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 Electric Company for approval to implement a power supply cost recovery plan for the 12 months ending December 31, 2019. | ) ) ) ) | Case No. U-20221 |

**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 January 24, 2020.

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 February 14, 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 February 28, 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

Sharon L. Feldman

Digitally signed by: Sharon L. Feldman
DN: CN = Sharon L. Feldman email = feldmans@michigan.gov C = US O = MOAHR OU = MOAHR - PSC
Date: 2020.01.24 10:25:55 -05'00'

Sharon L. Feldman
Administrative Law Judge

January 24, 2020
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 September 28, 2018, DTE Electric Company (DTE Electric) filed its Power Supply Cost Recovery (PSCR) plan under MCL 460.6j for the calendar year 2019. In its filing, the company projected total power supply costs of $1.36 billion for 2019, a $68.7 million underrecovery for the 2018 PSCR year, and sales of 43,540 Gwh. The company proposed a maximum PSCR factor of 1.81 mills ($0.00181) per kWh, over the base factor of 31.26 mills per kWh approved in the company's general rate case. The company's filing included prefiled testimony and exhibits from the following witnesses: Barry J. Marietta, David G. Nick, Shawn D. Burgdorf, Markus B. Leuker, Kevin L. O'Neill, Christopher A. Bence, Ryan C. Pratt, Michael D. Sloan, and Trevor A. Jarrait.

DTE Electric, Staff, the Association of Businesses Advocating Tariff Equity (ABATE), and the Michigan Environmental Council (MEC) attended the December 5,

2018 prehearing conference.[1] At the prehearing conference, the petitions to intervene filed by MEC and ABATE were granted and a consensus schedule was established. On December 6, 2018, the Attorney General also filed a Notice of Intervention, and subsequently participated in this case.[2]

On February 20, 2019, DTE Electric filed revised testimony and exhibits, including testimony from Adam Gamez adopting the testimony initially filed by Mr. Nick. In its revised testimony, DTE Electric revised its estimate of its 2018 underrecovery to $115 million, and revised its requested maximum factor to $0.00410 per kWh.

Following adjustments to the schedule by agreement of the parties, on May 28, 2019, Staff filed the testimony and exhibit of Jing Shi; MEC filed the testimony and exhibits of James F. Wilson, and the Attorney General filed the direct testimony and exhibits of Sebastian Coppola. On July 1, 2019, DTE Electric filed the rebuttal testimony and exhibits of Mr. O'Neill, Mr. Sloan and Mr. Pratt. MEC filed a motion to strike a portion of the testimony of Mr. Pratt on July 7, 2019, and DTE Electric filed a response on July 22, 2019.

At the evidentiary hearing held on July 29, 2019, after oral argument on the motion, the ALJ granted it for the reasons stated on the record. Mr. Pratt and Mr. Sloan testified and were cross-examined on their testimony, while the testimony of the remaining witnesses was bound into the record by agreement of the parties, without the need for them to appear.

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[1] MEC participated by telephone.
[2] It is unclear whether the Notice of Intervention was ever formally acknowledged by the ALJ, but the Attorney General's intervention, without opposition by any party, is hereby acknowledged. Note that the petition was filed on behalf of then-Attorney General Bill Schuette, but Attorney General Dana Nessel is now the named intervenor.

The evidentiary record is contained in 554 transcript pages and 110 exhibits, with official notice taken of Exhibit A-30 from Case No. U-20235, as well as a confidential transcript volume and confidential versions of certain exhibits filed according to the terms of the protective order.[3]

## II.

## OVERVIEW OF THE RECORD

This section reviews the testimony presented by the parties. The arguments of the parties and related portions of the record are discussed in more detail in the discussion section that follows.

### A. DTE Electric

DTE Electric presented the testimony of 9 witnesses, with 3 of these witnesses also presenting rebuttal testimony.

Shawn D. Burdorf is the Supervisor of the Tactical Merchant Analytics Team in DTE Electric's Generation Optimization department.[4] He presented testimony in support of DTE Electric's projected generation expenses for the PSCR year and remainder of the five-year forecast period. His projected costs included emission allowance expense, chemical expense, purchased power expense and MISO market costs. He incorporated the coal, oil and natural gas expense projections sponsored by Mr. Bence and Mr. Pratt, the nuclear fuel cost sponsored by Mr. Jarrait, and the bundled transmission cost sponsored by Mr. Nick. Mr. Burgdorf also explained the non-PSCR-customer sales and transmission adjustments. Mr. Burgdorf testified that the company relied on MISO market forwards for its wholesale energy and capacity price projections,

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[3] See 2 Tr 152-153.
[4] Mr. Burgdorf's testimony is transcribed at 2 Tr 331-358; his qualifications are set forth at 2 Tr 332-335.

and relied on inflation-adjusted current costs for emission allowance price projections. Mr. Burgdorf reviewed the company's projected power generation, including its plan to meet MISO resource adequacy requirements, presenting forecast generation in Exhibit A-11 and net demonstrated capacity in Exhibit A-13, noting that Mr. Jarrait addresses the nuclear generation and capacity forecast for Fermi 2. And Mr. Burgdorf presented an estimate of sorbent costs to meet emission requirements at the company's generating units in Exhibit A-12.

Adam Gamez is Regulatory Compliance Senior Strategist in the Federal Regulatory Affairs department within the Regulatory Affairs organization of DTE Energy Corporate Services, LLC.[5] He presented the projected expenses associated with the DTE Electric's participation in the MISO market in Exhibit A-19. Mr. Gamez explained several of the line item expense components of Exhibit A-19 with reference to specific MISO schedules.[6] He also discussed an open docket before FERC that is expected to revise the authorized return on equity for MISO transmission owners. He testified to his opinion that the projected expenses are reasonable and prudent.

Markus B. Leuker is the Manager of Corporate Energy Forecasting for DTE Electric.[7] Mr. Leuker presented the company's projected sales and system output for the PSCR year and the remainder of the five-year forecast period, shown on an annual basis in Exhibit A-21, on a monthly basis in Exhibit A-22, and separately for bundled and choice customers in Exhibits A-23 and A-24. Mr. Leuker explained the bases of the projections, with supporting information in Exhibits A-25 and A-26. Mr. Leuker testified that DTE Electric is forecasting an average 0.3% decline in temperature-normalized

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[5] Mr. Gamez's testimony is transcribed at 2 Tr 360-373; his qualifications are set forth at 2 Tr 361-362.
[6] See 2 Tr 364-371.
[7] Mr. Leuker's testimony is transcribed at 2 Tr 375-389; his qualifications are set forth at 2 Tr 376-378.

sales over the forecast period, based on increasing customer counts and an overall positive economic outlook, offset by energy waste reduction and increasing distributed generation.[8]

Barry J. Marietta is Manager for Air Quality Services in the Environmental Management & Resources department of DTE Energy Corporate Services LLC.[9] He explained the company's compliance with the Mercury and Air Toxic Standards (MATS) emission limitations, as well as Cross-State Air Pollution Rule (CSAPR) and National Ambient Air Quality Standards (NAAQS). He identified the principal controlled emissions for the generating plants, outlined the company's compliance obligations and plans.

Christopher A Bence is the Manager of Procurement within DTE Electric's Fuel Supply department.[10] He testified to support the company's projections of coal, coke oven gas, blast furnace gas and petcoke expenses in Exhibit A-14. Mr. Bence explained that the cost projections are based on the fuel requirements supported by Mr. Burgdorf. For coal costs, he testified that the cost projections are based on existing coal and transportation contracts, forward market prices, and forecasted transportation rates. Mr. Bence explained the company's plans to obtain coal through a combination of contract and spot-market purchases and reviewed some of the assumptions underlying the company's projections.[11] He presented a list of the company's long-term coal contracts in Exhibit A-15. Mr. Bence testified that the cost of No. 2 fuel oil was projected based on futures prices and expected transportation costs. He also explained

[8] See 2 Tr 381-382.
[9] Mr. Marietta's testimony is transcribed at 2 Tr 391-401; his qualifications are set forth at 2 Tr 392-394.
[10] Mr. Bence's testimony is transcribed at 2 Tr 403-414; his qualifications are set forth at 2 Tr 404-406
[11] See 2 Tr 409-412.

the company's agreement with DTE Energy Services for coke oven and blast furnace gas for use at the River Rouge plant.[12] And he explained the company's plan to use pet coke at the Monroe plant. Mr. Bence provided his opinion that the company's plans provide for reliable supply and are reasonable and prudent.

Trevor A. Jaraitt is Staff Engineer – Nuclear Engineering within the Reactor Engineering Workgroup at DTE Electric.[13] Mr. Jaraitt presented the company's nuclear fuel expense forecast in Exhibit A-20. He explained the eight steps in the nuclear fuel cycle, and the company's contracts for uranium supply, fabrication, and enrichment.[14] He testified that the company's fuel cost projections for its Fermi 2 nuclear plant are based on reasonable operating assumptions for the five-year forecast period, including an increase in the core operating cycle beginning in 2022, attributable to a new advanced fuel type.[15] He also discussed the software program the company uses to project fuel costs.[16] He testified to his opinion that the projected fuel expenses are reasonable and prudent.

Kevin L. O'Neill is Principal Project Manager in the Regulatory Affairs department of DTE Energy Corporate Services LLC.[17] Mr. O'Neill presented the calculation of the PSCR billing factors for 2019 in Exhibit A-1, along with a calculation of the average PSCR billing factors for the remainder of the five-year forecast period in Exhibit A-2, stated relative to the base of 31.26 mills per kWh approved in Case NO. U-15244. He explained that the 2019 PSCR cost projections used in the calculations include the

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[12] See 2 Tr 412-413.
[13] Mr. Jaraitt's testimony is transcribed at 2 Tr 415-428; his qualifications are set forth at 2 Tr 417-418.
[14] See 2 Tr 419-422.
[15] See 2 Tr 423-424.
[16] See 2 Tr 424-427.
[17] Mr. O'Neill's testimony, including his rebuttal testimony, is transcribed at 2 Tr 305-329; his qualifications are set forth at 2 Tr 306-310.

power supply costs presented in Exhibit A-3 by Mr. Burgdorf, the projected 2018 underrecovery of $115.4 million as shown in Exhibit A-46,[18] and the projected voluntary green power program energy and capacity credits. He also explained that the net system requirement underlying the factor calculations are based on Mr. Leuker's forecast, and the loss multiplier underlying the factor calculations is the value approved in Case Nos. U-15244 and U-18255.[19] Mr. O'Neill also identified the PSCR factor DTE Electric implemented in January 2019, and the factor it proposed to implement in July 2019.

Mr. Sloan is Managing Director of Natural Gas and Liquids Advisory Services for the consulting firm ICF Resources, LLC (ICF).[20] After describing the NEXUS pipeline and the development of the Marcellus/Utica natural gas producing region, Mr. Sloan presented his firm's 2015 evaluation of the impact of NEXUS pipeline on Michigan energy markets (the 2015 ICF Report), as Exhibit A-27. This report includes his estimate of the impacts of the additional pipeline capacity created by the NEXUS pipeline based on ICF's natural gas forecasting model. He presented ICF's forecast that the increased pipeline capacity will increase prices in the Appalachian basin and decrease prices in most Michigan markets. Focusing on the expected availability of cheaper natural gas in Michigan not transported on the NEXUS pipeline, Mr. Sloan forecast that the benefit to all Michigan customers, including residential, commercial and industrial end-users and electric power producers, would be $3.1 billion over the

[18] He explained that the revised version of Exhibit A-1 admitted into evidence in this case includes the estimated 2018 underrecovery of $68.7 million as of the time of the filing, and the separately stated additional underrecovery of $46.7 million based on the company's 2018 PSCR reconciliation filing in Case No. U-20203.
[19] See 2 Tr 318-321.
[20] Mr. Sloan's testimony, including rebuttal and cross-examination, is transcribed at 2 Tr 192-301; his qualifications are set forth at 2 Tr 197-199 and 222-230.

