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

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of DTE Gas Company for approval of a gas cost recovery Plan, five-year forecast, and monthly gas cost Recovery factors for the 12 months ending March 31, 2020	)))))	Case No. U-20235

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 December 5, 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 January 3, 2020, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before January 17, 2020.

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

Dennis W. Mack

Digitally signed by: Dennis W. Mack
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Date: 2019.12.05 15:04:55 -05'00'

Dennis W. Mack
Administrative Law Judge

December 5, 2019
Lansing, Michigan

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

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On December 21, 2018, DTE Gas Company (Company) filed an Application with the Michigan Public Service Commission (Commission) seeking approval of its Gas Cost Recovery (GCR) Plan for the period of April 2019 through March 2020.[1] In general, the Application proposes a maximum base GCR factor of $2.80 per thousand cubic feet (Mcf), along with a contingency factor, and a Reservation Charge of $0.24 per Mcf for Gas Choice Customers and $0.38 per Mcf for GCR customers. The Application also seeks approval of an amendment to the Company's NEXUS pipeline transportation capacity contract, and review of its 5-year forecast.

1 The Application was initially filed with the incorrect case number (U-20236), and on January 4, 2019 the Company filed an Amended Application with the correct case number (U-20235).

Pursuant to due notice, a pre-hearing conference was conducted on February 8, 2019, during which the Company and Commission Staff appeared, and intervention was granted to the Attorney General. During the hearing on July 12, 2019 the Company offered the testimony of the following employees: George H. Chapel, Manager, Marketing Forecasting; Lucian Bratu, Senior Gas Supply and Planning Analyst (Direct and Rebuttal); Sherri M. Moore, Senior Strategist in Regulatory Affairs for DTE Energy Corporate Services, LLC; Timothy J. Krysinski, Principal Project Manager in the Regulatory Affairs Gas Strategy for DTE Corporate Services, LLC (Direct and Rebuttal); and Eric P. Schiffer, Senior Gas Supply and Planning Analyst (Direct and Rebuttal). Through these witnesses the Company entered Exhibits A-1 through A-32, inclusive. The Attorney General entered the testimony of Sebastian Coppola, an independent energy business consultant and President of Corporate Analytics, Inc., and Exhibits AG-1 through AG-14, inclusive, and AG-15, which was entered as Confidential.[2] 2 TR 278. Staff entered the testimony of Nyrhe U. Royal, a Senior Public Utilities Engineer, but did not offer any Exhibits. Under a schedule established during the pre-hearing conference, all the parties filed post-hearing Briefs and Reply Briefs.

II.

LEGAL FRAMEWORK

The Commission has the authority under 1982 PA 304 (Act 304) to "incorporate a gas cost recovery clause in the rates or rate schedule of a gas utility." MCL 460.6h(2). To implement such a clause, the gas utility must annually file a gas cost recovery plan for a 12-month period (Plan Year) that includes, *inter alia*, a proposed gas cost recovery

2 At the Attorney General's request, the record was kept open until July 19, 2019 to provide time to review, and if necessary, respond to, the Company's responses to discovery requests. 2 TR 14-15.

factor and 5-year forecast of its customers' gas requirements. MCL 460.6h(3) & (4). After reviewing the projections and proposals for the Plan Year under several enumerated factors, the Commission determines whether the underlying decisions were reasonable and prudent, and then issues a final order that serves to "approve, disapprove, or amend the gas recovery plan accordingly." MCL 460.6h(6). Concomitantly, the 5-year forecast is evaluated for a determination of whether future recovery is, based on present evidence, unlikely (Section 7 warning). MCL 460.6h(7).

III.

THE APPLICATION

1. GCR Plan

For the Plan Year the Company projects natural gas sales of approximately 156 Bcf to its 1,280,000 GCR customers. Consistent with past practice, if formulating projected sales the Company utilizes a rolling 15-Year normal weather pattern to project demand, and for the Plan Year it calculates the pattern based on actual conditions for the 15-year period between 2003 to 2017. 2 Tr. 24. Next, the Company breaks down its customers by rate class (residential, commercial/industrial and gas choice) and market area to calculate usage per customer per Heating Degree Day for varying temperatures to project demand and forecast sales. Exhibit A-1. The Company has 156,000 gas choice customers, which is 12% of its rate schedule customers, for the Plan Year, with forecasted sales volumes of 28.6 Bcf. Id. The Company also provided a monthly breakdown of its sales volumes and customers for the Plan Year, along with its Design Day Demand and Historical Normalized Sales. Exhibits A-2, 3, 4, 5 & 6. None of the Parties raised any issues concerning the Company's market forecasts, and they should be deemed reasonable and prudent. The Company provided a detailed operating plan that includes normal weather, design day, colder-than-normal protection, warmer-than-normal protection, and storage for the Plan Year, and storage utilization for the 5-Year forecast. Staff takes issue with the Company's supply plan and Design Day relative the extreme weather conditions earlier this year, and its recommendation is addressed below.

