with how DTE Electric Calculation C amounts are being returned to customers. DTE Electric customers do not have a separate credit on their bills. *Id.* Many DTE Electric customers are also DTE Gas customers and receive a single combined bill. Witness Slater testified that showing a separate credit for DTE Gas on combined customer bills would cause unnecessary confusion. *Id.*

Witness Slater testified that he does not agree with AG witness Coppola's Exhibit A-3 simplicity approach to calculating of negative surcharges. 2 Tr 140. Witness Slater testified that witness Coppola's rate design calculations do not maintain the breakeven points between rate schedules. *Id.* Witness Slater believes that witness Coppola's approach could cause customers to switch rate schedules which would change the recovery of the total revenue requirement. Witness Slater concluded that AG witness Coppola's rate calculations should not be implemented. *Id.*

In its Reply Brief DTE Gas disagrees with Staff and the AG that the Calculation C rate differences be returned to customers in the form of a credit, rather than revised rates.

Staff and the AG recommend that DTE Gas implement a credit rather than revised rates. DTE Gas also restates its disagreement with the AG's methodology for calculating the AG's proposed negative surcharge rates. DTE Gas argues that if the Commission envisioned a "Credit C" then the Commission would have ordered DTE Gas to prepare a "Credit C" rather than a "Calculation C." DTE Gas Reply Brief pp 17-18.

DTE Gas also disagrees with Staff's and the AG's recommendation that Calculation C adjustments be rolled into DTE Gas rates when a future rate cases is filed. DTE Gas argues that neither Staff nor the AG explain why they believes it is unreasonable to return excess deferred taxes to DTE Gas customer through revised current rates but reasonable to include the return of excess deferred taxes through future rates. DTE Gas argues that the disappearance of a credit when future adjusted rates are implemented in its post-rate cases would be more than confusing than adjusting current rates. DTE Gas Reply Brief pp 18-19

DTE Gas argues that its proposal to reduce rates to reflect the excess deferred taxes is just and reasonable by a preponderance of the evidence, and none of the intervenors have proven the contrary. Additionally, DTE Gas argues that Staff admitted that DTE Gas's proposal is reasonable. *Id*.

IV.

DISCUSSION

In the Commission's order in U-18494 the Commission provided that any captioned utility that files a new rate case prior to October 1, 2018, may use the rate case for determination of Calculation C. The Commission also ordered DTE Gas and other utilities to file applications for Calculation C determinations by October 1, 2018. The purpose of DTE Gas Calculation C filing is to capture all remaining impacts of the TCJA changes that were not captured in the Commission's Credit A or Credit B determinations. Calculation C captures DTE Gas's one-time remeasurement of its net deferred tax liabilities from 11 35% to 21%, excess Accumulated Deferred Income Taxes (ADIT) and how they should be returned to DTE Gas customers. The remeasurement occurred at year end 2017.

On September 4, 2018, DTE Gas in U-20298 filed a motion for extension of time to file its application for determination of Calculation C so that DTE Gas's Calculation C could be accurately derived from rates determined in the then pending final order in DTE Gas's rate case U-18999. The Commission granted DTE Gas's motion and ordered DTE Gas to file its Calculation C application by November 16, 2018. On November 16, 2018 DTE Gas filed an application, pursuant to the Commission's orders in U-18494, U-20106 and U-20189, for a determination of Calculation C.

A. <u>DTE Gas's Calculation C Proposal</u>

DTE Gas's Exhibit A-6 Schedule C8.1, identifies a total of $333.0 million in excess ADIT, before gross up for income taxes. This amount represents a regulatory liability that DTE Gas must return to customers. Staff argues that the Commission require (1) DTE Gas to meet an annual reporting requirement, (2) that the differences in actual and estimated protected and unprotected excess ADIT expense be included in a regulatory liability or regulatory asset, (3) that the Calculation C amounts should be allocated to customers on the basis of rate base, and that (4) Calculation C should result in a credit effective until the next rate case, rather than modified rates, for most rate schedules. Staff Brief p 2.

DTE Gas proposes to return this money back to customers over different time periods depending on how the excess ADIT funds are characterized using the following three ADIT categories: protected plant, unprotected plant, and non-plant. DTE Gas ADIT amounts for each category are summarized in the following table:

Description	Excess ADIT	(Refund)/ Collection Period
Protected Plant	$ (238.1)	ARAM
Unprotected Plant	$ 1.3	34
Non-Plant	$ (96.2)	13
Total DTE	$ (333.0)	

2 Tr. 208; See Exhibit A-6 Schedule C8.1

DTE witness Wisniewski testified the DTE Gas has three "buckets of ADIT". DTE Gas's Protected Plant bucket consists of excess ADIT payments related to the cumulative difference between tax depreciation (Modified Accelerated Cost Recovery and bonus) and book depreciation. DTE Gas identified a Protected Plant excess ADIT liability of $238.1 million, before gross up. The return of protected plant excess ADIT are subject to IRS normalization rules and must be returned to customers under the Average Rate Assumption Method (ARAM). 2 Tr. 26.