20-year study period, with a net present value of $1.3 billion.[21] Separately quantifying the expected benefit to DTE Electric customers from the availability of lower-cost gas at Kensington in comparison to MichCon city prices, to be transported on the NEXUS pipeline, he forecast a benefit of $79 million over the 20-year study period, with a net present value of $22 million.[22]

Mr. Sloan identified "fundamental changes" in the natural gas market since the 2015 ICF Report, including changes that either increased or decreased pipeline capacity from the Marcellus/Utica region, the growth in production from that region and other supply areas, increased liquid natural gas (LNG) exports and exports to Mexico, stronger growth in demand for electric generation, and lower prices at all major hubs.[23] Mr. Sloan also provided his opinion on the market impacts of some of these changes. He testified that increased pipeline capacity from the Marcellus/Utica region would likely lead to higher prices in that region in the short term, but would then lead to increased production, reducing prices again.

Mr. Sloan testified that DTE Electric did not ask ICF to update the 2015 ICF report, but did request an updated forecast of the price differential between Kensington and the MichCon citygate. He presented in Figure 2 at 2 Tr 217 a chart showing the projected spread generally increasing from 2018 to 2038 in both real and nominal terms. He testified that ICF is projecting a modest increase in the average basis differential from the $0.92 per dekatherm (dth) used in the 2015 ICF Report to $1.05 per dth, lower in the near term and higher after 2020 relative to the 2015 ICF Report

[21] See 2 Tr 205-206.
[22] See 2 Tr 208.
[23] See 2 Tr 208-215.

value.[24] He testified that Mr. Pratt used this revised price spread along with ICF's 2018 "base case" forecast to generate the increase in projected savings to DTE Electric customers from $79 million in the 2015 ICF report to $178 million. Mr. Sloan also testified that the forecasted increase in production from the region drives the need for additional pipeline capacity, and that "the basis out will need to be sufficient to support increased pipeline development."[25]

Mr. Sloan also acknowledged that the 2018-2022 gas futures curves reflect a lower basis than reflected in the current ICF forecast. He testified that the forward strips reflect current market consensus, not a forecast of future price spreads. He also viewed the futures market as an opportunity for hedging, and stated "there is little liquidity" beyond the 12-24 month contracts.[26]

Ryan C. Pratt is Supervisor for Planning and Procurement, within the Fuel Supply Department of DTE Electric.[27] Mr. Pratt presented the company's forecast natural gas expense for the PSCR year and five-year plan period, shown on Exhibit A-14, including a discussion of the company's natural gas requirements and procurement strategies. He testified that gas cost projections are based on NYMEX futures prices for the MichCon citygate, Dawn, and Dominion South hubs, plus forecast transportation costs. Mr. Pratt stated that the company's projected plan year costs of $73 million are expected to remain relatively constant until the 1,110 MW Blue Water Energy Center begins commercial operations in 2022, with a 34 MW Combined Heat and Power (CHP)

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[24] See 2 Tr 215-218.
[25] See 2 Tr 219.
[26] See 2 Tr 219-220.
[27] Mr. Pratt's testimony, including rebuttal and cross-examination testimony, is transcribed at 2 Tr 61-191, with the confidential version of his rebuttal testimony in the confidential record; his qualifications are set forth at 2 Tr 67-68.

plant located at a Ford Motor Company site (the Ford CHP) expected to begin operations in 2020.

Mr. Pratt testified that the Blue Water plant is ideally located near three large natural gas transmission lines and several gas storage facilities. He stated that DTE Electric intends to contract for the construction and operation of a lateral to connect the plant to nearby transmission lines, and to contract for firm gas transportation and storage.[28] He also noted that natural gas hubs upstream at MichCon and downstream at Dawn provide markets for a portion of the required natural gas supplies. He stated that DTE Electric intends to purchase gas "in supply basins or at nearby market hubs."[29] He estimated gas supply expenses in the first full year of operation of the plant would be $226 million for approximately 54 million MBtu, with additional annual costs of $15.4 million for the pipeline lateral and transportation, and $4.5 million for storage.[30]

For the Ford CHP, Mr. Pratt testified that DTE Electric intends to contract with DTE Gas to extend its system to the plant, and to take service under the gas utility's XLT transportation tariff. He also stated that DTE Electric proposes to recover through the PSCR clause the fuel costs associated with electric sales to the MISO market, but not the fuel costs of serving the Ford CHP.[31]

Mr. Pratt discussed the company's NEXUS pipeline agreements, which are included in Exhibits A-28 through A-37, A-39, A-43 and A-44.[32] He testified that NEXUS Gas Transmission, LLC is a joint venture between a DTE Electric affiliate, DTE Gas Storage & Pipelines, and an Enbridge, Inc. affiliate, Spectra Energy Partners, LP. See

[28] See 2 Tr 72-73.
[29] See 2 Tr 74.
[30] See 2 Tr 74-75.
[31] See 2 Tr 76-77.
[32] See 2 Tr 79-81, 87-88.

2 Tr 77. Mr. Pratt testified that DTE Electric expected to begin taking service from the pipeline on October 1, 2018,[33] although in his revised direct testimony, he also stated that service began on November 1, 2018, after October 2018 amendments to the pipeline agreements.[34]

The October 2018 amendments added a receipt point at Clarington (south of the Kensington, Ohio receipt point provided for in the agreements prior to this amendment) for half of the 30,000 dekatherm-per-day (dth/day) contract capacity or 15,000 dth/day, for four years of the 20-year contract term. The Clarington receipt point includes transportation on the Texas Eastern Appalachian Lease (TEAL) pipeline, which runs between Berne, Ohio and Uniontown, Pennsylvania and interconnects with the NEXUS pipeline at Kensington. NEXUS leases the TEAL pipeline from Enbridge Energy Services. He testified that for transportation from the Kensington receipt point, DTE Electric pays $0.695 per dth/day plus 1.32% fuel, while it pays an additional $0.15 dth/day and 0.6% fuel for transportation from Clarington.[35]

In support of the reasonableness and prudence of the company's projected costs associated with this pipeline, Mr. Pratt testified to the review that ICF performed in 2015, as described in Mr. Sloan's testimony, identifying savings of $79 million over a 20-year period for NEXUS deliveries, and identifying savings of $271 million over the same time period attributable to gas purchases from other sources. He also testified that based on ICF's 2018 gas forecast, DTE updated the savings estimate for NEXUS deliveries to $178 million over the 2018-2038 time period, presenting his calculation in Exhibit A-

[33] See 2 Tr 79.
[34] See 2 Tr 87. Since Mr. Pratt revised his testimony following the October 2018 amendments, it is inexplicable why he left erroneous statements in that testimony.
[35] See 2 Tr 90.

17.[36] He also calculated additional savings of $2.4 million over the four-year term of the October 2018 TEAL amendments based on his estimate of lower cost gas available at Clarington relative to Kensington.[37] He presented FERC tariffs for the pipeline services in Exhibit A-45, testifying that the rates DTE Electric pays are below the tariff rates and lower than rates paid by some anchor shippers.[38]

B. Staff

Jing Shi is a Public Utilities Engineer in the Act 304 Sales and Forecasting Section of the MPSC's Energy Operations Division.[39] Ms. Shi explained Staff's review of DTE Electric's filing. Ms. Shi testified that Staff believes DTE Electric's 2019 PSCR plan is consistent with prior plans, and she presented a table comparing cost elements and sales projections from the company's 2018 plan with its 2019 plan.[40] She testified that key differences include an increase in generation and fuel costs, a decrease in net purchased power, an increase in bundled transmission costs, and a projected underrecovery for 2018 in contrast to the overrecovery included in the 2017 plan. She testified that Staff found the proposed 2019 PSCR factors reasonable and prudent.[41] She also testified that Staff believes the voluntary green program costs should be included in the PSCR plan, citing the Commission's order in Case No. U-18076.[42] Turning to the projected NEXUS Gas Transmission costs, Ms. Shi cited the Commission's February 7, 2019 order in Case No. U-18403 finding the agreements reasonable and prudent at the time they were made. She indicated that DTE Electric is

[36] See 2 Tr 82-84.
[37] See 2 Tr 87-88.
[38] See 2 tr 90-91.
[39] Ms. Shi's qualifications are set forth at 2 Tr 433-435; her testimony is transcribed at 2 Tr 432-445.
[40] See 2 Tr 439
[41] See 2 Tr 442.
[42] See 2 Tr 442-443.

requesting approval of modifications to the agreement, and testified that Staff finds the modifications reasonable because it allows the company to gain access to additional supply sources for fuel diversity, with a projected cost savings of $2.4 million over four years.[43]

C. Attorney General

Sebastian Coppola is an independent business consultant; his qualifications are summarized in his testimony and Attachment A to that testimony.[44] Mr. Coppola addressed the projected capacity costs associated with the NEXUS Gas Transmission agreements. In his opinion, DTE Electric has not adequately supported the modifications to its transportation capacity agreement because it has not shown that if fully explored all available options to transport Marcellus/Utica gas into Michigan at the least possible cost. He further testified that DTE Electric is projecting gas costs to increase significantly over the five-year plan period, and Mr. Coppola attributed this increase to the company's decision to contract for gas transportation capacity with NEXUS.

In formulating his recommendations on behalf of the Attorney General, Mr. Coppola reviewed the testimony of Mr. Pratt and Mr. Sloan. He characterized this testimony as largely mirroring the testimony they filed in the company's 2018 and 2017 plan cases, Case Nos. U-18403 and U-18143, and the testimony they filed along with another witness in the 2016 plan case, Case No. U-17920. Mr. Coppola testified that an affiliate of DTE Electric, DTE Gas Storage & Pipeline Company, owns 50% of the 250-mile NEXUS pipeline project, and Sparta Energy, a subsidiary of Enbridge, Inc., owns

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[43] See 2 Tr 444-445.

[44] Mr. Coppola's testimony, including Attachment A, is transcribed at 2 Tr 450-506, with a confidential version of his testimony in the confidential record.

the remaining 50%.[45] He testified that the pipeline has the capacity to transport 1.5 Bcf per day to markets in Ohio, Michigan, and Ontario, and that DTE Electric's proposed purchase of 75,000 dth/day represents only 5% of this capacity.[46] After reviewing the terms of the company's agreement and the company's projected savings, Mr. Coppola testified that although DTE Electric has substantially increased its projected direct savings to PSCR customers over the 20-year contract term—from the $79 million projected in the company's 2018 PSCR plan to the $178 million reflected in Exhibit A-17—DTE Electric's current five-year plan reflects an increased cost of $38.3 million, which is above the $19.3 million the company estimated in its 2018 plan case.[47] Mr. Coppola testified: "At least over the next five years, the cost savings projected by the Company over the life of the NEXUS contract are not materializing and in fact are going in the opposite direction."[48]

Mr. Coppola reviewed the recent revisions to the NEXUS agreements, adding a receipt point at Clarington for an additional charge of $0.15 per dth for 15,000 dekatherms of the 30,000-dekatherm daily quantity previously reserved at the Kensington receipt point. He took issue with Mr. Pratt's focus on the cost of transportation from Clarington to Kensington as only $0.15 per dth/day, viewing the total cost for transportation from Clarington to Michigan of $0.845 per dth/day as the more significant figure.[49] Mr. Coppola calculated a $3.3 million the cost of the four-year term of the contract amendment. Mr. Coppola objected that the October 2018 contract extension took effect in the prior PSCR plan year, November 2018, without review in the

[45] See 2 Tr 457.
[46] See 2 Tr 457-458.
[47] See 2 Tr 459.
[48] See 2 Tr 459.
[49] See 2 Tr 460-461.

plan case for that year.[50] He presented a discovery response from DTE Gas Company as Exhibit AG-1 to show that DTE Gas Company was aware of the change in receipt point since 2015:

> Mr. Pratt's explanation on page 23 of his revised direct testimony, that the gas production area around the Clarington receipt point has been more prolific since 2014 and thus made the new receipt point attractive, is not a convincing argument to justify not previously disclosing this receipt location and the increased cost, particularly in light of the DTE Gas discovery response.[51]

Mr. Coppola also testified that NEXUS leased TEAL capacity from its other parent corporation, Enbridge, and characterized the DTE Electric contract revision as "another affiliate company transaction designed to help NEXUS market the additional capacity it has leased from TEAL."[52] Mr. Coppola objected that the utility's estimated $2.4 million savings over the four-year contract term are not likely to materialize, citing information in a confidential discovery response contained in Exhibit AG-2.[53] As the last ground of his objection, after reviewing Mr. Pratt's testimony and DTE Gas Company's discovery response from Case No. U-20235, included in Exhibit AG-4, Mr. Coppola concluded that DTE Electric had failed to support that the incremental $0.15 per dth/day cost is fair and reasonable.