The Company's projected supply cost for the Plan Year is $396 million for total delivered supply volume of 128 Bcf. 2 TR 160; Exhibits A-10 and A-14. Mr. Schiffer testified extensively to the Company's methodology and processes of maintaining its portfolio of gas supply, under both short-term and long-term purchasing arrangements, and transportation contracts for the Plan Year. 2 TR 124-157; Exhibits A-7, A-9, A-10 & A-11. The Company proposes a $55 million reservation charge for firm pipeline capacity during the Plan Year, and for the 5-year Forecast. Id., 152; Exhibit A-11. Under a previously approved methodology for its function as a Supplier of Last Resort, the GCC reservation charge is $0.24 per Mcf and the GCR charge $0.38 per Mcf. 2 TR 75-77.

The change to the Company's transportation portfolio for the Plan Year and 5-Year forecast involves its contract with NEXUS. In July 2014 the Company entered into a Precedent Agreement, with subsequent amendments, with NEXUS for transportation of 75MDth/d of natural gas from the Appalachian Basin to the Kensington Receipt point for "a monthly reservation charge of $0.695 per Dth per day of MDQ, plus 1.22% fuel, plus $0.00 per Dth usage charge", for 15 years beginning in 2017. Case No. U-17691, July 7, 2016, Proposal for Decision, pg. 9. At that time, the Company anticipated that it would utilize the Kensington receipt point and the Tennessee interconnect when the pipeline went into service. However, in 2017 the NEXUS in-service date was pushed out to the 3rd quarter of 2018, with the Tennessee interconnect delayed even further. 2 TR 167. In order to access the supply anticipated by the Tennessee interconnect, along with the benefits of added liquidity and shippers in Market Zone 1, the Company began to examine its alternatives. Mr. Schiffer testified that based on the change in circumstances, "[i]n October 2018, DTE Gas successfully negotiated the addition of the Clarington receipt point on the NEXUS contract for the period of November 1, 2018 – October 31, 2022 for an additional $0.15/Dth for 50% of the contracted capacity, or 37.5 MDth/d (Exhibit A-30 October 23, 2018 Negotiated Rate Agreement Adding Clarington Receipt Point)." 2 TR 153. By adding Clarington, located 75 miles south of Kensington, the Company gains access to the Texas Eastern Appalachian Lease (TEAL) which, "when fully operational, will create additional capacity to deliver up to 950 MDth/d of natural gas production from approximately 11 different receipt points in the Appalachian Basin in Texas Eastern's Zone M2 between Berne, Ohio, and Uniontown, Pennsylvania, to the interconnect with NEXUS near Kensington." Id., 154. The Company projects the access to the lower price Texas Eastern's Zone M2 source will result in an estimated $4.8 million net reduction in gas costs over the four-year time frame. Id., 154. Mr. Schiffer broke down those savings as follows:

COG (from COGM 9/17/2018) Case w/ Teal Service 37,500 Dth/d Capacity			
10/18/2018			
			With
			Teal Service
			vs
Period	Nexus Only	W/Teal Service @.15	Nexus Only
N18M19	$ 168,537,143	$ 168,324,074	$ (213,069)
N18O22	$ 1,510,454,091	$ 1,505,653,158	$ (4,800,933)
By Period			
N-D18	$ 67,700,366	$ 67,610,892	$ (89,474)
2019	$ 394,582,754	$ 393,290,218	$ (1,292,536)
2020	$ 369,204,334	$ 367,733,812	$ (1,470,522)
2021	$ 354,321,340	$ 352,716,560	$ (1,604,780)
J-O 2022	$ 324,645,297	$ 324,301,676	$ (343,622)
Total	$ 1,510,454,091	$ 1,505,653,158	$ (4,800,933)

Based on the projected $4.8 million in savings resulting from the 2018 NEXUS Amendment over its 4-year term by virtue of providing access to new suppliers and lower cost supply, the Company seeks a determination that the $0.15/Dth increase is reasonable and prudent.

Under its cost and customer usage forecasts, the Company proposes a maximum GCR factor of $2.80 per Mcf for the Plan Year, along with approval for monthly adjustments due to actual market conditions under a contingent factor matrix. 2 TR 68; Exhibit A-20. The calculation of the GCR factor and the contingent factor matrix utilizes methodology approved previous GCR cases. The Attorney General challenges the costs associated with both the 2014 NEXUS Agreement and 2018 Amendment, along with the Company's approach to proceedings before the Federal Energy Regulatory Commission (FERC) concerning the Tax Cuts and Jobs Act of 2017, PL 115-97, 131 Stat 2054 (TCJA), impact on interstate pipeline rates. Except for these 2 issues, and Staff's suggestion regarding the supply plan and Design Day, all of which are addressed below, no other aspects of the Company's GCR Plan were contested.