DTE Gas's unprotected Plant-related excess ADIT is based on timing differences due to certain capital expenditures that were deducted as expenses for tax purposes but capitalized and depreciated for book purposes. DTE Gas identified unprotected plant excess ADIT asset of $1.3 million, before gross-up. Unprotected balances are not subject to normalization rules and may be collected or returned over any period of time as determined by the Commission. DTE Gas's Calculation C proposal would return this amount from customers over 34 years. Witness Wisniewski testified that the 34-year period represents that remaining book life of DTE Gas's utility assets. 2 Tr. 26

DTE Gas's Non-Plant excess ADIT is unprotected and based on the cumulative timing differences for all non-plant related items. DTE Gas's Calculation C proposal identifies a Non-Plant excess ADIT liability of $96.2 million, before gross-up for income taxes. DTE Gas proposes returning this amount to customers over a 13-year period. Witness Wisniewski testified that the 13-year period is the average life of the largest cumulative timing differences that make up most of the total balance. 2 Tr. 26-27.

DTE, Staff, ABATE and the AG all agree that DTE Gas's $333.7 million regulatory liability consists of $238,062,000 of Protected Plant ADIT before gross up, $96,247,000 of Unprotected Non-Plant ADIT before gross up and $1.3 million in Unprotected Plant before gross up. DTE Gas's Calculation C proposes to refund ratepayers the unprotected ADIT over a time period ranging from 34 to 13 years. The parties agree that DTE Gas reasonably determined its excess deferred tax liability and annual amortization amounts pertaining to the protected property assets as of December 31, 2017. The parties also agree that DTE Gas's Calculation C proposal to amortize $1.3 million in Unprotected Plant ADIT over 34 years is reasonable.

AG witness Coppola testified that the amounts above are before tax gross-up basis and the amount refunded, or "flowed-back," to DTE Gas ratepayers will be on an after-tax basis and the product of DTE Gas most recent tax multiplier of 1.355 times the total refundable amount as of December 31, 2017 $333,037,000 or $451,264,787. The AG recommends the Commission should adopt this amount as DTE Gas's excess deferred tax liability and asset amounts as of December 31, 2017. 2 Tr. 187; See Exhibit AG-1.

B. DTE Gas's Proposed 13-year amortization of Unprotected Non- Plant ADIT

DTE Gas's Calculation C proposal identifies a Non-Plant excess ADIT liability of $96.2 million, before gross-up for income taxes. DTE Gas proposes returning this amount to customers over a 13-year period. DTE Gas witness Wisniewski testified that the 13-year period is the average life of the largest cumulative timing differences that make up most of the total balance. 2 Tr. 27. The AG, ABATE, and RCG, argue that DTE Gas's proposed 13-year amortization for Non-Plant ADIT is too long and is not adequately supported.

DTE Gas argues that it proposed 13-year amortization period is reasonable because, according to witness Wisniewski, "Thirteen years is the average life of the largest cumulative timing differences making up most of the total" of the excess deferred taxes of the Non-Plant component. 2 Tr 26. Witness Wisniewski testified that DTE Gas's largest non-plant cumulative timing differences (those greater than $70 million), are:

- Property taxes expected 2-year reversal;
- Other Post -Employment Benefits (OPEB) expected 7.25-year reversal;
- Pension expected 10.25-year reversal; and
- State deferred expected 34-year reversal.

2 Tr. 31

These cumulative timing differences represent 85% of the absolute value of total Non-Plant cumulative timing differences. *Id.* DTE Gas argues that its proposal is reasonable and prudent because it is based on when DTE Gas's underlying cumulative timing differences are expected to reverse, as presented and supported in DTE Gas's calculations detailed in record testimony and exhibits. DTE Gas Reply Brief pp 4-5.

AG witness Coppola testified that the Commission should reject DTE Gas's amortization period of 13 years and related amortization amounts for excess deferred tax liabilities for Unprotected, Non-Plant because the amortization period is not adequately supported and is too long. Witness Coppola disagrees with DTE Gas's 13-year amortization because:

- It is a simple average of the remaining life of the five timing differences; and.
- Includes only five items out of a total of 27 timing differences.

2 Tr. 193-194; See Exhibit AG-1.

Witness Coppola testified that he believes that a weighted average of the amounts of the timing differences is more appropriate and, if used, would show an average life for the five items of closer to 12 years. In addition, witness Coppola testified that the 22 items not included in DTE Gas's 13-year amortization have amortizable lives of less than 10 years, which if included would further decrease the average life calculated by DTE Gas. The AG recommends that because DTE Gas has not provided sufficient support for its 13- year amortization the Commission should exercise its discretion with regard to DTE Gas's Unprotected Non-Plant ADIT and approve the pass-through of TCJA tax benefits to customer by approving an amortization period of 10 years or less. *Id.;* AG Brief pp 10-11.

ABATE witness Walters testified that DTE Gas's proposed 13-year amortization period for its Unprotected Non-Plant excess ADIT liability is unreasonable because:

- A shorter refund period returns excess ADIT to ratepayers faster and minimizes intergeneration inequities in that the ratepayers that contributed to the excess

ADIT are more likely to be the same ratepayers to whom the return of excess ADIT would be provided.

- The refunding of excess ADIT balances reduces the portion of zero-cost capital which if all else is equal, will increase the relative portions of debt and equity capital in the ratemaking capital structure, increasing the overall rate of return on rate base, and future earnings.
- A shorter amortization period will eliminate DTE Gas's ADIT liability from DTE's books in a shorter amount of time.
- An amortization period of 10 years more equitably balances the interests of all stakeholders than DTE Gas's proposed 13-year amortization.