In formulating his recommendation, Mr. Coppola referenced the company's projected streams of costs and benefits in Exhibit A-18 in support of his testimony that the DTE Electric is asking customers to pay higher costs for several years with no

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[50] See 2 Tr 461.
[51] See 2 Tr 462.
[52] See 2 Tr 462.
[53] See 2 Tr 463-466.

offsetting savings.[54] In an extensive further analysis, he explained his concerns with the company's projected savings.[55]

Mr. Coppola objected that DTE compared the rate it pays for transportation on the NEXUS pipeline with the maximum filed rate, and did not compare it to transportation costs on other pipelines, from Marcellus/Utica or other basins. He stated that the transportation cost per dekatherm DTE Electric pays is the highest of any pipeline DTE Electric has access to, citing Exhibit AG-5.[56] He also noted that DTE Gas had reduced the projected price spread for gas at the Kensington receipt point compared to the MichCon citygate below that assumed in Mr. Sloan's analysis, citing Exhibit AG-6.[57] Mr. Coppola also concluded that DTE Electric has not justified the need for 30,000 dth/day in capacity, citing Exhibit AG-7.[58]

Mr. Coppola testified that the cost savings DTE projects for future years are overstated because they are premised on the assumption that prices for gas from the Marcellus/Utica region will be significantly lower than prices in other basins, characterizing this as not a credible scenario. He cited DTE Electric's acknowledgement that the NEXUS agreements carry a net cost to ratepayers over the five-year period 2019-2023 as shown in Exhibit A-18. Mr. Coppola also takes issue with the company's use of market price forwards taken on a single day to capture the price difference between the MichCon citygate and Dominion South as proxy for the Kensington receipt point. Mr. Coppola revised the calculations in Exhibit A-18 using November 12, 2018 market data and presenting the results in Exhibit AG-8 and AG-9,

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[54] See 2 Tr 467-468.
[55] See 2 Tr 470-486.
[56] See 2 Tr 470.
[57] See 2 Tr 472-473.
[58] See 2 Tr 475.

extended over a 10-year time period. He testified that his analysis shows a cost increase of $64 million over that period, whereas the original ICF analysis in Exhibit A-17 projected cost savings of $50 million over that same time period.[59] He testified:

> As sophisticated as the ICM GMM employed by Mr. Sloan may be, the model cannot predict with any reasonable degree of certainty what gas prices will be 20 years from now. The gas market in North America is extremely complex and ever-changing. Even gas price forecasts of less than three years are highly speculative, not to mention a 20-year forecast which is trying to predict regional price differentials in a production area . . . that is not yet fully developed or understood.[60]

In his opinion, "the collective view of gas market participants reflected in the over-the-counter and traded gas futures is a more reliable basis of future prices than the prices generated from the forecast model employed by ICF."[61]

While Mr. Coppola characterized as speculative the company's assertion that future lower gas prices will more than offset the higher transportation capacity costs paid to NEXUS Gas Transmission, he recommended that the Commission put in place a mechanism to track both NEXUS capacity costs and actual gas cost savings at both Kensington and Clarington, and permit DTE Electric to recover capacity costs only as savings materialize. He further described this mechanism:

> 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

[59] See 2 Tr 482-483.
[60] See 2 Tr 483.
[61] See 2 Tr 284.

> contract. This reset would avoid the accumulation of large carryover balances over a long period of time.[62]

Mr. Coppola also clarified that the Commission could terminate the mechanism at any time if it determines sufficient cost savings have already accrued, and that DTE Electric should be permitted full future recovery of NEXUS costs.

Mr. Coppola presented Exhibits AG-1 through AG-11 in support of his testimony.

D. MEC

James F. Wilson is an economist and independent consultant with the firm Wilson Energy Economics.[63] In his testimony, Mr. Wilson also took issue with the company's agreements with NEXUS. He testified that during the first six months of the pipeline's operation, there was no benefit to DTE Electric utilizing the pipeline for gas supply because gas prices were lower in Michigan. He testified that although 14% of the gas supply to DTE Electric's plants came from the NEXUS pipeline, DTE Electric has acknowledged that the net cost of the pipeline to PSCR customers will be $39 million over the five-year plan period.[64] He testified that DTE Electric's projections that net savings to customers will materialize over a 20-year period is unlikely and that losses are likely to continue indefinitely. After explaining the general basis for his conclusion, Mr. Wilson presented an analysis updating the analysis DTE Electric relied on, showing a net cost over the life of the contract of $145 million. He recommended that the Commission deny DTE Electric recovery of the net cost of the NEXUS capacity for the plan year, as shown in Exhibit A-18.[65]

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[62] See 2 Tr 487.
[63] Mr. Wilson's qualifications are set forth at 2 Tr 511-512, and in his curriculum vitae in Exhibit MEC-1; his testimony is transcribed at 2 Tr 509-551, with a confidential version in the confidential record.
[64] See 2 Tr 517.
[65] See 2 Tr 519-520.

In his analysis for MEC, Mr. Wilson presented Exhibits MEC-2 and MEC-3 to show that over the first six months of the pipeline's operation, daily spot prices were lower at the MichCon citygate than at Kensington on all but 19 days. He presented Exhibit MEC-4 to show that for receipts from Clarington, prices were generally though not always lower than MichCon citygate prices, but price differentials were significantly below the NEXUS pipeline reservation cost.[66] Mr. Wilson reviewed long-term contracts between NEXUS and other shippers, testifying that 69% of the pipeline capacity is currently under long-term contracts, and only 45% of the pipeline capacity reflects contracts with non-affiliates.[67] Mr. Wilson identified two recent developments affecting the value of the pipeline, a slower rate of increase in the production from the Marcellus/Utica supply basin, and increased development in other North American supply regions. He presented Exhibits MEC-7 through MEC-11 to show that the ICF forecasts relied on by DTE Electric have missed or failed to capture these effects.[68] Mr. Wilson also presented an updated analysis in Exhibits MEC-12 and MeC-13, using the approach in Exhibits A-17 and A-18 with revised forward prices.[69] Based on this analysis, he concluded that the NEXUS agreements are expected to impose a net $145 million cost on ratepayers over the 20-year contract term.[70] Mr. Wilson further explained his reliance on forward prices as reasonable in lieu of the ICF forecast.[71] Mr. Wilson also testified that the uncertainty and risk around the basis estimates incorporated his analysis are asymmetrical, in that there is greater risk the basis will be

[66] See 2 Tr 519-525.
[67] See 2 Tr 526-528.
[68] See 2 Tr 531-538.
[69] See 2 Tr 540-542.
[70] See 2 Tr 542.
[71] See 2 Tr 543-544.

lower than higher, while he characterized the basis differentials reflected in the ICF forecast as “unstable”, explaining that such differentials should not be expected to persist:

> High basis over a path creates incentives for market participants to seek alternate paths for their deliveries, and/or to support expanded capacity over the path, and/or to support increases in takeaway capacity from the origin point, and/or to support increased deliverability to the destination point, and/or to reduce development of new supplies at the origin point and shift production to other, more promising supply regions.[72]

Addressing the affiliate relationship between DTE Electric and NEXUS, Mr. Wilson presented an analysis of the market price for the NEXUS transportation service, in order to apply the price cap in the Commission’s Code of Conduct, referencing his analysis in Exhibits MEC-12 and MEC-13. Although he discussed alternatives for DTE Electric to supply its plants, he testified:

> Because the NEXUS contract does not result in net benefits to DTE Electric’s customers, and the capacity is not needed at this time or anytime soon, there is no need to compare it to other specific long-term alternatives.[73]

He also discussed comparisons Mr. Pratt presented regarding the terms reflected in DTE Electric’s agreements versus that of other shippers, and did not find the comparisons sufficient to justify the agreements.[74]

E. Rebuttal

DTE Electric was the only party to present rebuttal testimony.

In his rebuttal testimony, Mr. O’Neill addressed Mr. Coppola’s recommendations for a tracking mechanism to match NEXUS cost recovery to demonstrated savings. Mr. O’Neill objected to the use of a mechanism given that PSCR costs are reconciled, and

[72] See 2 Tr 545.
[73] See 2 Tr 547.
[74] See 2 Tr 549-551.

given the reasonableness and prudence reviews that take place. Mr. O'Neill also opined that the proposed mechanism contradicted prior Commission determinations regarding the utility's NEXUS agreements.[75] Mr. O'Neill stated that he interpreted the proposed tracker to foreclose recovery of past cost excluded in prior periods when anticipated future savings materialize. He characterized this as "shortsighted."[76]

In his rebuttal testimony, Mr. Pratt objected that Mr. Coppola and Mr. Wilson raised many of the same arguments presented in the company's 2016, 2017, and 2018 PSCR plan cases,[77] and disputed that DTE Electric had failed to justify the reasonableness and prudence of its agreements with NEXUS.[78] He directly addressed DTE Electric's need for firm gas transportation capacity, and disputed that DTE Electric did not consider alternatives at the time it entered into the NEXUS agreement.[79] Mr. Pratt reiterated his direct testimony regarding the ICF forecast, Exhibit A-27, and the company's July 2014 analysis of alternatives in Exhibit A-38. Mr. Pratt also reiterated his contention that $271 million in gas savings will accrue to DTE Electric in addition to the savings it associates with gas that will be transported on the pipeline, citing Exhibit A-16, and stated his belief that the pipeline would not have been built without DTE Electric's commitment.[80] Mr. Pratt deferred to Mr. Sloan's rebuttal to address claims that the ICF forecast gas cost price differential is overstated. He disputed Mr. Coppola's and Mr. Wilson's reliance on forward prices, and objected to any reliance on analyses performed five years after the company's commitment was made.[81]

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[75] See 2 Tr 326.
[76] See 2 Tr 327-328.
[77] See 2 Tr 94-95.
[78] See 2 Tr 110.
[79] See 2 Tr 95-97.
[80] See 2 Tr 98-99.
[81] See 2 Tr 100-101.