2. 5-year forecast

As noted, Act 304 requires the filing and review of a:

> 5-year forecast of the gas requirements of its customers, its anticipated sources of supply, and projections of gas costs. The forecast shall include a description of all relevant major contracts and gas supply arrangements entered into or contemplated between the gas utility and its suppliers, a description of all major gas supply arrangements which the gas utility knows have been, or expects will be, entered into between the gas utility's principal pipeline suppliers and their major sources of gas, and such other information as the commission may require.
> MCL 460.6h(4).

Under this provision, the Company entered its 5-year forecast. Under that forecast the Company identified its anticipated supply sources, projected gas supply costs, and supply contracts entered or anticipated for the period ending in March of 2024. Except for the challenge to the NEXUS Agreement and Amendment raised by the Attorney General, *infra*, no evidence was entered that requires a Section 7 warning for a cost item in that forecast. MCL 460.6h(7).

IV.

CONTESTED ISSUES

1. Attorney General

The Attorney General raises two issues with the Company's GCR Plan and 5-year forecast.

A. NEXUS

The NEXUS Agreement is a 15-year transportation contract effective on

September 1, 2018, for 75,000 Dth/day of daily capacity at a rate of $0.695 per Dth/day at the Kensington receipt point. The Company entered into an Amendment of the Agreement that, as of November 1, 2018, adds the Clarington receipt point over a 4-year period for 50% of its contracted capacity, 37.5 MDth/d, for an additional cost of $0.15/Dth as of November 1, 2018. 2 TR 153; Exhibit A-30. The costs associated with NEXUS will be incurred during the Plan Year and during the 5-year forecast period. Mr. Coppola notes the effect of the Amendment is a shift of 50% of the Company's contracted NEXUS capacity from Kensington to Clarington, resulting additional costs of $2.1 million annually and $8.4 million over the 4-year term of the modification. 2 TR 229. The Attorney General does not seek a specific disallowance for costs associated with NEXUS during the Plan Year, or a Section 7 warning on a cost item, but instead seeks a cost deferral and recovery mechanism be imposed to protect ratepayers if the projected savings are not realized.

In support of the argument concerning the proposed mechanism the Attorney General relies on the analysis of the NEXUS transportation contract undertaken by Mr. Coppola. In his testimony, Mr. Coppola notes that the Company became aware of the Clarington receipt point in 2015, and entered into the modification in 2018, but only disclosed the change in the Application at issue in this case. Id. 230; Exhibit AG-1. Mr. Coppola took issue with the Company's approach to the negotiation of the Amendment, noting it essentially took what NEXUS offered, despite the fact it initially sought the entire 75,000 Dth/day capacity transferred to Clarington for 3 years. 2 TY 232; Exhibit AG-3. Further, while the Company projects net gas cost savings of $4.8 million under the Amendment, Mr. Coppola testified it did not provide specific information on the assumptions relied on to arrive at that amount, leaving those savings as unvalidated, and, "at best, doubtful." 2 TR 231. Along the same lines, Mr. Coppola testified the Company did not provide any substantive basis to support its claim the Amendment's incremental $0.15 per Dth/day fee and corresponding $8.1 million increase in fixed payments under its 4-year term is fair and reasonable. 2 TR 231-230.

To arrive at the savings it claims will result from the Amendment, the Company compared its contracted price with NEXUS to the maximum rate filed for transportation from Kensington to Ypsilanti. Mr. Coppola characterized this comparison as flawed, and contrary to the Company's approach, along with other regulated utilities in Michigan, to bidding for transportation capacity: taking each offered price and selecting the lowest, irrespective of the maximum filed price of the pipeline operator. Id., 234. In addition, Mr. Coppola undertook a comparative analysis, based on Exhibits A-8 and A-11, of both the transportation costs for NEXUS and other pipelines used by the Company and the total cost of gas delivered to the MichCon Citygate over the 5-year forecast period:

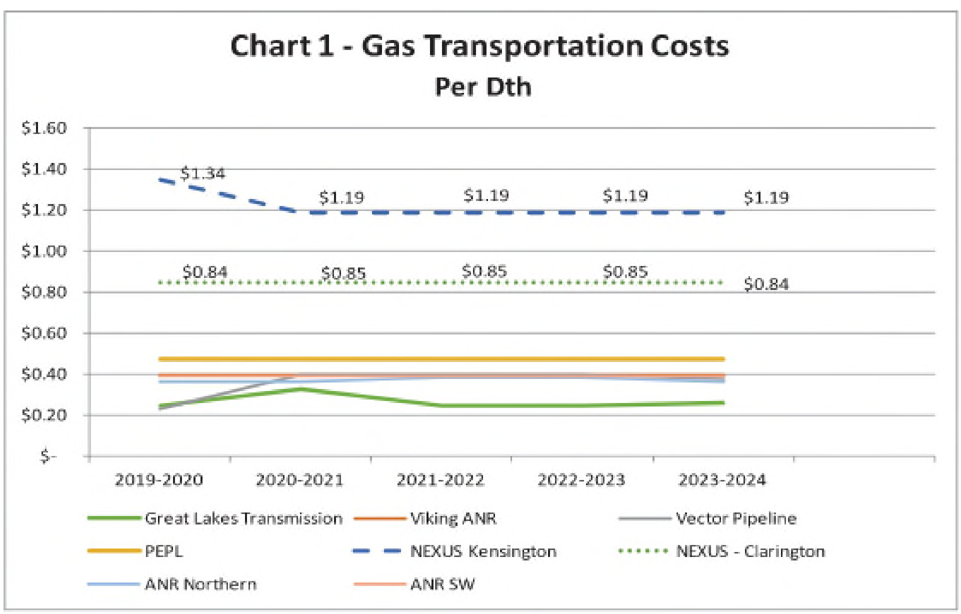

Table 1 - Comparative Delivered Cost of Gas by Pipeline to MichCon Citygate Per Dth

Average Delivered Price	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024
MichCon citygate	$ 2.73	$ 2.38	$ 2.38	$ 2.42	$ 2.49
Great Lakes	$ 3.00	$ 3.21	$ 2.53	$ 2.59	$ 2.85
Viking/ANR Northern	$ 3.15	$ 3.19	$ 2.68	$ 2.74	$ 2.97
Vector	$ 3.00	$ 2.67	$ 2.66	$ 2.71	$ 2.75
Panhandle Field Zone	$ 2.86	$ 2.70	$ 2.71	$ 2.74	$ 2.83
NEXUS - Kensington	$ 3.96	$ 3.35	$ 3.26	$ 3.31	$ 3.38
NEXUS - Clarington	$ 3.36	$ 2.99	$ 2.95	$ 2.98	$ 3.06
ANR Northern	$ 2.99	$ 2.63	$ 2.64	$ 2.69	$ 2.74
ANR SW	$ 2.78	$ 2.58	$ 2.59	$ 2.62	$ 2.71
Price Above (Below) MichCon Citygate					
NEXUS - Kensington	$ 1.23	$ 0.97	$ 0.89	$ 0.89	$ 0.89
NEXUS - Clarington	$ 0.64	$ 0.61	$ 0.57	$ 0.56	$ 0.57

Based on the foregoing, Mr. Coppola testified “the NEXUS pipeline and the gas purchases at Kensington and Clarington provide no benefit to customers over the next five years. Instead, they increase costs to customers.” Id., 237.

Mr. Coppola also notes that the 5-year forecast in this case does not provide the differential in gas prices projected in previous 5-year forecasts, which in prior cases the Company claimed would offset the transportation cost increase for capacity on NEXUS.[3] Mr. Coppola contends that claim is also being advanced to support the reasonableness of the increased transportation costs under the Amendment. However, he notes the Company also indicated that since the 2014 Study, which forms the basis for its contention that the NEXUS costs will be surpassed by lower supply prices, “the environment has changed…”, and the dynamics of the natural gas market preclude a determination on what, if any, the impact on actual gas prices the supply provided by NEXUS will be over the next 5-years. Exhibit AG-5.

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3 See Case No. U-17491, 2 TR 140: “As stated on page 47 of Exhibit A-34, which I sponsor as part of my testimony, “’The savings [to DTE Gas customers] start in the first year of the contract, and generally increase over time.’”

Based on the foregoing, Mr. Coppola contends the increased costs associated with NEXUS relative to the alternatives available to the Company have not resulted in a corresponding offset in lower supply costs and will unlikely do so in the future. This situation will be exacerbated by the increased costs during the 4-year term of the 2018 Amendment. Mr. Coppola also characterized the remaining claims the Company makes to support its contention the NEXUS costs are reasonable, i.e. the tariffs agreed by other customers and the most favored nation clause in its Agreement, as immaterial. 2 TR 238-239. To Mr. Coppola, the reasonableness of the NEXUS costs comes down to "the basic tenants of economic decision making", which is, how do those costs compare with what other pipelines would provide for access to the supply and transportation of it into Michigan. Id., 234. Under this test, Mr. Coppola contends the NEXUS costs are unreasonable.

As noted, Mr. Coppola did not specifically identify a specific disallowance for the costs associated with NEXUS during the Plan Year, or a Section 7 warning that costs in the 5-year forecast are unlikely to be approved in future proceedings. Rather, he proposes the Commission allow the recovery of the costs from GCR customers only upon a showing that the Company is achieving the cost savings of equal or greater value than the NEXUS costs. To that end, the Attorney General proposes a cost deferral and recovery mechanism that would:

> [T]rack the annual value of the price difference between the spot market prices at the MichCon citygate and the spot market prices at Kensington and Clarington, multiplied by the Company's daily gas purchases for each month at the Kensington and Clarington purchase locations. The Company would be able to include in recoverable PSCR costs the lower of the actual NEXUS transportation costs or the value of the MichCon citygate and the Kensington/Clarington price difference. The mechanism would track any unrecovered NEXUS transportation costs from prior years and also any carryover value of the price difference not

> utilized in prior years. In those years where the NEXUS transportation costs exceed that year's price difference value, the Company would be able to recover that shortfall up to the amount of any prior year carryover value. Any carryover value or deferred unrecovered costs would be reset to zero at the end of each five-year period during the term of the NEXUS contract. This reset would avoid the accumulation of large carryover balances over a long period of time.
> 2 TR 241; see also Exhibit AG-6.