2 Tr. 210-211

Witness Walters also testified that the use of a 10-year amortization for the return of excess ADIT is common and has been approved by several public utility regulatory commissions.

- In Texas, Docket No. 48401, Texas New Mexico Power Company agreed to a five-year amortization period for the unprotected excess ADIT.
- In Nevada, Docket No. 18-05031, Southwest Gas proposed a five-year amortization. However, the Nevada Public Utilities Commission ordered Southwest Gas Corporation to re und the unprotected excess ADIT liability back to customers over a six-year period.
- In Indiana, Cause No. 44967, Indiana Michigan Power Company agreed to a six-year amortization of the unprotected excess ADIT liabilities.

- In its Calculation C case (U-20317), Indiana Michigan Power Company is proposing a 10-year amortization for its unprotected excess ADIT in its Michigan jurisdiction.
- In Missouri, Case No. ER-2018-0226, Ameren Missouri was required to implement a 10-year amortization for all unprotected excess ADIT liabilities.
- In Missouri, Case No. ER-2018-0145, Kansas City Power and Light was required to implement a 10-year amortization for all unprotected excess ADIT liabilities.

2 Tr. 211-212

Staff did not express an opinion regarding the AG, ABATE, nor RCG's conclusion that DTE Gas's proposed 13-year amortization period is too long.

DTE Gas witness Wisniewski testified that DTE Gas does not agree with AG Witness Coppola's and ABATE witness Walters' recommendations to reduce DTE Gas's proposed amortization period of the regulatory liability of excess deferred taxes related Unprotected Non-plant of $96.2 million from 13 years to 10 years. Witness Wisniewski testified that DTE Gas's the 13-year amortization period was developed by taking the average life of when the largest non-plant cumulative timing differences are expected to reverse. DTE Gas's largest non-plant cumulative timing differences, (those greater than $70 million), are property taxes (expected 2-year reversal), OPEB (expected 7.25-year reversal), Pension (expected 10.25-year reversal) and State deferred (expected 34-year reversal). These cumulative timing differences represent 85% of the absolute value of total Non-Plant cumulative timing differences. 2 Tr. 31.

Witness Wisniewski testified that neither AG witness Coppola nor ABATE witness Walters provided any valid support for their recommendations. DTE Gas argues that witness Coppola's position is not supported and arbitrary and witness Walter's 10-year or less amortization period recommendation incorrectly assumes that other utilities have the same non-plant timing differences and tax situation/portfolio as DTE Gas. 2 Tr. 31-32.

I agree with the AG, ABATE and RCG that DTE Gas has not provided sufficient support for its 13-year amortization. The AG, ABATE, and RCG's recommendation is reasonable and prudent. Therefore, I recommend the Commission exercise its discretion with regard to DTE Gas's Unprotected Non-Plant ADIT and approve the pass-through of TCJA tax benefits to customers by approving an amortization period of 10 years or less.

C. <u>DTE Gas's Capital Structure</u>

DTE Gas witness Suchta testified that deferred tax is a component of DTE Gas capital structure so a change in DTE Gas's deferred tax balance as a result of amortizing excess deferred tax liability must, per the Commission order in U-18494, be included in DTE's proposal. Witness Suchta testified that DTE Gas Calculation C proposed capital structure adjustment is related to the re-measurement of the deferred tax balance as of December 31, 2017 and was not included in any calculation in U-18999. 2 Tr 75-76: See Exhibit A-7, Schedule D1, page 1. Because DTE Gas's deferred taxes were reduced permanent capital was increased by the same amount. DTE Gas's approved debt to equity ratio, 48% of the $4.7 million change, is allocated to long-term debt and 52% is allocated to equity. DTE Gas's total capitalization of $4.3 billion is the same amount approved by the Commission. 2 Tr 67. The deferred taxes and permanent capitalization changes result in a change in the overall weighted cost of capital from 5.56% to 5.57%.

This updated rate is carried to Exhibit A-1, Schedule A1, column (e) to calculate the income requirement*. Id.*

Staff, AG, ABATE and RCG disagree with DTE Gas's proposed capital structure adjustment. Staff witness Welke testified that the entire DTE Gas ADIT regulatory liability and the over/under regulatory asset/liability should be included in DTE Gas's capital structure as zero cost capital. Witness Welke testified that prior to the TCJA, ADIT that resulted in regulatory assets and liabilities was included in the capital structure as zero cost capital. Staff recommends for the sake of consistency Calculation C regulatory assets and liabilities should remain in the capital structure at zero cost. 2 Tr 177-178.

RCG argues that the Commission should disregard DTE Gas's Calculation C proposal's allowance for changes in DTE Gas's capital structure. RCG Brief pp 3-4. RCG argues that DTE Gas provided no evidence that additional common equity was provided by DTE Gas's parent company, DTE Energy, or that DTE issued any additional debt because of the adoption of TCJA. RCG argues that DTE Gas provided no evidence that the total sum of zero cost capital reflected in DTE's capital structure associated with deferred federal income tax reserves were decreased due to the TCJA and the Commission has not approved any post TCJA changes in DTE Gas's capital structure. *Id*. Finally, RCG argues DTE Gas witness Suchta admitted that DTE Gas's Calculation C proposal will not require a change in DTE Gas's capital structure costs because:

- No additional debt or equity has been issued due to the adoption of TCJA during this period; and

- No accounting amortizations or other treatment for Calculation C will be made until on and after the Commission's order.