Addressing Mr. Coppola's testimony regarding the TEAL amendment, he disputed that his focus on the incremental cost of the amendment was misleading,[82] but agreed with Mr. Coppola's computation of a total cost of $3.3 million associated with the amendment rather than Mr. Wilson's computation of $4.1 million. In Mr. Pratt's view, the total impact of the TEAL amendment is de minimis,[83] but he objected to characterizing the benefits as "fleeting."[84] Mr. Pratt also agreed with Mr. Coppola that DTE Electric had been aware of the Clarington receipt point as an option for some time, but stated that DTE Electric did not decide to purchase capacity at that receipt point until 2018.[85] Mr. Pratt reviewed the price quotes DTE Electric solicited before entering into the TEAL amendment.[86] He also presented in Exhibit A-48 a revised version of calculations Mr. Coppola included in Exhibit AG-3, disputing Mr. Coppola's conclusion regarding DTE Electric's utilization of the pipeline.[87] Mr. Pratt acknowledged that there was no specific basis on which the rate for the Clarington receipt point was determined, but testified that it was a product of negotiation and lower than the tariff rate.[88]

In his rebuttal testimony, Mr. Sloan took issue with Mr. Wilson's critique of the ICF forecast, characterizing the company's underlying assumptions regarding increased production levels from the Marcellus/Utica area as realistic:

> ICF believes that the recent slowdown in production is a temporary phenomenon and the production is expected to rebound as there is an abundant amount of cheap shale gas resource in the Marcellus and Utica that can be recovered at the current natural gas prices. Moreover, the drilling and technology improvements in the region are likely to continue as producers have many years of experience drilling and producing shale

[82] See 2 Tr 101.
[83] See 2 Tr 102.
[84] See 2 Tr 104.
[85] See 2 Tr 103.
[86] See 2 Tr 104-105,
[87] See 2 Tr 105-106.
[88] See 2 Tr 107.

> gas from the area. As shown in Figure 1, production already started to rebound from March and ICF expects the production to continue to rebound to reach 32.3 Bcfd by December, an increase of 2.3 Bcfd from December 2018 with average annual production of 31.1 Bcfd in 2019.[89]

He also presented recent data on well drillings to show that they have rebounded from a December 2018 low.[90]

Acknowledging that there have been several pipeline additions to transport gas from the Marcellus/Utica area, and that the historical price spread dropped significantly when these projects came online, Mr. Sloan testified that the ICF forecast expects pipeline capacity to further increase. He testified that nonetheless, ICF's 2018 base case shows Dominion South Point prices increasing over time, "belying Mr. Wilson's assertion that Marcellus/Utica prices are depressed in ICF's analysis."[91] He testified that as new capacity is added, it is likely that prices will increase in the near term, but those increases will spur additional production, reducing prices again "as production catches up with pipeline capacity."[92] He also testified that new pipeline projects that have been announced for the region have faced delays at the state level, which he believes will increase the value of the NEXUS pipeline over time. Addressing the futures market prices through 2022, Mr. Sloan testified:

> In the short term, the forwards strip provides both buyers and sellers the opportunity to hedge gas sales prices, or lock in gas purchase prices. However, they are subject to significant shifts over time as market conditions change, and as the perceptions of market conditions change. The market consensus reflected in the forward strip is based on a number of factors, including the market expectations regarding the impact of the completion of NEXUS and Rover pipelines on basis into the Midwest, and on the completion of other pipeline projects exiting the Marcellus/Utica.[93]

[89] See 2 Tr 234-235.
[90] See 2 Tr 235-236.
[91] See 2 Tr 238.
[92] See 2 Tr 239.
[93] See 2 Tr 241.

He further disputed Mr. Wilson's reliance on and use of forward prices, characterizing forward prices as "a risk management tool rather than a forecast tool," and objecting to the escalation of forward prices taken from a single day.[94] He also testified to his view that warmer winter weather in the 2015/2016, 2016/2017, 2017/2018, and 2018/2019 winters, with the associated reduction in gas demand for heating, was "a primary cause" of the narrowing of the price spreads between the Marcellus/Utica region and other markets.[95] He also disputed that the risk of overestimating the basis differential is greater than the risk of underestimating that differential.[96]

Addressing Mr. Coppola's testimony, Mr. Sloan disagreed with his economic analysis. He contended that Mr. Coppola overlooked three economic principles:

1) Competition among producers within a basin will tend to drive gas prices within the basin toward the market cost of production.

2) There are many different gas production regions and many different gas demand centers. The production regions and demand centers are interconnected by a complex web of pipelines ensuring that most demand centers have access to multiple sources of natural gas, and most producing regions have access to multiple demand centers.

3) Production from different basins competes for markets in different locations, and prices at the basin level are determined by the price of gas in the incremental demand market where the gas producers can deliver gas at a competitive price.[97]

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[94] See 2 Tr 242.
[95] See 2 Tr 244-245.
[96] See 2 Tr 246-247.
[97] See 2 Tr 249.

Mr. Sloan believes the Marcellus/Utica region prices will remain relatively low because the marginal cost of development is widely regarded as among the lowest in North America.[98] He presented a chart at 2 Tr 253 to show the price differentials for several producing regions in comparison to the MichCon citygate prices, characterizing the differentials as shifting and diverging, rather than converging over time. He also objected to Mr. Coppola's reliance on 10-year market forwards for the same reasons he objected in discussing Mr. Wilson's testimony. Further addressing the difference between actual price spreads and the predictions in the 2015 ICF report, Mr. Sloan testified that the spreads also spiked during certain periods, and identified weather as another reason for the observed values.

## III.

## DISCUSSION

Based on the testimony and the briefs of the parties, the only issues in dispute in this case involve DTE Electric's contracts with NEXUS, and the extent to which the Commission has already resolved the factual and legal contentions of the parties. The NEXUS agreements — including the initial Precedent Agreement signed in 2014, subsequent rate and service agreements, and various amendments to those agreements — are Exhibits A-28 through A-37, A-39, A-40, A-43 and A-44 in the record. These agreements between DTE Electric and an affiliate provide for the transportation of gas from the Marcellus/Utica region to the MichCon citygate. DTE Electric began taking service under these agreements November 1, 2018.

DTE Electric and Staff argue that the company's decisions have been reasonable and prudent and that the Commission has already resolved the key disputes in prior

[98] See 2 Tr 249-251.

cases, including Case Nos. U-18403 and U-17920. To DTE Electric, the record in this case is not materially different from the record in those prior cases.[99] DTE Electric relies primarily on the testimony of Mr. Pratt and Mr. Sloan. DTE Electric cites Mr. Pratt's testimony and Exhibit A-38 to demonstrate the analysis it conducted before entering its first agreement with NEXUS, and also cites Mr. Sloan's subsequent 2015 analysis, Exhibit A-27. DTE Electric acknowledges that it projects a net cost of $39 million for the NEXUS agreements over the five-year forecast period, arguing that the transportation expenses are reasonable and prudent "based on a long-term view," while contending witnesses for the Attorney General and MEC largely object to what DTE Electric characterizes as the "short-term" cost of the NEXUS contracts.[100] In further support of the reasonableness of its agreements, DTE relies on Mr. Pratt's incorporation of updated ICF model results from 2018 to project $178 million in savings through 2038, to be achieved through lower-priced gas purchases delivered on the NEXUS pipeline, as presented in Exhibit A-17.

Staff supports the company's proposed PSCR factor and its requests to recover the transportation and gas supply costs associated with its NEXUS pipeline agreements. Citing Ms. Shi's testimony, Staff argues that the Commission found the NEXUS costs reasonable and prudent in Case No. U-18043, and that Staff has found the subsequent modification to be reasonable and prudent "because it provides additional supply sources creating fuel diversity and is expected to reduce fuel expenses by $2.4 million over four years."[101]

[99] See DTE Electric brief, pages 27-32.
[100] See DTE Electric brief, page 26-27; Pratt, 2 Tr 85-86.
[101] See Staff brief, pages 4-5, citing 2 Tr 444-445.

The Attorney General and MEC object to the agreements, citing Mr. Coppola's and Mr. Wilson's testimony as well as cross-examination of Mr. Pratt and Mr. Sloan. They contend the agreements are not reasonable and prudent, are based on speculative or unfounded savings estimates, and violate the Code of Conduct. They further dispute that the Commission's prior orders preclude the Commission from finding the agreements unreasonable in this case. In this context, MEC argues any prior Commission approval under Act 304 was only for 1 year, and the Commission is legally obligated to evaluate costs annually.[102] MEC further argues that DTE Electric's 20-year savings projections are outside the evaluation period under Act 304 and do not shield the agreements from compliance with the Code of Conduct.[103] MEC notes that it has appealed the Commission's decisions in DTE Electric's 2018 PSCR case, Case No. U-18403, and DTE Gas's 2018 GCR case, Case No. U-18412. The Attorney General and MEC also object specifically to the October 2018 TEAL amendments.

The Attorney General and MEC emphasize the affiliate relationship between DTE Electric and the NEXUS Pipeline Company. The Attorney General recommends that the Commission put in place a mechanism to track NEXUS costs and savings, and to limit cost recovery to actual savings from purchases at Clarington and Kensington, with a disallowance of the NEXUS transportation costs as an alternative. MEC argues that the Commission should not approve DTE Electric's projected 2019 NEXUS costs and should issue a section 7 warning regarding projected costs included in the five-year forecast. MEC also contends that DTE electric cannot statutorily recover the costs for

[102] See MEC brief, pages 13-15.
[103] See MEC brief, pages 41-52.

NEXUS capacity contracted for but not used to transport gas volumes to DTE Electric plants.

In its reply brief, MEC disputes DTE Electric's contention that the relevant issues in this case have already been decided, reiterating its claim that the Commission did not have legal authority to review PSCR costs for the 2019 PSCR year in prior cases, and contending that new evidence and circumstances would justify reconsideration if approval had been given. MEC disputes that the NEXUS agreement costs are recoverable through the PSCR factor, contending that the agreements do not fall within the statutory language "long-term firm gas transportation," because the agreements only provide for delivery to the MichCon citygate, and because DTE Electric is not using the pipeline capacity primarily to serve its electric generation.[104] MEC also takes issue with DTE Electric's claims that any cost disallowance would be unlawful, would cause it to breach contracts, or would constitute impermissible hindsight review.[105] In her reply brief, the Attorney General similarly disputes that the Commission's prior decisions control the decision in this case.

In her reply brief, the Attorney General also takes issue with DTE Electric's reliance on prior Commission orders, arguing that the Commission has yet to review actual NEXUS costs: "While the Commission has reviewed the NEXUS arrangement before, it has yet to find that the transportation expenses related to the arrangement are reasonable and prudent, as this, along with the corresponding gas cost recovery plan case, is the first time the Company has requested recovery of those expenses."[106] The

[104] See MEC reply brief, pages 7-10.
[105] See MEC reply brief, pages 11-17, 18-20.
[106] See Attorney General reply, pages 7-8.

Attorney General argues that the reasonableness of DTE's transportation costs must be evaluated based on the cost of alternatives.

MEC and the Attorney General also take issue with Staff's support of the NEXUS agreements in their reply briefs. MEC argues that Staff provided minimal testimony or evaluation of the agreements and did not explain how the agreements comply with the Code of Conduct. The Attorney General disputes that the Commission's prior decisions establish the reasonableness of the company's costs and argues that Staff "simply accepted DTE's own, in-house calculations of savings and rationales" for the TEAL amendments.[107]

In its reply brief, DTE Electric rejects MEC's analysis, based on current projections of future gas costs, as impermissible hindsight. DTE Electric argues that its July 2014 agreement was reasonable and prudent, that the recent TEAL amendment is not a material change, and that its agreements with NEXUS fully comply with the Code of Conduct. DTE Electric opposes MEC's recommended disallowance of NEXUS costs for contracted capacity not actually used to serve DTE Electric plants, and it contends that the Attorney General's proposed limited recovery mechanism is unlawful.

In the discussion that follows, the significance of prior Commission decisions is addressed in section A below. The TEAL amendments, which postdate the Commission's orders at issue, are discussed in section B below. The dispute among the parties regarding the recoverability of pipeline capacity costs is discussed in section C, and the Code of Conduct is discussed in section D.