Mr. Coppola contends the mechanism would protect GCR customers from the risk that NEXUS will not achieve the cost savings that the Company initially forecasted would result from the Agreement. The Amendment, which increases the NEXUS costs even more, makes that protection even more important. In addition to protecting GCR customers from unreasonable costs, Mr. Coppola contends the mechanism will allow the Company to recover its costs when the savings it projects will result from NEXUS are ultimately realized.

B. Pipeline Pass-Through of Tax Savings

The Tax Cuts and Jobs Act of 2017, PL 115-97, 131 Stat 2054 (TCJA), was signed by the President on December 22, 2017. Included in its provisions was a reduction in the federal corporate tax rate from 35% to 21%, effective January 1, 2018, along with changes implicating current corporate tax expense, along with deferred tax and accounting methods. In response to the TCJA, the Federal Energy Regulatory Commission (FERC) issued a Notice of Proposed Rulemaking on November 31, 2018 for the purpose of determining the impact of the TCJA on intrastate pipeline rates. 2 TR 86-87. On July 18, 2018 FERC issued Order 849 setting forth the procedures for determining whether an intrastate natural gas pipeline's rates are just and reasonable considering the reduction in the corporate income tax rate. The Company intervened and is participating in several of the pending proceedings. Id., 88-91.

The Attorney General takes issue with the Company's level of participation in the FERC proceedings, which Mr. Coppola characterized as "passive" because it is "simply monitoring the situation" as opposed to filing comments or seeking to expediate the proceedings. Id., 243. As a result, GCR customers, who ultimately pay for the transportation services, are not receiving a timely return of the savings resulting from the reduction in the tax rate. As an example, Mr. Coppola cites the NEXUS Agreement and Amendment, for which some portion rate was predicated on the higher pre-TCJA 35% tax rate. Mr. Coppola contends the Company should investigate the possibility of negotiating a lower rate based on the reduction of the pipeline's tax liability. However, the Company notes that under a FERC rule a negotiated rate is not bound by the minimum/maximum recourse rate set in a filed tariff, and thus it has not investigated this possibility, a position Mr. Coppola terms "unacceptable". Id., 245; Exhibit AG-8.

The Attorney General makes numerous recommendations concerning the pass-through of TCJA tax savings under the Company's transportation contracts. First, the Company should be directed to take a more active role, i.e. seeking to expedite, the FERC proceedings that are addressing the effects of the TCJA tax rate reduction. Further, any reductions that are ultimately realized should be returned to customers, and not set aside to offset future rate reductions. The Attorney General also recommends the Commission intervene in the FERC proceedings, or submit comments in them, in order to ensure the timely pass-through to the Company's customers of the savings. Finally, the Commission should alert the Company that going-forward the assessment of the reasonableness of the NEXUS rates will include a close examination of the sharing of the tax rates between those entities.

2. Staff

Ms. Royal's testified Staff reviewed the Application in order to ascertain "any requests for Commission approval; to distinguish between known and projected costs; to determine consistency with past Commission orders; and to assess the reasonableness and prudence of the plan." 2 TR 271. Known costs, which typically arise from determinations in prior cases, are recovered in future proceedings if they are determined to be reasonable and prudent, while projected costs form the origin of the requested GCR base factor and are considered in determining the reasonableness of that factor. Id., 272-273. The Company is not seeking any approval of modeling, or specific inputs/outputs for the projected costs.

Ms. Royal also addressed the NEXUS Amendment. Based on the Company's proofs, Staff agrees the Amendment will provide access to diverse and lower-priced supply from the Appalachian Basin, along with improved reliability and mitigation of price risk. Id., 276. Based on these considerations, including the estimated $4.8 million in savings over the 4-year term projected by the Company, Staff recommends the approval of the Amendment. Id., 276.

Based on its review, Staff does not have any issues with the Company's GCR Plan and 5-year forecast, and recommends the Application be approved. Id., 275-276. However, it recommended the Company update its design day and supply plan considering the 2019 polar vortex event, or in the alternative explain why the current submissions are adequate. Id., 277.

V.

ANALYSIS

1. NEXUS Agreement and Amendment

The NEXUS Agreement is a 15-year transportation contract effective on September 1, 2018, for 75,000 Dth/day of daily capacity at a rate of $0.695 per Dth/day at the Kensington receipt point. The Company entered into an Amendment of the Agreement that adds the Clarington receipt point over a 4-year period for 50% of its contracted capacity, 37.5 MDth/d, for an additional cost of $0.15/Dth as of November 1, 2018. 2 TR 153; Exhibit A-30. In this case, the Company is seeking an approval of the costs arising from the NEXUS Agreement and Amendment during the Plan Year, and a determination those costs are unlikely to be disapproved through the 5-Year forecast process.