RCG Brief pp 4-5.

RCG argues that DTE Gas's proposal regarding DTE Gas's capital structure are hypothetical mathematical calculations and are not supported by the record evidence. *Id.*

The AG argues the Commission should reject DTE Gas's proposed capital structure adjustment and higher cost of capital to reduce the amount of refundable net excess deferred taxes passed through to customers. Brief p 29. DTE Gas's proposal recalculates the overall rate of return on capital, based on the proposed pass-through of the amortization of the net excess deferred liabilities to customers in 2019. See Exhibit A-7, Schedule D1. DTE Gas believes that this will reduce the net deferred income tax balance included in DTE Gas's capital structure. Exhibit A-7 shows that DTE Gas calculated a $9,369,000 reduction in deferred taxes will be replaced by long-term and equity capital so DTE Gas assigned 52% of the amortization amount to equity capital and 48% to long-term debt. 2 Tr. 67.

The AG argues that because DTE Gas's deferred income tax balance changes monthly DTE Gas should not be allowed to change its capital structure based on one TCJA ADIT adjustment. According to the AG, doing so would be as unfair to customers. The AG argues that the Commission should only review the entire array of increases and changes to DTE Gas capital structure in a general rate case. 2 Tr. 198; AG Brief p 30.

Witness Coppola testified that whether DTE Gas pays the deferred taxes to the US Treasury or returns TCJA savings to customers, DTE Gas is no worse off. Therefore, the AG argues that DTE Gas should not be allowed to offset the pass-through of excess deferred taxes by $466,000 due to DTE's proposed higher rate of return. *Id.*

The AG also argues that the Commission should reject DTE Gas's capital structure adjustment because in U-18999, DTE's Gas last rate case, the Commission considered DTE Gas proposed deferred income tax balance adjustments which lowered the balance by $38.8 million and increased the long-term debt balance by $18.6 million and the common equity balance by $20.2 million. DTE Gas adjusted its projected deferred taxes to the new TCJA tax rate of 21%. This adjustment was from January of 2018 to the end of the projected test year, September 2019. The AG argues that DTE Gas's capital structure deferred tax balance already reflects the reversal of the excess deferred taxes for the relevant 14 percentage point TCJA difference and no new adjustment is required. *Id.*

In its final order in U-18999 the Commission accepted DTE Gas's proposed adjustment and adopted DTE Gas's proposed revised capital structure. AG Exhibit AG-5 provides DTE Gas's U-18999 initial projected capital structure, the revised capital structure, and select potions of DTE Gas's Brief, Staff Reply Brief, Proposal for Decision, and Commission order related to DTE Gas's capital structure. DTE Gas witness Suchta testified that DTE Gas filed its last rate case U-18999 on November 22, 2017 before the TCJA effective date of December 22, 2017 use the pre TCJA rate of 35% to compute its revenue requirement. Witness Suchta testified that the TCJA impact for the protected time period December 31, 2017 to September 30, 2019 was determinable and DTE Gas quantified the protected impact in response to a Staff. 2 Tr 75. The adjustment in DTE

Gas's Calculation C proposal is based on its December 31, 2017 re-measurement of deferred taxes that were not included in the U-18999 calculations. 2 Tr. 76.

I agree with Staff, ABATE, AG and RCG that the Commission should reject DTE Gas's proposed capital structure adjustment. DTE Gas's capital structure deferred tax balance approved in U-18999 reflects the reversal of the excess deferred taxes for the relevant 14 percentage point TCJA difference and no new adjustment is required. Doing so at this time would neither be reasonable nor prudent. The Commission should review changes to DTE Gas capital structure in DTE Gas's next general rate case.

D. <u>Amortized Net Excess Deferred Tax Liabilities for 2018 and 2019</u>

The AG recommends that the Commission order DTE Gas to refund to ratepayers the amortized net excess deferred tax liabilities for 2018 and 2019 through Credit C negative surcharges soon after the Commission's final order in this matter. 2 Tr. 192. The AG also recommends the Commission reject DTE Gas's proposal to revise customer rates as a means to flow through to customers a portion of the tax benefits for the net excess deferred tax liabilities beginning in 2019 because DTE Gas's proposal avoids refunding to customers the TCJA 2018 tax benefits. The AG recommends the Commission order DTE Gas to refund:

- $31,168,315 to customers over the 12-month period following an order in this case; and
- $16,069,507 beginning in January 2020 and continuing forward until a new appropriate amount is reflected in base rates in DTE Gas's next rate case.