[107] See Attorney General reply brief, pages 4-6.

A. Prior Commission Decisions

While the Commission has addressed DTE Electric's contractual relations with NEXUS in prior plan cases, the parties dispute the significance of the Commission's orders in those cases. DTE Electric argues that the Commission previously found its agreements with NEXUS to be reasonable and prudent. Staff concurs. MEC and the Attorney General argue that the Commission did not approve NEXUS costs in those prior cases, and therefore should reevaluate the utility's decision-making in this case. MEC further argues that the Commission is required to reevaluate the reasonableness and prudence of the utility's decision-making in each plan case:

> Even if the Commission had found in the last case that DTE's 2018 PSCR costs were reasonable and prudent, that would not preclude the Commission in this case from evaluating DTE's 2019 PSCR costs and its 2019-2023 forecast of PSCR costs. Act 304 requires the Commission to decide based on the evidence in this case whether DTE's 2019 PSCR costs are reasonable and prudent and should be approved, disallowed, or modified. The 2019 PSCR costs were not ripe for approval in the 2018 PSCR case. Section 6 of MCL 460.6j grants the Commission authority to approve (or disapprove or modify) only an applicant's 12-month plan. Section 7 grants the Commission authority to evaluate decisions in the five-year forecast and to warn an applicant that future expenses may be disallowed, but does not grant authority to approve expenses in the five-year forecast.
>
> Moreover, the Commission's prior finding that DTE's decision to contract with NEXUS was reasonable and prudent does not also mean that all future PSCR costs incurred under the NEXUS contract should be treated as pre-approved. Under Act 304, the PSCR Clause is reset annually, fluctuating as often as monthly based on actual utility costs. The utility must evaluate decisions and justify PSCR costs on an annual basis, including:
>
> > the utility's evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in the plan, in light of its existing sources of electrical generational, and an explanation

> of all the actions taken by the utility to minimize the cost fuel to the utility.[108]

MEC cites the Commission's December 17, 1986 order in Case No. U-8288, arguing:

> The Commission has recognized that Act 304 imposes this annual review obligation on the utility and on the Commission itself. In the context of reviewing long-term gas supply contracts under the GCR clause, the Commission held that it must "[] do more than merely observe whether a utility is properly administering contracts"; that Act 304 "does require a complete annual review" of gas supply contracts, even if a prior determination in a GCR proceeding approved the contract; and that "res judicata does not preclude the statutorily mandated annual review of gas supply contracts contemplated by Act 304."[109]

DTE Electric acknowledges that *res judicata* and collateral estoppel do not apply in a strict sense to Commission decisions, but argues that issues fully decided in earlier MPSC proceedings need not be completely relitigated in later proceedings unless the party wishing to do so establishes by new evidence or a showing of changed circumstances that the earlier result is unreasonable.[110]

A review of the Commission's prior decisions shows that, although the Commission has not expressly approved NEXUS contract costs in their entirety for cost recovery, the Commission has found DTE Electric's decision-making to be reasonable and prudent, and found that the utility took all appropriate steps to minimize its cost of fuel. In its February 7, 2019 order in DTE Electric's PSCR plan case for the 2018 plan year, Case No. U-18403, after a lengthy discussion of the arguments of the parties and the PFD issued by the ALJ in that case, the Commission held that DTE Electric had established the reasonableness of its decision to contract for NEXUS capacity:

[108] See MEC brief, pages 13-14 (footnotes omitted).
[109] See MEC brief, pages 14-15. As discussed below, MEC also argues that the Code of Conduct requires an annual evaluation.
[110] See DTE Electric brief, page 32.

> The Commission finds compelling DTE Electric's evidence that it executed the July 2014 precedent agreement based on DTE Gas Company's LCA showing that contracting for transportation capacity on the NEXUS pipeline would result in the lowest landed costs between competing alternatives. The Commission rejects MEC/SC's accusation that the ALJ improperly shifted the burden of proof to MEC/SC to show that the NEXUS arrangement violated the Commission's Code of Conduct. Instead, the Commission finds that the ALJ's analysis accurately concluded that MEC/SC had not successfully rebutted DTE Electric's assertion that the utility proved it entered into the NEXUS agreement not to subsidize the pipeline's construction but because the transportation capacity offered by its affiliate would result in the lowest landed costs when compared with other alternative greenfield pipeline capacity options from the Marcellus/Utica basin in existence at that time. Further, based on the ALJ's thoughtful and well-reasoned analysis, the Commission agrees with the ALJ's conclusion that the record does not support a finding that the NEXUS precedent agreement violates the Commission's Code of Conduct. [111]

The Commission also found that it had previously determined in Case No. U-17920 that the company's initial decision to enter in the NEXUS precedent agreement was reasonable:

> The Commission likewise agrees with the ALJ's determination on page 92 of the PFD, that, although DTE Electric failed to present through testimony and documentary evidence "the full nature of the NEXUS arrangements" in this PSCR plan case, it cannot be said that the record contains any new evidence that would invalidate the Commission's determination in Case No. U-17920 that DTE Electric's decision to execute and continue the NEXUS precedent agreement was reasonable. Regarding the new evidence that MEC/SC presented in this matter, the Commission agrees with the ALJ and DTE Electric that it is neither substantial nor inconsistent with the Commission's past decisions on this issue and does not alter the chronology of events that led the utility to execute the July 2014 precedent agreement. The Commission also notes that the Staff presented testimony that DTE Electric's plan did not introduce any new issues and is consistent with past Commission approvals.[112]

Further, the Commission held:

> The Commission likewise agrees with the ALJ's assessment that there is consensus among the parties that the NEXUS agreement will result in

[111] See February 7, 2019 order, pages 42-43.
[112] See February 7, 2019 order, page 43.

> projected losses for the 2018 PSCR year and the five-year forecast, but that, "against the larger backdrop of the underlying rationale and circumstances" that led the utility to enter into a long-term capacity arrangement with NEXUS, the Staff identified cost benefits to DTE Electric and its customers that will result from bringing additional quantities of natural gas into Michigan from the Marcellus/Utica basin, a low cost region. PFD, p. 93.[113]

After concluding that the Commission may lawfully consider long-term benefits of the agreement beyond the five-year forecast period, the Commission rejected the argument that the company's estimate of long-term benefits was speculative:

> The Commission further disagrees with MEC/SC that these long-term benefits are speculative or conjectural. Further, the Commission is satisfied that DTE Electric has taken all appropriate steps to minimize the cost of fuel by entering into a long-term firm gas transportation contract that will result in a net savings to customers over the length of the contract. Accordingly, the Commission agrees with the ALJ that the NEXUS costs are not excessive and that MEC/SC's recommendation to deny DTE Electric's request for NEXUS transport costs should be denied.[114]

As MEC and the Attorney General argue, the Commission also required DTE Electric to present a more substantive analysis of the reasonableness of its contract costs in the reconciliation of its 2018 PSCR plan. The Commission adopted the PFD's recommendation in this regard.

The PFD issued in Case No. U-18403 concluded:

> Accordingly, while this ALJ agrees with MEC/SC that DTE Electric has not in this record presented through testimony and documentary evidence "the full nature of the NEXUS arrangements", it also cannot be said that this record contains any new evidence that would invalidate the findings and determinations made by the ALJ in Case No. U-17920 and adopted by the Commission regarding the reasonableness of DTE Electric's contractual arrangement with NEXUS. The Commission should therefore decline MEC/SC's recommendation to deny DTE Electric's request for NEXUS transport costs and to issue a section 7 warning on this basis.[115]

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[113] See February 7, 2019 order, page 43.
[114] See February 7, 2019 order, page 44.
[115] See Case No. U-18403 PFD, page 92.

The PFD rejected testimony challenging the reasonableness and prudence of the utility's decision by witnesses for MEC and the Sierra Club, and for the Attorney General, and concluded that "decisions concerning natural gas transportation made between November 2013 and the July 31, 2014 Precedent Agreement with NEXUS, along with the Precedent Agreement, and the subsequent Negotiated Rate Agreement and Service Agreement, were reasonable and prudent at the time they were made."[116] Notwithstanding the PFD's finding that the agreements were reasonable and prudent, and its determination that a section 7 warning was not warranted regarding recovery of the NEXUS costs, the PFD recommended that the Commission require DTE Electric to provide in its reconciliation of its 2018 PSCR plan "a more substantive discussion of the reasonableness of the 69.5 cents per dth rate . . . in order to receive full recovery of NEXUS costs."[117]

This recommendation and the Commission's subsequent adoption of this recommendation in Case No. U-18403 appear to have been a response to a Staff recommendation, which Staff explained in its initial brief as follows:

> In this case, as presented by Mr. Ancona, Staff supports the updated volumes and term, but made clear that the total for non-fuel charges would be capped at the now negotiated rate of 69.5 cents per dth. Furthermore, Mr. Ancona pointed out the lack of discussion as to the negotiated rate of 69.5 cents per dth. To that end, Staff requested that DTE Electric provide some support for the 69.5 cents per dth through discovery, submitted as Exhibit S-1.[118]

Citing a Staff exhibit containing a discovery response from DTE Electric, the PFD explained:

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[116] See Case No. U-18403 PFD, page 115, paragraph 7.
[117] See Case No. U-18403 PFD, page 117, paragraph 8.
[118] See Case No. U-18403, Staff brief, page 7.

> As Mr. Ancona testified, while this discussion provides a rationale for the negotiated rate that warrants its inclusion as a projected cost in this proceeding, such a rationale should be presented in greater detail in DTE Electric's own filing rather than merely in response to a discovery request. Indeed, that DTE Electric's response questioning the necessity of this recommendation consists largely of DTE Electric's reliance on testimony from a prior case underscores the need for a more developed record on this issue in the reconciliation proceeding. In so finding, this PFD also disagrees with MEC/SC's objections to Staff's recommendation. Adopting Staff's recommendation to require DTE Electric to supplement its rationale for the agreed to negotiated rate does not equate to a deferral of the Commission's evaluation of the decisions underlying DTE Electric's PSCR plan. Moreover, this PFD has already addressed and rejected MEC/SC's criticisms that the costs associated with NEXUS are excessive or that the affiliate nature of the NEXUS agreement violates the Code of Conduct. For these reasons, this PFD recommends the Commission adopt Staff's recommendation to recognize DTE Electric's negotiated rate of $0.695/Dth per day as a projected cost in this case and that DTE Electric be required to provide a more substantive discussion of the reasonableness of the 69.5 cents per dth rate in the 2018 PSCR reconciliation in order to receive full recovery of NEXUS costs.[119]

The Commission's final order adopted the PFD in large part, expressly rejecting only the PFD's conclusion that Commission review in a PSCR case is limited to the five-year forecast period. In its ordering paragraphs, however, the Commission stated only a portion of the comparable finding in the PFD, concluding that the Precedent Agreement and subsequent amendments were reasonable and prudent:

> DTE Electric Company's decisions regarding natural gas transportation made between November 2013 and the July 31, 2014 precedent agreement with NEXUS, along with the precedent agreement and its subsequent amendments were reasonable and prudent at the time they were made.[120]

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[119] See Case No. U-18403 PFD, pages 113-114.

[120] See February 7, 2019 order, page 46. The precedent agreement and its amendments are in the record in this case as Exhibits A-28, A-31 through A-37, and A-40. Only the most recent amendment, Exhibit A-40, was adopted after the close of the record in Case No. U-18403. This amendment, dated June 28, 2018, as with many of the others encompassed by the Commission's order quoted above, merely extends a deadline in the precedent agreement, and is not directly challenged by any party to this case.