The record indicates the Amendment will result in greater regional diversity of supply, and a broader supply portfolio that diminishes potential disruptions and mitigates price risk. 2 TR 153-154. In addition, the Company is an anchor shipper and has a most favored nation provision, thereby ensuring the its negotiated rate is as low as any other NEXUS customer. Id., 158-159. Taken together, the Company contends the Amendment will result in $4.8 million net reduction in gas costs over its 4-year term. Id., 154-155. Staff agrees that based on the Company's projections, the Amendment should be approved. Id., 276.

As noted, the Attorney General did not initially seek a disallowance of the costs associated with the NEXUS for the Plan Year or a Section 7 warning concerning those costs. Rather, the Attorney General's proofs centered on the proposed cost recovery mechanism, with a disallowance only “[i]f the Commission is concerned with mandating such a mechanism without the Company’s direct input….” Id., 243. Based on Mr. Coppola’s testimony, the Attorney General proposed the cost recovery mechanism “[s]hort of disallowing…” or instead of “rejecting outright…” the NEXUS transportation costs. Initial Brief, pgs. 4, 23. However, after the close of proofs and the filing of Initial Briefs, the Attorney General proposed as an alternative to the mechanism that the NEXUS costs be deemed “unreasonable”. Reply Brief, pg. 6. If accepted, the implication of this proposal is the disallowance of the transportation rate as unreasonable in the Plan Year, and a Section 7 warning for the same costs in the 5-year forecast.

The Company identifies the numerous GCR and Power Supply Cost Recovery cases over the past 3 years where NEXUS was litigated and notes that at no point has the Commission issued a Section 7 warning for the transportation costs associated with the Agreement. See Reply Brief, pgs. 2, ns 1 & 2, and 30-34, For example, the Commission held in the Company’s 2018 PSCR Plan case the 2014 decision to enter into the 20-year Agreement was reasonable in light of the circumstances at that time, including the expected long-term benefits, and did not violate the Code of Conduct. See Case No. U-18403, February 7, 2019 Order, pgs. 42-44. As it pertains to a GCR Plan, the Commission characterized the costs under the NEXUS Agreement as “projected and not verified or known costs” that cannot be recovered until they are evaluated in in the “2018-2019 [GCR] reconciliation….” Case No. U-18412, February 7, 2019 Order, pg. 6. These holdings control the review in this case on whether the projected NEXUS costs, including the increased cost under the Amendment, during the Plan Year are reasonable, or whether a Section 7 warning concerning the costs in the 5-year forecast is warranted.

Mr. Schiffer testified the Company's negotiated rate with NEXUS for the Kensington to Ypsilanti transportation path is 15.6% less than the pipeline's maximum rate approved by FERC, which translates to annual savings of $3.5 million. 2 TR 157; Exhibit A-26. That rate is fixed and is currently lower than the variable rates paid by other anchor shippers due to the increases to cover the cost overruns experienced by NEXUS, which Mr. Schiffer termed "significant." 2 TR 158-159. As of the in-service date for NEXUS the Company's negotiated rate was no higher than the rate of any other similarly situated shipper, and if it were the most favored nation provision of the Agreement would adjust the Company's rate down to the lower rate. Id. 159. Based on this evidence, the Company's projected costs under the Agreement during the Plan Year are reasonable, and a Section 7 warning for those costs in the 5-year forecast is unwarranted.

Regarding the Amendment to the NEXUS Agreement, Mr. Schiffer testified the Company is continuously looking for alternative transportation paths to reduce costs, and when one is identified a Landed Cost Analysis (LCA) is performed. Id., 167. In 2017 the Company was advised the in-service date for NEXUS would be delayed until the 3rd quarter of 2018, and the Tennessee interconnect, which would expand liquidity and shippers in Market Zone 1, would be delayed even further out. In the summer of 2018, the Company began finalizing supply purchases for transport on NEXUS, including inquiring about availability and price at the Clarington and Kensington receipt points in order to increase the number of supply sources. Id., 168. An LCA was developed that indicated adding the Clarington receipt point would allow access to more suppliers and lower priced gas, leading to the Amendment, with the $0.15/Dth rate representing "the rounded difference between the maximum rates from Supply Zone (which Clarington is in) and the Market Zone 1 (which Kensington is in)." Id., 169. The Company projects a net cost savings of $4.8 million from the Amendment. Id.