2 Tr. 195-196.

The AG argues that the $30 million refund will occur over a 6-12-month period so it is unlikely that DTE Gas customers would notice any unusual rate fluctuations on their bills or complain about receiving a credit on their gas bills. The AG argues that approximately 60% of the refund will go to residential customers and 60% of the additional $19 million that the AG wants to refund to customers in 2019 (above DTE Gas's $12.2 million proposal) approximately $12 million, would go to DTE Gas residential customers. AG Brief p 21. The AG divided the $12 million by DTE Gas's 1 million residential customers and determined that each DTE Gas residential customer would be received a $12 per year per customer refund, or $1 per month. If the Commission orders DTE Gas to return the AG's recommended $31.2 million, the average DTE Gas residential customer would receive a credit of approximately $1.60 per month. The AG argues that this change in DTE Gas residential customer bills would neither cause customer confusion nor complaints. *Id.*

Exhibit A-3 provides the AG's proposed recalculated Calculation C refund negative surcharge rates for 2019 and 2020. 2 Tr. 195. Exhibit AG-3 provides how $31,168,315 of 2018 and 2019 refundable excess deferred taxes were allocated to applicable DTE Gas customer rate schedules based on U-18999 (DTE Gas's last rate case) cost of service study (COSS) rate base allocators. *Id.* Exhibit AG-3 allocates the refundable amount for the general service customer class between Rate Schedules GS-1 and GS-2, based on the U-18999 revenue profile of the two rate schedules. AG witness Coppola aggregated the Rate Schedule XXLT and DIG refund Tax Credit C negative surcharges by dividing the refund amount allocated to each rate schedule by DTE Gas's U-18999 forecasted annual volumes for sales and transportation. 2 Tr. 194-196.

The AG recommends the Commission approve her Calculation C negative surcharges for 2018 and 2019 and order DTE Gas to implement the applicable credits effective, the first billing cycle, and for the subsequent 12 months, following the Commission's order in this matter. Brief p 28.

Witness Suchta testified that, contrary to the AG's assertion, DTE Gas is not delaying the "flowback" of TCJA benefits to customers. 2 Tr. 71. After the Commission's final order in U-20106 (DTE Gas Credit A filing) DTE Gas reduced its revenue requirement by $38 million. After the Commission's final order in U-20189 (DTE Gas's Credit B filing) DTE Gas will begin refunding $25 million to customers from January 2-19 through June 2019. One year after the TCJA effective date DTE Gas has begun flowing back $63 million to ratepayers. 2 Tr. 71-73.

DTE Gas does not agree with the AG's proposal to refund ADIT for 2018 and 2019 during 2019 because it feels the AG's proposal does not meet Staff's third guiding principle provided in the Commission's order in U-18494. DTE Gas argues that the AG's proposal would not "avoid accounting pitfalls, such as *unnecessary complexity*, *large* annual *rate fluctuations for ratepayers*, penalty interest and cash flow volatility for investors." See U-18494 Order p. 8.; 2 Tr. 73. Witness Suchta testified that the AG's proposal to return two years of amortization within one year is unnecessarily complex and inconsistent with the Commission's order in U-18494. Additionally, witness Suchta believes that the AG's proposal would result in rate fluctuations and complicated billing because it has a 12-month credit for year one and year two amortization amounts beginning in 2019, then on top of that another credit for year three amortization starting January 1, 2020. 2 Tr. 73-74.

DTE Gas witness Wisniewski provided rebuttal testimony regarding the AG's recommendation to accelerate amortization of DTE Gas's TCJA regulatory liability. Witness Wisniewski testified that DTE Gas does not agree with AG witness Coppola's recommendation to accelerate amortization of DTE Gas's TCJA regulatory liability because witness Coppola's recommendation is inconsistent with past Commission rate case practice in U-15985, U-16864 and U-17999. 2 Tr. 30. In U-15985 DTE Gas requested recovery for the impact of the change from the Michigan Single Business Tax to the Michigan Business Tax (MBT). The MBT was enacted in July 2007, became effective January 2008 and required DTE Gas to establish state deferred taxes on all of its cumulative timing differences and create a new tax regulatory asset. *Id.* In U-16864 DTE Gas requested recovery for the impact of changes in federal tax law by The Patient Protection and Affordable Care Act (PPACA) and changes in the Michigan income tax from the MBT to the Michigan Corporate Income Tax (MCIT). *Id.* These tax law changes required DTE Gas to re-measure deferred taxes and to create or adjust a tax regulatory asset. In U-17999 DTE Gas requested recovery for the impact of the increase in the City of Detroit corporate income tax rate from 1% to 2% effective January 2012. These tax law changes required DTE Gas to re-measure deferred taxes and to create a tax regulatory asset. 2 Tr. 30-31.

DTE Gas argues that in U-15985, U-16864 and U-17999 it requested recovery for the impact of tax law changes through amortization of regulatory assets and the Commission did not order DTE Gas to accelerate amortization of regulatory assets for the time between the new tax laws were effective date and the date of the Commission's order. DTE Gas argues that the AG's recommendation to accelerate amortization of the

TCJA regulatory liability is inconsistent with the Commission's past practice and is not necessary. 2 Tr. 31.

RCG and ABATE support a faster return of ADIT to DTE Gas customers. Staff neither directly addressed the AG's proposal in its testimony nor briefs.