As in the PFD, however, notwithstanding the Commission's direction to DTE Electric to provide additional support for the NEXUS contract price in the reconciliation, the Commission expressly found that DTE Electric had taken all appropriate steps to minimize the cost of fuel to ratepayers:

> [T]he Commission is satisfied that DTE Electric has taken all appropriate steps to minimize the cost of fuel by entering into a long-term firm gas transportation contract that will result in a net savings to customers over the length of the contract. Accordingly, the Commission agrees with the ALJ that the NEXUS costs are not excessive and that MEC/SC's recommendation to deny DTE Electric's request for NEXUS transportation costs should be denied.[121]

In portions of its discussion, the Commission also expressly accepted the analyses presented by DTE Electric, finding the "Landed Cost Analysis" that is Exhibit A-38 in this case "compelling"[122] and characterizing the Precedent Agreement as "a 20-year contract with long-term savings projected in the ICF 2015 Report."[123] The Commission rejected arguments in that case that DTE Electric's savings estimates were speculative:

> The Commission further disagrees with MEC/SC that these long-term benefits are speculative or conjectural. Further, the Commission is satisfied that DTE Electric has taken all appropriate steps to minimize the cost of fuel by entering into a long-term firm gas transportation contract that will result in a net savings to customers over the length of the contract. Accordingly, the Commission agrees with the ALJ that the NEXUS costs are not excessive and that MEC/SC's recommendation to deny DTE Electric's request for NEXUS transport costs should be denied.[124]

The Commission also simultaneously determined the contract price was reasonable to use in the PSCR plan cost projection, and that the Commission declined to issue a

[121] See February 7, 2019 order, page 44.
[122] See February 7, 2019 order, page 42.
[123] See February 7, 2019 order, page 44.
[124] See February 7, 2019 order, page 44.

section 7 warning based on similar evidence presented here. The Commission explained:

> The ALJ found that the Staff presented a reasonable basis for its recommendation that the negotiated rate of $0.695/Dth per day be treated as a projected cost in this case and its recommendation that DTE Electric be required to provide a more substantive discussion of the reasonableness of the 69.5 cents per Dth rate in the 2018 reconciliation in order to receive full recovery of NEXUS costs. PFD, p. 113. Thus, the ALJ recommended both that the Commission recognize DTE Electric's negotiated rate of $0.695/Dth per day as a projected cost in this case and that the utility provide a more substantive discussion of the reasonableness of that negotiated rate in its upcoming PSCR reconciliation proceeding in order to fully recover its NEXUS transportation costs. *Id.*, pp. 113-114. No party has taken exception to this recommendation, and the Commission agrees with the ALJ's findings and conclusions on this issue.[125]

While the parties correctly recognize that prior Commission decisions are not precedential, as judicial orders are, Commission findings of fact nonetheless have a preclusive effect. In *Pennwalt Corp v PSC*, the Court of Appeals explained:

> Since ratemaking is a legislative, rather than a judicial, function, the administrative determination made by the commission in setting rates is not "adjudicatory in nature," as required by [*Senior Accountants, Analysts & Appraisers Ass'n v Detroit*, 399 Mich 449 (1977)]. Thus, res judicata and collateral estoppel cannot apply in the pure sense. However, this does not mean that the question of the reasonableness of the costs of the wastewater treatment facility had to be completely relitigated in case number U–6949. The precise question was litigated in case number U–6488, where the commission found the costs to be reasonable. To have the same proofs, exhibits, and testimony repeated would be a waste of the commission's resources. Rather, we feel that placing the burden on plaintiff to establish by new evidence or by evidence of a change in circumstances that the costs were unreasonable adequately balances the competing considerations of administrative economy and allowing plaintiff the chance to challenge the rate increase.[126]

In *In re Application of Consumers Energy for Rate Increase*, the Court of Appeals cited *Pennwalt Corp v PSC* in holding:

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[125] See February 7, 2019 order, page 45.
[126] *Pennwalt Corp v PSC*, 166 Mich App 1, 9 (1988)

> [R]atemaking is a legislative, rather than a judicial, function, and thus the doctrines of res judicata or collateral estoppel "cannot apply in the pure sense." . . . Even so, issues fully decided in earlier PSC proceedings need not be "completely relitigated" in later proceedings unless the party wishing to do so establishes by new evidence or a showing of changed circumstances that the earlier result is unreasonable.[127]

The Court reiterated this principle in a recent opinion reviewing the Commission's November 19, 2015 order in a Consumers Energy rate case, Case No. U-17335.[128]

While MEC and the Attorney General have presented evidence and argument to show the speculative nature of the future savings DTE Electric anticipates will materialize sometime after the five-year plan period, they have not presented new evidence regarding DTE Electric's past decision-making that was not available in prior cases. Instead, any new evidence addressing decision-making the Commission evaluated in prior cases generally tends to show the limitations or inaccuracies in the ICF forecast in light of actual natural gas prices or alternate current gas price forecasts. DTE Electric correctly characterizes this evidence as hindsight.[129] It should also be noted that the parties' arguments focus on DTE Electric's estimate of savings derived

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[127] 291 Mich App 106, 122 (2010).

[128] See *In re Application of Consumers Energy Company to Increase Rates*, 322 Mich App 480, 493-494 (2017) (Ratemaking is a legislative, rather than a judicial, function. For that reason, the doctrines of res judicata and collateral estoppel do not apply in a strict sense. Nevertheless, factual "issues fully decided in earlier PSC proceedings need not be 'completely relitigated' in later proceedings unless the party wishing to do so establishes by new evidence or a showing of changed circumstances that the earlier result is unreasonable.").

[129] See, e.g., the Commission's July 25, 2006 order in Case No. U-13960-R, page 7 ("It is often true that with the benefit of hindsight it is possible to show that money could have been saved. This is not the test that the Commission applies in determining the reasonableness and prudence of gas purchase decisions. Gas supply decisions are judged based on the known and reasonably foreseeable circumstances existing at the time that the decisions were made, and not on the results of the decisions. December 19, 1991 order in Case No. U-9173-R, p. 26; May 10, 1996 order in Case No. U-10444-R, p. 6; March 12, 2003 order in Case No. U-13060-R, p. 26. "Act 304 does not hold utilities to a standard of omniscience or perfect performance, but rather to a standard of reasonableness and prudence." February 5, 1997 order in Case No. U-10640-R, p. 10.") Also see, *Attorney General v PSC*, 161 Mich App 506, 517 ("The statute here provides, in the clause where a gas cost recovery clause is defined, for 'the booked costs of gas sold by the utility if incurred under reasonable and prudent policies and practices.' Since the word 'incurred' is used in the past tense, it is logical to assume that the Legislature intended that the determination whether the actions of a utility were reasonable and prudent should be made in light of existing conditions at the time the decision to purchase the gas was made.")

from a future price differential between the MichCon citygate and the Marcellus/Utica region, i.e. the original and updated forecast reflected in Exhibits A-27 and A-17, rather than on DTE Electric's estimate of savings due to an overall reduction in the cost of gas at the MichCon citygate, reflected in Exhibits A-27 and A-16.[130]

MEC argues that the Commission's ongoing statutory responsibilities in PSCR cases require the Commission to evaluate the reasonableness and prudence of the company's decision-making annually. Quoting MCL 460.6j(3), it argues:

> Under Act 304, the PSCR Clause is reset annually, fluctuating as often as monthly based on actual utility costs. The utility must evaluate decisions and justify PSCR costs on an annual basis, including:
>
> > the utility's evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in the plan, in light of its existing sources of electrical generational, and an explanation of all the actions taken by the utility to minimize the cost fuel to the utility.
>
> The Commission, too, must evaluate the utility's fuel supply plans, including "whether the utility has taken all appropriate legal and regulatory actions to minimize the cost of fuel" on an annual basis. If the reasonableness of the decision to enter into a contract forever fixed the reasonableness of the annual fuel costs incurred under the contract, then these obligation to "minimize the cost of fuel" and evaluate planned costs on an annual basis would be meaningless.[131]

Indeed, MEC argues long-term contracts must be evaluated both on the basis of whether they were reasonable at the time they were entered into and whether they remain reasonable under current market conditions.[132]

Consistent with the discussion above, Act 304 does not require the Commission to reevaluate its prior factual findings in each PSCR plan case, running a significant risk of potentially inconsistent decisions. Instead, the Commission may rely on prior findings

[130] See Sloan, 2 Tr 205-206; Pratt, 2 Tr 82-83.
[131] See MEC brief, pages 13-14, footnotes omitted. Also see MEC brief, pages 54-55.
[132] See MEC brief, page 55.

of fact in the absence of relevant new evidence. Such reliance does not render the statute meaningless, however. For example, as the discussion that follows shows, given the Commission's finding that DTE Electric reasonably and prudently decided to contract with NEXUS, DTE Electric is still responsible to demonstrate in a reconciliation that it administered this contract, and all its contracts and purchasing decisions, in a reasonable and prudent manner. Thus, DTE Electric's initial decision to enter into a contract, once found reasonable, would generally not be reevaluated absent additional evidence regarding DTE Electric's actual decision-making process or the information available to it at the time. How it administers that contract over time, however, is subject to evaluation in ongoing cases.

Accordingly, the Commission has found a utility's agreement to pay a fixed price for intrastate gas production reasonable, but also found the utility had an obligation to seek price reductions under Act 9 when subsequent market conditions made that price no longer reasonable. MEC cites the Commission's December 17, 1986 order in Case No. U-8288 and its January 27, 1987 order in Case No. U-8287, in which the Commission addressed intrastate gas purchase contracts entered into by Michigan Consolidated Gas Company and Consumers Power Company,[133] but its discussion overlooks the availability of Act 9 as a means to revise the intrastate contracts, which made renegotiation of those contracts feasible. MEC's subsequent discussion of the Commission's August 30, 1983 order in Case No. U-7484, and the Court of Appeals opinion affirming that order, nicely makes the appropriate distinction:

> The decision in *Attorney General v Public Service Commission* is not to the contrary. That was an appeal of the 1983 Commission order in Case No. U-7484, approving the GCR factor for Michigan Gas Utilities Company

[133] See MEC brief, pages 55-56.

> (MGU). One issue was the reasonableness of MGU's long-term liquid natural gas contract costs, which were negotiated when gas was in short supply and assured supply "even at a high prices seemed desirable." Changing conditions led to concerns the costs were no longer reasonable, and MGU intervened in FERC proceedings challenging its contract provision. The Commission found the contracts were reasonable at the time they were entered, and approved the costs for the GCR. But in that case, the Commission did not refuse to consider evidence of contemporary prices, as DTE proposes the Commission should do in this case. To the contrary, the Commission explicitly instructed MGU that, even though the contracts were reasonable at the time they were executed, Act 304 imposes an obligation on the utility "to take all appropriate legal and regulatory actions to mitigate the effect of these provisions [and] may provide grounds to disallow those expenses for GCR factors in future years." *That the contracts were reasonable at the time entered did not "lessen Applicant's obligation to take all appropriate steps to reduce or eliminate these costs in the future."* The Commission thus considered both historic and contemporary conditions.[134]

Recognizing DTE Electric's obligation to take all appropriate steps to minimize PSCR costs is not equivalent to ignoring the Commission's prior decision that DTE Electric's decision to contract with NEXUS was reasonable and prudent. In this case, putting aside the TEAL amendments discussed below, no party identified any actions DTE Electric should have taken to reduce or mitigate the costs it incurs under the NEXUS agreements.

While MEC argues that savings projected over a 20-year period are also irrelevant in a PSCR plan review,[135] the Commission clearly rejected this argument in Case No. U-18403:

> Unlike the ALJ's recommendation that limits the scope of the Commission's evaluation in this PSCR plan proceeding to costs and savings incurred during the PSCR period, the Commission agrees with DTE Electric's observation that the NEXUS precedent agreement is not a five-year contract, but a 20-year contract with long-term savings projected in the ICF 2015 Report admitted as Exhibit A-27. The Commission further agrees with DTE Electric that the words "other relevant factors" in MCL

[134] See MEC brief, pages 56-57, footnotes omitted, emphasis added.
[135] See MEC brief, pages 41-45.