The Attorney General attempts to establish the unreasonableness of the costs under the Amendment through Mr. Coppola's contention the projected savings benefits will prove as fleeting as those projected for the Agreement. As noted, the Company has consistently framed the benefits of NEXUS as long-term based on the access it provides to lower cost natural gas supply from the Appalachian Basin, a benefit that will be enhanced by the increased access to suppliers under the Amendment. However, some of those benefits, such as a reduction in prices and volatility, are beginning to be realized. In support, Mr. Schiffer notes that despite a 1.25 Bcf/d increase in demand over the past winter, prices remained stable, unlike 2014 when similar extreme weather conditions resulted in significant increases in the spot market. Id., 170. The 2.2 Bcf/d volume of supply from the Appalachian Basin available through the increased capacity from NEXUS, along with Rover, has also made up for the 1 Bcf/d reduction in supply volume being transported from the west, which also contributes to supply and price stability. The increase in supply from these pipelines have contributed to the MichCon city-gate index having lower prices as of June 2019 compared to the previous ten years, to the point that the NYMEX premium added to those prices is now a discount for both summer and winter seasons, a trend Mr. Schiffer expects to continue into in the future. Id., 171-172. Contrary to Mr. Coppola's approach of focusing on specific points in isolation, i.e. prices, locations and time, the proper focus is on the market as a whole and the access the Amendment provides to significantly more supply and suppliers, which forms the basis of the Company's projected $4.8 million in savings under its 4-year term. Id., 173.

Based on the foregoing, the NEXUS costs projected during the Plan Year, including the costs incurred under the Amendment, are reasonable. Further, a Section 7 warning for the NEXUS costs projected in the 5-year forecast is not warranted.

This leaves the Attorney General's proposed cost recovery mechanism, which in effect would allow the Company to recover NEXUS costs incurred during the Plan Year only if the savings it projects are realized.[4] As Mr. Schiffer notes, NEXUS is one of many transportation contracts in the Company's portfolio that are acquired and utilized for supply, all of which are provided for the Commission's consideration under Act 304. Id., 178. That consideration entails a determination of whether the projected cost is reasonable under the circumstances, and thus recoverable under Act 304. The Attorney General does not provide any basis to treat the projected NEXUS costs differently than other costs. Further, in proposing the mechanism, Mr. Coppola indicated his recommendation assumes "the Commission has the requisite authority under Michigan law…" to impose it on the Company. 2 TR 241. The Attorney General does not provide what legal authority exists for the mechanism, beyond noting deferred accounting and cost recovery procedures are used for other costs. Exhibit AG-14.

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4 The Attorney General also argues in her Reply Brief that as an alternative to a proposed cost recovery mechanism the NEXUS costs arising from both the Agreement and Amendment be deemed unreasonable, with the effect being non-recovery of the costs during the Plan Year and a Section 7 warning for the costs in the 5-Year forecast. Reply Brief, pg. 6. However, Mr. Coppola recommended these steps only "[i]f the Commission is concerned with mandating such a mechanism without the Company's direct input…." Id., 243. Based on Mr. Coppola's testimony, the Attorney General proposed the cost recovery mechanism instead of "rejecting outright…" the costs under the Agreement and Amendment. Initial Brief, pg. 23.

However, those methods were not imposed in a GCR Plan case, which allows recovery during the Plan Year for costs that are reasonably and prudently incurred. See MCL 460.6h(1)(b), (2) & (6). The Company is correct that it is well settled that under Act 304 the determination is controlled by the circumstances known at the time the cost was incurred, and not in hindsight. See *Attorney General v Public Service Commission*, 161 Mich App 506, 517; 411 NW2d 469 (1987); *Detroit Edison Company v Public Service Commission*, 261 Mich App 448, 452; 683 NW 2d 679 (2004). Consistent with this authority, and as discussed above, the projected NEXUS costs under both the Agreement and Amendment are reasonable for the GCR Plan Year in this case, and a Section 7 warning is not warranted for the projected costs in the 5-year forecast. Because the Attorney General does not provide any factual basis or legal authority to impose the proposed cost recovery mechanism, the recommendation should be rejected.

2. <u>Pipeline Pass-Through of Tax Savings</u>

The Attorney General recommends several steps the Commission should require to expedite a refund of the savings the Company should realize under its transportation contracts based on the reduction in the corporate tax rate. However, as the Company notes, a blanket approach of vigorously litigating every FERC proceeding involving a carrier it has a transportation contract with would be expensive and, in most cases, fruitless. Rather, the Company monitors all rate-related proceedings filed with FERC and the National Energy Board of Canada that could materially affect its customers, and then, as necessary and appropriate, participates in a proceeding. 2 TR 83. Whether it will participate, and if so what form that participation will take, is driven by the level of impact the Company's cost of gas. Id., 86. As it pertains to FERC proceedings regarding the TCJA rate reduction, regulated pipelines filed under a staggered schedule in October, November and December of 2018, and the Company intervened in 3 cases in October of 2018, and 4 cases in December of 2018. Id., 87-91.