I agree with DTE Gas that the AG's proposal does not meet Staff's third guiding principle provided in the Commission's order in U-18494. The AG's proposal is unnecessarily complex and inconsistent with the Commission's order in U-18494. Additionally, the AG's proposal is inconsistent with the Commission's order in U-15985, U-16864 and U-17999. In these cases, DTE Gas requested recovery for the impact of tax law changes through amortization of regulatory assets. The Commission did not order DTE Gas to accelerate amortization of regulatory assets for the time between the new tax laws were effective date and the date of the Commission's order. Contrary to the AG's belief no evidence was presented which establishes that DTE Gas has delayed the return to TCJA benefits to its customers. As pointed out by DTE Gas witness Suchta in her testimony after the Commission's final order in U-20106 (DTE Gas Credit A filing) DTE Gas reduced its revenue requirement by $38 million. After the Commission's final order in U-20189 (DTE Gas's Credit B filing) DTE Gas will begin refunding $25 million to customers from January 2019 through June 2019. One year after the TCJA effective date DTE Gas has begun flowing back $63 million to ratepayers.

Therefore, I find the AG's proposal is neither reasonable nor prudent and recommend the Commission not adopt the AG's proposal to accelerate the amortization of DTE Gas's TCJA regulatory liability.

E. <u>Recovery of Excess ADIT through Negative Surcharges</u>

DTE Gas witness Suchta testified that witness Wisniewski completed a re-measurement of DTE Gas deferred taxes resulting from the TCJA and how the resulting excess tax will be returned to customers through amortization of the tax regulatory liability. This re- measurement resulted in a $12.2 million reduction in DTE Gas's current approved revenue requirement. 2 Tr. 63-64. Exhibit A-1, Schedule A1 details the $12.2 million revenue sufficiency based on the authorized revenue requirement in U-18999 adjusted for the proposed amortization of the deferred tax re-measurement amount. Witness Suchta testified that the DTE Gas proposed deferred tax re- measurement would not change DTE Gas U-18999 authorized base rate. 2 Tr. 65. See Exhibit A-1, Schedule A1 and on Exhibit A-2, Schedule B1.

DTE Gas witness Slater testified that he used witness Suchta's reduced revenue requirement when preparing DTE Gas's proposed COSS. See Exhibit, A-8 Schedule F1.1, page 5 of 6. Witness Slater testified that he followed the same methodology approved in U-18999 when developing the proposed rates except he did not change any U-18999 approved monthly service charges. 2 Tr. 133. In this case and in U-18999, witness Slater adjusted the EUT rate schedules to hit the breakeven points between the EUT rate schedules from. U-18999 and made a small adjustment to preserve the breakeven point between Rates S (Schools) and GS-1 (General Service). 2 Tr. 135-136.

Staff witness Revere testified that Staff used DTE Gas's Cost of Service Study (COSS) and moved the Calculation C related adjustment amounts from FIT to State/Local taxes. Staff is neither proposing Calculation C amounts be treated as State/Local Taxes, in this case nor in future rate cases. Witness Revere recommends that the amortization of DFIT (Deferred Federal Income Tax) be listed as a separate line item in DTE Gas's COSS and be allocated on rate base. 2 Tr. 170. Staff included these amounts in State/Local Taxes because an adjustment was already made to this line item and it is currently allocated on the same basis as Staff's recommended Calculation C amounts. 2 Tr. 170-171. Exhibit S-1, Schedule F1.1. provides Staff's modified COSS. Witness Revere testified that DTE Gas's rate design method is reasonable and uses the same rate design method as Staff. Exhibit S-1, Schedules F3 and F6 provides Staff's modified rate design. *Id.*

Staff recommends that DTE Gas's Calculation C rate reductions be returned to customers through a credit, rather than revised rates. Staff recommends the off-system transportation rate, which should be put into place as the modified rate rather than a credit. 2 Tr. 171. Witness Revere testified that a credit would clarify the Calculation C customer impact. Staff recommends that in future rate cases the amounts for all rates should be included as part of base rates and not separately identified. Exhibit S-2 provides Staff's calculation of imputed credits based on the calculated rates and a comparison of Staff's and DTE Gas's proposed rates and imputed credits. *Id*.

RCG agrees with the AG and ABATE that the Commission should order DTE Gas to return the benefits of the TCJA to ratepayers through credits or adjustments over a shorter amortization period than proposed by DTE Gas. RCG Brief p 1. RCG argues its recommendation is consistent with the Commissions orders and precedent following the TCJA tax reduction and supports a faster adjustment of rates. In addition, the Commission's delay in addressing these matters on a prompter basis, as recommended by RCG in DTE Case U-18255 in January 2019, supports a faster return of TCJA benefits. RCG Brief pp 3-4.

The AG recommends that the Commission order DTE Gas to begin to refund to customers the amortized net excess deferred tax liabilities for 2018 and 2019 through Calculation C negative surcharges. 2 Tr 192.; AG Brief p 14. Exhibit AG-2, shows the three components of excess deferred taxes for the three years 2018 to 2020. 2 Tr. 194-195. Protected property assets amounts for each year are taken from Exhibit A-1. Witness Coppola recalculated the Calculation C refund negative surcharge rates that should go into effect in 2019 and 2020. 2 Tr. 195. See Exhibit AG-3. This exhibit provides how $31,168,315 of 2018 and 2019 refundable excess deferred taxes were allocated to the applicable DTE Gas customer rate schedules based on the COSS approved in U-18999 (DTE Gas's last rate case) rate base allocators. In Exhibit AG-3, witness Coppola allocates the refundable amount for the general service customer class between Rate Schedules GS-1 and GS-2, based on the U-18999 revenue profile of the two rate schedules. Witness Coppola then aggregated the Rate Schedule XXLT and DIG refund. The AG's recommended Calculation C negative surcharges were determined by dividing the refund amount allocated to each rate schedule by DTE Gas's U-18999 forecasted annual volumes for sales and transportation. 2 Tr. 194-196.