460.6j(6) permit the Commission to consider the long-term benefits of the 20- year contract that the utility presented. These benefits include a projected long-term savings of $67.4 million from 2018 through 2038 and the $271 million savings for its customers due to NEXUS driving projected MichCon Citygate prices lower during the 20-year term of the NEXUS agreement. See, Exhibit A-27. In contrast, MEC/SC's strict interpretation of Act 304 would limit the Commission's benefit cost review to the five years of the forecast. Such an evaluation would require the Commission to accept a tunnel-vision view of power supply costs that considers costs in a vacuum and ignores the benefits that a 20-year long-term firm gas transportation contract offers.[136]

Thus, this PFD concludes that the following Commission findings from Case No. U-18403, addressing the utility's decision-making through the close of the record in that case, should also be adopted in this case:

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

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

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

Because the Commission in Case No. U-18403 concluded that the negotiated rate of $0.695 per dth/day should be used as a projected cost in that case, and directed DTE Electric to provide a more substantive discussion of the reasonableness of the negotiated $0.695 per dth/day rate in its reconciliation of 2018 PSCR costs in order to receive full recovery of NEXUS transportation costs,[137] this PFD recommends that the $0.695 rate similarly be used to project PSCR costs in this case, leaving it to the

[136] See February 7, 2019 order, pages 43-44.
[137] See February 7, 2019 order, pages 45, 46.

reconciliation of the company's 2018 plan for the Commission to evaluate that more substantive discussion.

B. TEAL Amendments

The October 2018 TEAL amendments revised both the rate and service agreements to provide for the addition of the Clarington receipt point for half of the contract volumes (15,000 dth/day) at an additional cost of $0.15 per dth/day plus an additional fuel cost of 0.6%, for a term of 4 years. Because the amendments were executed in October 2018, they were not considered in the 2018 plan case and were not originally included in the DTE Electric's filing in this case, but were the subject of the company's February 20, 2019 revised testimony and exhibits. Through this revised testimony, Mr. Pratt opined that the TEAL amendments were reasonable and prudent, as discussed in Section II above.[138]

As noted in that discussion, DTE Electric estimated savings of $2.4 million from the October 2018 TEAL amendments, "as compared to purchasing [at] Kensington over the four-year term."[139] Mr. Pratt presented direct and rebuttal testimony and was also cross-examined regarding this estimate. DTE Electric's $2.4 million savings estimate reflects a $3.3 million contract cost ($0.15 per dth/day) offset by $5.2 million in lower gas costs over the four-year term, based on an estimated gas price differential between Kensington and Clarington.[140] In contrast to its analysis of the initial agreement, DTE Electric does not claim that the TEAL amendment it entered into in October 2018 would have the additional effect of reducing the cost of gas at the MichCon citygate. Instead,

[138] See 2 Tr 87-91.
[139] See Pratt, 2 Tr 88.
[140] See Pratt, 2 Tr 136-140; also see 2 Tr 104-105. DTE Electric considers the actual price estimates to be confidential.

DTE Electric asserted only that adding the Clarington receipt point would justify the additional cost incurred by providing access to lower-cost gas than would be available at Kensington.

The Attorney General and MEC dispute the company's savings analysis and decision-making. As noted in Section II above, Mr. Coppola objected to the TEAL amendments based on his conclusion that DTE Electric had not justified the additional cost, rejecting Mr. Pratt's comparison of the $0.15 per dth/day rate to the tariffed rate.[141] Mr. Wilson objected that the price spreads between Kensington and Clarington did not reach the level of the company's total obligations under the NEXUS agreements, presenting a chart in Exhibit MEC-4, and explaining that the primary utilization of the Clarington receipt point from November 1, 2018 through April 1, 2019 was under a hedging contract entered into the by company's Asset Manager.[142] While acknowledging a small impact from the TEAL amendments, Mr. Wilson disputed that the impact is de minimis.[143]

In his rebuttal testimony, Mr. Pratt disputed that his initial presentation on the TEAL amendments was misleading or that DTE Electric initially concealed the TEAL amendments.[144] He characterized the projected savings of $2.4 million over 4 years as having a de minimis, approximately $500,000 impact on annual PSCR costs.[145] Mr.

[141] In that context, Mr. Pratt seemed to indicate that DTE Electric was paying a price to transport gas from Clarington to Kensington that was discounted from the tariff rate by 85%, from $0.9664 per dth/day to $0.15 per dth/day, when the same tariff rate ($0.9664 per dth/day) applies to transportation all the way from Clarington to the MichCon citygate. That is, for transportation from Clarington to the MichCon citygate, DTE Electric pays a total reservation rate of $0.845 instead of the tariff rate of $0.9664, a significantly smaller discount than 85%. See Exhibit A-45.
[142] See 2 Tr 524-525.
[143] See 2 Tr 539-540; DTE Electric notes that Mr. Wilson used $4.1 million as the total cost of the TEAL amendments, rather than $3.3 million.
[144] See 2 Tr 101, 102-103.
[145] See 2 Tr 102.

Pratt further addressed the price forecast underlying the savings estimates, including the "adders" used to develop these forecasts, testifying they were based on indicative price quotations.[146] Responding principally to Mr. Coppola's testimony regarding the utilization of the pipeline capacity, Mr. Pratt explained that in addition to gas volumes transported from Clarington to serve DTE Electric plants, which Mr. Coppola estimated as 27% of the available capacity, the utility's Asset Manager used almost all of the available capacity from Clarington, providing compensation to DTE Electric and PSCR customers for deliveries to third parties. He presented Exhibit A-48 to show utilization of the Clarington receipt point capacity.[147] Mr. O'Neill also presented rebuttal testimony objecting to Mr. Coppola's proposed tracking mechanism.[148]

In their briefs, the Attorney General and MEC continue to object to the TEAL amendments. The Attorney General characterizes the TEAL amendments as another affiliate transaction that raises concerns about self-dealing and cross-subsidization.[149] The Attorney General disputes the $2.4 million net cost savings estimate DTE Electric presented, citing Exhibit AG-2. The Attorney General challenges both the price differential DTE Electric projects between the Kensington and Clarington receipt points, and the projected utilization of the pipeline capacity.[150] The Attorney General further argues that DTE Electric has failed to support the reasonableness of the additional $0.15 per dth/day charge as the product of meaningful negotiation.[151]

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[146] See 2 Tr 104-105.
[147] See 2 Tr 105-106.
[148] See 2 Tr 325-329.
[149] See Attorney General brief, pages 10-11.
[150] See Attorney General brief, pages 12-18.
[151] See Attorney General brief, pages 18-19, reply brief, page 10.

MEC also argues that DTE Electric's rationale for entering into the TEAL amendment validates MEC's concern with the affiliate relationship underlying the prior agreements. MEC disputes that DTE Electric actually negotiated the agreements, citing Exhibits MEC-44, MEC-45, MEC-46, and MEC-19, as well as Mr. Pratt's testimony in cross-examination.[152] MEC also disputes DTE Electric's estimated savings of $2.4 million over a four-year period associated with the TEAL amendments. MEC argues any savings must be evaluated in the context of the costs it ascribes to the underlying (Kensington to MichCon citygate) NEXUS transportation agreements. MEC argues that DTE Electric unreasonably relied on a loosely-constructed price differential between Kensington and Clarington.[153]

In its briefs, DTE Electric argues that the resulting rates are reasonable, relying both on Mr. Pratt's testimony and on Ms. Shi's testimony for Staff.[154] DTE Electric also argues that the Commission lacks the authority to adopt the Attorney General's proposed mechanism limiting rate recovery to demonstrated savings.[155]

A review of the record shows that DTE Electric's savings estimates were not based on reliable or rigorous price estimates. In the absence of futures-market price or other price forecasts specific to Kensington or Clarington, DTE Electric used "indicative quotes" to construct a basis differential or "adder" for each location relative to NYMEX market forwards at other locations.[156] DTE Electric used the adders in combination with

[152] See MEC brief, pages 16-20.
[153] See MEC brief, page 21.
[154] See DTE Electric brief, pages 38-39.
[155] See DTE Electric brief, pages 35-36.
[156] The Attorney General and MEC also dispute DTE Electric's choice of market indexes to use, noting that in his five-year estimate of the net cost of the NEXUS agreements prior to the TEAL amendments in his Exhibit A-18 , i.e. based on the capacity costs from Kensington to the MichCon citygate only, Mr. Pratt used a different construct for the Kensington price forecast. DTE Electric's choice of an alternative

NYMEX market forwards to project price spreads over the four-year contract term. As MEC argues, DTE Electric's analysis of savings relied on an informal estimate or "indication" of the Clarington price from the company's Asset Manager that was only intended to reflect a 1-to-2-year time period, and did not reflect firm quotes from any actual producer.[157] Indeed, the note associated with the Clarington price estimate states: "Not a physical point but a pool, so have talked to no one, but any Tetco shipper *could* deliver there at about this price."[158] While DTE Electric produced an email from the Asset Manager with this price indication, as shown in Exhibit MEC-43, it relied only on verbal information for the Kensington price.[159]

Nevertheless, some information in the record, including the price spreads shown in Exhibits MEC-3 and MEC-4, reflects a substantial price difference between Kensington and Clarington for the first months of the agreement, although as the footnote to Exhibit MEC-4 and Mr. Wilson's testimony indicate, this may be attributable to a single contract. Additionally, several exhibits show that DTE Electric has utilized the transportation capacity at Clarington both to serve its generating plants and through release to the Asset Manager for sale to third parties, at least until April 1, 2019.[160] As Mr. Wilson testified:

> Under the TEAL amendment, half of DTE Electric's capacity has the Clarington receipt point through October 2022. The situation has been better for receipts from Clarington than for Kensington, as prices have generally been lower at Clarington. Exhibit MEC-4C shows the price and cost information for shipments from Clarington. For DTE Electric's

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approach for estimating the prices at Kensington reinforces this PFD's conclusion that its TEAL savings analysis is best characterizes as a rough or back-of-the-envelope calculation.

[157] See 2 Tr 146-148, Exhibit MEC-43. DTE Electric considers the actual price estimates to be confidential.

[158] See 2 Tr 147, Exhibit MEC-43.

[159] See 2 Tr 144-146, Exhibit MEC-42.

[160] See Exhibits MEC-4, MEC-29, and A-48.

> Clarington capacity, the Asset Manager flowed gas on all but three days during the period. However, the spreads amounted to only a small fraction of the reservation cost.
>
> * * *
>
> Exhibit MEC-4C shows that DTE Electric's Asset Manager apparently entered into fixed price deals at both Clarington and MichCon Citygates for the month of November, and also for December through March, to hedge (lock in) the value of the capacity during these periods.[161]

Thus, although the company's pricing estimates were not well-supported, the utilization data does reflect a price differential over the 6-month period for which data was available. This short-term utilization, however, does not justify DTE Electric's reliance on short-term, unfirm price quotes to support savings estimates over the four-year contract term.