The Attorney General does not identify any additional proceedings that the Company should have intervened in, but rather takes issue with the Company's approach and the time it has taken for these cases to be resolved. Regarding the latter, and assuming it is appropriate in a GCR Plan case to dictate the Company's legal strategy in proceedings before a federal regulatory body, filing a motion to expedite does not mean it will be granted. FERC is not required to act in a specific timeframe, nor has it indicated a timeframe it will follow to decide the cases. Id., 103. Having established the process for addressing the issue of the effect of the tax reduction on rates charged on interstate pipelines, it is reasonable to assume that FERC will process and decide the cases in due time irrespective of whether a motion to expedite is filed by the Company. Further, Staff notes that any adjustment to transportation costs resulting from the reduction of a pipeline's federal tax rate will be monitored and returned to customers in future reconciliation cases.

As for the level of the Company's participation in the FERC cases, contrary to the Attorney General's contention the Company is being passive, Mr. Krysinski testified in detail to the status of each case that the Company intervened as a party. Id., 101-102. Given the point in the process where each case is, it is not surprising that the parties to the cases are engaged in ongoing settlement discussions. The Attorney General also requests the Commission direct the Company seek in the FERC proceedings a decision that requires any tax savings be refunded to the pipeline's customers irrespective of any other rate considerations. Staff notes this request is contrary to the methodology established in Order 849. Based on the foregoing, the Attorney General's recommendations concerning the Company's participation in FERC proceedings should be rejected.

The Attorney General also contends the Company should renegotiate the NEXUS Agreement rates based on the TCJA's reduction of the federal corporate tax rate. As a preface, NEXUS went into service after the effective date of the TCJA, so it was not required to file a case with FERC under Order 849. Even if it had, the Company has a negotiated rate with NEXUS, which FERC treats differently than minimum/maximum tariff rates that are subject to change based on an intervening event, such as a reduction in the pipeline's tax rate. Id., 102.[5] The Attorney General also recommends the Commission require the Company enter negotiations for a lower rate with NEXUS based on the TCJA. Assuming again the relief sought is available in a GCR Plan case, the Company is correct in its assertion that NEXUS is unlikely to voluntarily lower its negotiated rates with shippers because its federal tax rate was reduced, just as it is unlikely the shippers would agree to an increase had the situation been reversed and the tax rate was raised.

Based on the foregoing, and as it relates to the Plan Year and 5-year forecast, the enactment of the TCJA is not a basis to find the Company's costs under the NEXUS Agreement and Amendment are unreasonable.

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[5] As stated in Order 849, pg. 159, FERC's "consistent practice…has been to address only the pipeline's recourse rate and not make any modifications in any shipper's negotiated rate…" under the presumption "that a shipper's freely negotiated rate contract continues to meet the just and reasonable requirement…regardless of a reduction in the pipeline's tax costs, absent a particular shipper filing a complaint that presents compelling reasons to initiate an…investigation." Staff's Reply Brief, pg. 6, fn 2.

3. Updated Design Day and Supply Plan

Staff's recommended both these components of the Plan either be updated to account for the 2019 polar vortex event on January 30-February 1, or in the alternative an explanation be provided as to why the current submissions are adequate. Id., 277. An updated supply plan was not submitted because the Company anticipates extreme weather as a matter of course, along with other current and anticipated events that could impact supply, and is continuously refining its operations accordingly. 2 TR 58, 62. As for the design day, Mr. Bratu testified that while market requirements increased slightly on January 30, 2019, it did not reach the point to require a change to the pipeline gas supply portfolio. Id. Under similar conditions in the future, the Company is prepared to meet demand by increasing gas storage deliveries. Id., 51-52. Mr. Bratu testified the Company's ability to meet increased demand by adjusting its supply purchases and storage withdrawals avoided any operational issues during the 2019 event, and there is no reason to believe a different result will occur under future extreme weather conditions. Id., 62-63. Based on this evidence, the Company's supply plan and design day are reasonable.

VI.

CONCLUSION

Based on the foregoing, it is recommended the Commission:

1. Approve a maximum base gas cost recovery factor of $2.80 per Mcf that can be adjusted to a new maximum GCR rate by the monthly NYMEX based contingency factor matrix for the period of April 1, 2019 through March 31, 2020;

2. Approve a SOLR Reservation Charge of an additional $0.38 per Mcf for GCR customers, and a Reservation Charge of an additional $0.24 per Mcf for GCC customers;
3. Finds that Company's 5-Year Forecast of Gas Requirements, Supplies and Costs, and Gas Supply Plan does not include any cost items that future recovery is unlikely; are unlikely to be allowed unlikely to permit DTE Gas to recover in the future;
4. Approve transportation costs of $0.69 per Dth for 75 MDth/d of NEXUS pipeline transportation capacity and the addition of the Clarington receipt point for an additional $0.15 per Dth for 37.5 Mdth/d of existing transportation capacity.

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

Dennis W. Mack

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Dennis W. Mack
Administrative Law Judge

December 5, 2019
Lansing, Michigan