The AG recommends that the Commission approve the AG's recommended Calculation Credit C negative surcharges for 2018 and 2019 and order DTE Gas to implement those credits effective with the first billing cycle, and for the subsequent 12 months, following the Commission order in this case. AG Brief p 28. AG witness Coppola using the same approach in Exhibit AG-3 also calculated a Calculation C negative surcharge for the year 2020 and future years until new customer rates go into effect, after the Commission's order in DTE Gas's next general rate case. See Exhibit AG-4. The AG recommends the Commission order DTE Gas to implement these Calculation C negative surcharges effective DTE Gas's first billing cycle in January 2020. AG Brief p 28.

DTE Gas witness Slater testified that he does not agree with AG witness Coppola's Exhibit A-3 approach to calculating negative surcharges. Witness Slater testified that witness Coppola's rate design calculations do not maintain the breakeven points between rate schedules. 2 TR. 140. Witness Slater believes that witness Coppola's approach would cause customers to switch rate schedules which would change the recovery of the total revenue requirement. Witness Slater concluded that AG witness Coppola's rate calculations should not be implemented. *Id.*

DTE Gas witness Slater testified that he disagrees with Staff witness Revere's and AG witness Coppola's conclusions that a Calculation C credits on a customer's bill would inform customers regarding the impact of Calculation C. Witness Slater testified that a new customer bill line item would more than likely cause confusion and generate additional calls to DTE's Customer Service center. *Id.* Additionally, witness Slater testified that returning Calculation C rate differences to customers through a credit is not consistent with how DTE Electric Calculation C amounts are being returned to customers. DTE Electric customers do not have a sperate Calculation C credit on their bills. Many DTE Electric customers are also DTE Gas customers and receive a single combined bill. Witness Slater testified that showing a separate credit for DTE Gas on combined customer bills would cause unnecessary confusion. *Id.*

Staff, AG, ABATE and RCG agree that Calculation C amounts should be returned to DTE Gas customers through a credit or negative surcharge rather than through the revised rates proposed by DTE Gas. DTE gas argues that a Calculation C credit or surcharge on customers bill would cause confusion and generate additional calls to DTE's customer service center. DTE Gas believes that because the refunding of Calculation C amounts via a credit for gas customers is different than DTE Electric's Calculation C, DTE Gas customers who received a combined DTE gas and electric bill would be even more confused than only DTE Gas customers.

DTE Gas was unable to provide any empirical data which shows that customer calls to DTE's call center increased after TCJA credits began appearing on customer bills. DTE Gas witness Slater testified that because DTE does not specifically track customer calls and inquiries regarding billing credits DTE Gas could not provide data in support its belief that there is a direct statistical relationship between new billing credits and customer calls. See 2 Tr. 144-143; Exhibit AG-3. Simply put there is no evidence that new billing credits would result in a corresponding increase in DTE call center customer calls. While it is possible some DTE Gas customers might have questions regarding a Calculation C credit on bills it is not likely that DTE's call center would notice a change in call volume.

Additionally, the AG correctly points out that the return of DTE Gas's Calculation C revenue sufficiency of $12 million to DTE Gas's 1 million residential customers would result in $12 per year average customer refund, or $1 per month. If Commission orders DTE Gas to return the AG's recommended $31.2 million, the average DTE Gas residential customer would receive a credit of approximately $1.60 per month. This slight monthly change in the average DTE Gas residential customer bills would more than likely neither cause customer confusion nor complaints.

Therefore, I find that DTE Gas's proposal is not reasonable and prudent and should not be adopted by the Commission. I agree with Staff and Intervenors that DTE Gas's Calculation C amount should be returned to DTE Gas customers through a credit rather than revised rates. No evidence was provided that a credit on DTE Gas's customer bills would result in confusion or complaints. The return of Calculation C amount to customers through a credit is consistent with the Commission's past practice regarding to the return of TCJA benefits through Credit A in U-20106 and Credit B in U-20189. Staff's proposed return of Calculation C amounts, through a credit or negative surcharge, is reasonable and prudent and should be adopted by the Commission.

F. <u>Annual Calculation C Reconciliation Letter</u>

Staff and the AG recommend that the Commission order DTE Gas to establish a deferred regulatory account to record the excess deferred taxes amortized to expense annually versus the amount estimated in rates, or refunded, with the balance of the account to be reflected in future rates. See Staff Brief p 4; AG Brief pp 34-36. Staff and the AG recommend that the Commission should require DTE Gas to file an annual letter by March 31 of each year until the excess deferred taxes are completely refunded to customers which details the regulatory account activity. Staff and the AG argue that this would ensure that DTE Gas customers receive TCJA benefits and would protect customers and DTE Gas. Staff and the AG recommend the annual letter should include the following for each of the three categories of excess deferred taxes:

(1) The beginning refundable balance;

(2) The yearly amount refunded;

(3) The over/under regulatory asset/liability DTE Gas has recorded, which is calculated as the difference between the actual amount of excess deferred taxes in a given year and the estimated amount refunded or included in rates; and

(4) The ending refundable balance.

See 2 Tr. 177-178; 2 Tr. 200-201.

Staff witness Welke also recommends the over/under regulatory asset/liability should include ADIT that were unrefunded in calendar year 2018. *Id.*

The AG argues that if the Commission does not direct DTE Gas to complete an annual reconciliation of deferred tax amounts then DTE Gas would retain the difference in the amortization amount versus the amount refunded to customers until its next rate case. AG Brief p 40. The AG believes that the lack of an annual reconciliation would result in DTE Gas either under-refunding the excess taxes, to ratepayers' detriment, or over-refunding, to DTE Gas. The AG argues that an annual reconciliation process would provide clarity and transparency and protect ratepayers and DTE Gas by ensuring deferred tax amounts are refunded to customers. Additionally, an annual reconciliation of deferred taxes would allow Staff, to track DTE Gas progress in refunding excess deferred taxes*. Id.*

DTE Gas argues that an annual reconciliation of deferred taxes is not necessary because all parties to DTE Gas future rate cases, through DTE Gas's rate case filings, would receive updated deferred tax amount information. DTE Gas Reply Brief p 21. DTE witness Suchta testified that the accumulation of deferred taxes is based on actual accounting activity, not what has been included in rates over many years. 2 Tr. 76. DTE Gas witness Suchta testified that amortization is dynamic and not static over the duration of the amortization. 2 TR. 78; See Exhibit A-3 6, Schedule C8.1. Witness Suchta testified that if DTE Gas does not file a rate case for an extended period of time, then it will have either a lower or higher amortization amount built into rates than what is being recorded on the books depending on the time period. *Id.* Witness Suchta testified that all parties to future DTE Gas rate cases will receive updated amortization information so there is no need for annual updates. *Id.*

DTE Gas also argues that the annual letter proposed by the AG and Staff is not necessary to track amounts to be filed in future rate cases and the amounts remaining to be returned to rate payers because neither perform any ratemaking or regulatory purpose nor provide information not already provided in rate cases. See DTE Gas Reply Brief pp 20-22. Witness Suchta testified that in U-18999, DTE Gas's last rate case DTE Gas provided a spreadsheet of the rate case model used to calculated rates that included six separate line items, which broke out deferred income tax expense and adjustments to deferred income tax effects. 2 Tr. 78. In future rate cases DTE Gas's Calculation C deferred tax amount information will be provided that includes monthly information from the historical test period through any bridge period and includes the projected test year amounts. DTE Gas argues that these rate case filings would provide interested parties with the information recommended by Staff witness Welke and AG witness Coppola. Id. Therefore, DTE Gas believes that the annual deferred income tax letter proposed by Staff and the AG is not necessary.

I agree with Staff and the AG that an annual reconciliation process would provide clarity and transparency and protect ratepayers and DTE Gas by ensuring deferred tax amounts are refunded to customers. Additionally, an annual reconciliation of deferred taxes would allow Staff, to track DTE Gas progress in refunding excess deferred taxes. Therefore, I find Staff and the AG's proposed annual reconciliation of deferred taxes is reasonable and prudent and recommend the Commission adopt Staff's and the AG's proposal.

V.

CONCLUSION

I find that there is a preponderance of the evidence that DTE Gas's has a $333.7 million regulatory liability which consists of $238,062,000 of Protected Plant ADIT before gross up, $96,247,000 of Unprotected Non-Plant ADIT before gross up and $1.3 million in Unprotected Plant before gross up.

I recommend the Commission exercise its discretion with regard to DTE Gas's Unprotected Non-Plant ADIT and approve the pass-through of TCJA tax benefits to customers by approving a reasonable and prudent amortization period of 10 years or less.

I also recommend that the Commission adopt and approve a reasonable and prudent 34-year amortization period for DTE Gas's Unprotected Plant ADIT.

I find that DTE Gas's proposed capital Structure adjustment is not reasonable and prudent. I recommend the Commission reject DTE Gas's proposed capital structure adjustment and recommend the Commission review changes to DTE Gas capital structure in DTE Gas's next general rate case.

I find the AG's proposal to accelerate the amortization of DTE Gas's TCJA regulatory liability for 2018 and 2019 is neither reasonable nor prudent and recommend the Commission not adopt the AG's proposal.

I find that DTE Gas's proposal to return excess deferred income taxes to customers through revised rates is not reasonable and prudent and should not be adopted by the Commission. Staff's proposal to return Calculation C amounts to DTE Gas customers through a credit, rather than revised rates, is reasonable and prudent and I recommend the Commission adopt Staff's proposal.

I find Staff and the AG's proposed annual reconciliation of deferred taxes through the use of an annual reconciliation latter is reasonable and prudent and recommend the Commission adopt Staff's and the AG's proposal.

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
For the Michigan Public Service Commission

Martin D. Snider

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Date: 2019.06.21 09:51:08 -04'00'

Martin D. Snider
Administrative Law Judge

June 21, 2019
Lansing, Michigan