Additionally, as MEC argues, DTE Electric's savings analysis and the current utilization data do not reflect the full potential cost of the TEAL amendments. As shown in Exhibit A-43, pages 5-6, paragraph B.2.d entitled "other charges", and explained further in exhibit MEC-45, DTE Electric is also obligated to pay "Annual Charge Adjustment" (ACA) surcharges that NEXUS does not plan to have in place until after 2019, and potentially other charges or surcharges that may be approved by FERC in the future. Mr. Pratt either did not understand or misrepresented the company's obligations under the NEXUS agreements when he stated that "[t]here are no additional commodity charges or any other charges" in addition to the $0.15 per dth/day transportation rate and 0.6% fuel adder.[162] Clearly, by October 24, 2018, Mr. Pratt was aware that those charges were part of DTE Electric's agreement because he asked to

[161] See 2 Tr 524-525, confidential graph omitted.
[162] See 2 Tr 90, 154-155; Exhibit A-43.

have the provision modified.[163] Nothing in the record indicates the potential magnitude of the company's obligation to pay these charges, which makes the company's estimated savings and its claim that the TEAL amendments are de minimis subject to significant uncertainty.

Based on these deficiencies, this PDF recommends that the Commission find that DTE Electric has not established the reasonableness and prudence of its decision to execute the TEAL amendments, and caution DTE Electric that it may not recover the full cost of the TEAL amendments under MCL 460.6j(7). This PFD does not recommend that the Commission adopt the tracking mechanism proposed by the Attorney General, as this issue can reasonably be dealt with in future reconciliations and plan cases, and does not justify the complexity associated with such a mechanism for an agreement that has only a four-year term.

C. Cost Recovery of NEXUS Capacity Costs For Unused Capacity

Both the Attorney General and MEC note that little of the NEXUS capacity DTE Electric contracted for has been used to supply DTE Electric generating plants.

DTE argues that it plans to use a significant portion of the NEXUS capacity to supply its gas-fired peaker plants in 2019, and on days when the peakers are not operating, may inject gas into storage for future use. It cites its Asset Management Agreement with a natural gas marketer that grants DTE Electric the firm right to use the transportation capacity as needed, but allows the marketer to deliver gas to third parties when DTE Electric does not use the capacity. DTE Electric also argues that long-term gas supply contracts are expressly provided for in MCL 460.6j (1)(a) and 460.6j(3).

[163] See 2 Tr 155-157, Exhibit MEC-45. In this context, DTE Electric does not appear to have negotiated the October 2018 amendments, but agreed to terms offered by NEXUS, terms that were offered to other "anchor shippers." See MEC brief, pages 18-20.

A review of the company's Exhibit A-48 as well as Exhibits MEC-5 and MEC-29 shows that DTE Electric has paid for but not used a significant percentage of the NEXUS pipeline capacity it contracted for. Some of the capacity not used to supply DTE's generating plants is used by the utility's Asset Manager, for which the company receives some form of reimbursement. As DTE Electric explains it, when the marketer delivers gas to third parties, the marketer provides revenues to DTE Electric equal to the value of the pipeline capacity, which DTE Electric intends to credit against PSCR expenses.[164]

MEC objects to ratepayers funding capacity that is not used to provide fuel to power plants.[165] Focusing on DTE Electric's contract with an Asset Manager to manage transportation under the NEXUS agreements, it argues that transportation capacity marketed to third parties may not be recovered through the PSCR clause, and further, that some pipeline capacity DTE Electric proposes to charge customers for is entirely unused.[166] MEC argues that Act 304 does not permit DTE electric to recover through the PSCR clause for transportation costs not directly linked to natural gas shipments to DTE Electric plants. MEC cites MCL 460.6j(b), which defines a PSCR clause as follows:

> "Power supply cost recovery clause" means a clause in the electric rates or rate schedule of an electric utility that permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility incurred under reasonable and prudent policies and practices.

[164] See DTE Electric brief, page 24, citing Pratt, 2 Tr 84-85, 106.
[165] See MEC brief, pages 26-28.
[166] See MEC brief, pages 22-25, 26-28.

MEC contends that cost recovery is limited to the costs incurred to supply existing sources of electric generation. MEC also cites MCL 460.6j(3), which among other elements, requires the utility to file a description of all major contracts and power supply arrangements, further specifying:

> For gas fuel supply contracts or arrangements, the description shall include whether the supply contracts or arrangements include long-term firm gas transportation and, if not, an explanation of how the utility proposes to ensure reliable and reasonably priced gas fuel supply to its generation facilities during the specified 12-month period.

The next sentence in this section provides:

> The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to provide power supply in the manner described in the plan, in light of its existing sources of electrical generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility.

MEC argues that the limitation to "fuel supply to [the utility's] generation facilities" in the first sentence quoted above and the limitation to "existing sources of generation" in the second sentence quoted above are meaningful. MEC also cites MCL 460.6j(13)(f) for the reconciliation requirement that the Commission "[d]isallow charges unreasonably or imprudently incurred for fuel not taken." MEC reasons from these provisions that only costs to transport volumes to DTE Electric generating plants may be recovered under Act 304. In its reply brief, MEC disputes that the NEXUS agreements constitute long-term firm gas transportation, citing the definition in MCL 460.6j(1)(a) specifying an agreement "to provide firm delivery of natural gas to an electric generation facility."[167]

This PFD does not find MEC's argument persuasive. DTE Electric is allowed to recover the booked cost of fuel incurred under reasonable policies and practices, and no party has argued that DTE Electric cannot book the cost of its transportation

[167] See MEC reply brief, page 9.

contracts, including capacity costs, as part of the booked cost of fuel. Long-term gas transportation contracts have to be disclosed in the company's filings under MCL 460.6j, but inherent in the concept of a "firm" transportation contract is some form of capacity payment or reservation charge.

DTE Electric is nonetheless obligated to administer its contracts so as to minimize the costs to ratepayers, which includes marketing unused pipeline capacity. No party seriously disputes that a stated purpose of the NEXUS agreements was to provide gas supply to the company's generating units. Here, given that the Commission has found DTE Electric's decision to enter into the NEXUS agreements was reasonable and prudent (not including the recent TEAL amendment), the company would ordinarily expect to recover the reasonable and prudent costs associated with those agreements. The company's efforts to manage that its gas purchases and its utilization of the contract capacity to minimize costs to ratepayers will be reviewed in the reconciliation.

D. Code of Conduct

MEC argues that the Code of Conduct requires an annual evaluation to determine compliance with the affiliate compensation cap:

> The Code states that, where an affiliate provides services to a utility, "compensation is at the lower of market price or 10% over fully allocated embedded cost." This is phrased in the present tense ("is at"). The plain language of the rule means that the costs at issue in this case – the 2019 PSCR costs – must be at (or below) market price. It does not matter under the Code of Conduct whether the affiliate compensation was (in the past) or may be (in the future) at or below the standard.[168]

MEC argues that the Commission did not address the affiliate compensation cap in the Code of Conduct in its prior orders, indicating this is a basis of MEC's appeal of the Commission's order in Case No. U-18403. It contends that DTE Electric has not

[168] Se MEC brief, page 15.

presented any evidence the NEXUS agreements comply with the Code of Conduct in this case.[169]

In arguing that the NEXUS agreements fully comply with the Code of Conduct, DTE Electric argues that the applicable Code of Conduct should be the one in effect when DTE Electric entered into its first agreement with NEXUS in 2014, adopted in Case No. U-12134, rather than the requirements of R 46010101 et seq. DTE, however, does not identify any meaningful difference in the language relied on. DTE Electric cites essentially the same language relied on by MEC, as quoted above:

> If an affiliate or other entity within the corporate structure provides services, products, or property to an electric utility or alternative electric supplier offering regulated service in Michigan, compensation shall be at the lower of market price or 10% over fully embedded cost and transfers of assets shall be at the lower of fully allocated embedded cost or market price.[170]

Focusing for purposes of discussion on the Code of Conduct adopted by the Commission in Case No. U-12134, there are many provisions in the Code of Conduct that apply to DTE Electric in its dealings with affiliates. Section II.B provides: "An electric utility's or alternative electric supplier's regulated services shall not subsidize in any manner, directly or indirectly, the unregulated business of its affiliates or other separate entities."[171] Although the Commission found that the company's agreement complied with the Code of Conduct, the Commission did not specifically address the pricing terms relative to the market and embedded cost caps. In discussing the Code of Conduct, the Commission's February 7, 2019 order seems to address compliance with

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[169] See MEC brief, pages 29-36.
[170] See DTE reply brief, page 18see October 29, 2001 order, Case No. U-12134, Attachment A, page 3, paragraph III.C. This language mirrors the language in R 460.10108(4) in pertinent part, except R 460.10108(4) states an exception for "value-added programs and services" under MCL 460.10ee.
[171] See October 29, 2001 order, Exhibit A, page 1.

this prohibition on intentional subsidization, rather than evaluating the pricing provisions to determine the recoverable affiliate transaction costs. In its order, the Commission explained:

> [T]he Commission finds that the ALJ's analysis accurately concluded that MEC/SC had not successfully rebutted DTE Electric's assertion that the utility proved it entered into the NEXUS agreement not to subsidize the pipeline's construction but because the transportation capacity offered by its affiliate would result in the lowest landed costs when compared with other alternative greenfield pipeline capacity options from the Marcellus/Utica basin in existence at that time. Further, based on the ALJ's thoughtful and well-reasoned analysis, the Commission agrees with the ALJ's conclusion that the record does not support a finding that the NEXUS precedent agreement violates the Commission's Code of Conduct.[172]

A review of the PFD shows there was no underlying analysis of compliance with the pricing provisions of the Code of Conduct per se.[173]

The compensation provisions are related to but distinct from the obligation not to subsidize the unregulated business of affiliates. The determination of compliance with the pricing provision of the Code of Conduct would be an issue for the reconciliation case, because the reconciliation case is the proceeding that determines what actual costs are assigned to PSCR customers. Under the Code of Conduct, the pricing provisions limit the amount a utility may recover from ratepayers, and the Commission has recognized that a utility has an ongoing obligation to comply with these provisions.[174] Recognizing that DTE Electric did not directly address the compensation provisions in this case, this PDF concludes that DTE Electric nonetheless has an obligation to address the recoverable affiliate compensation in the reconciliation.

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[172] See February 7, 2019 order, pages 42-43.
[173] See Case No. U-18403 PDF, pages 78-83.
[174] See, e.g. June 3, 2004 order, Case No. U-14138 ("In its 2004 power supply cost recovery (PSCR) reconciliation case, Detroit Edison will bear the burden of demonstrating the need for the power and that the price paid was reasonable and in conformance with the code of conduct.")

## IV.

## CONCLUSION

For the reasons explained above, this PFD recommends that the Commission adopt the findings and conclusions presented above, including the following findings and recommendations:

1. In its order in Case No. U-18403, the Commission determined:

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

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

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

2. These findings should be given preclusive effect in this case because they have not been shown to be erroneous based on new evidence contemporaneous to DTE Electric's decision-making.

3. In its order in Case No. U-18403, the Commission also concluded the negotiated rate of $0.695 per dth/day should be used as a projected cost, with DTE Electric directed to provide a more substantive discussion of the reasonableness of the negotiated $0.695 per dth/day rate in its reconciliation of 2018 PSCR costs in order to receive full recovery of NEXUS transportation costs. (See February 7, 2019 order, pages 45, 46.)

4. This conclusion is also controlling in this case, and thus the $0.695 per dth/day rate should be used as a projected cost in this plan case.

5. As a matter of law, MCL 460.6j does not preclude DTE Electric from recovering reasonably and prudently incurred gas pipeline transportation capacity costs, even if the capacity is not fully used to supply DTE Electric generating plants.

6. Regarding the TEAL amendments, which were not considered in Case No. U-18403, DTE Electric failed to establish that its decision to execute those amendments was reasonable and prudent. This PFD recommends that the Commission issue a warning under MCL 460.6j(7) that on the basis of present evidence, the Commission is unlikely to permit the utility to recover from its customers TEAL pipeline contract costs not offset by gas cost savings as projected by DTE Electric.

7. The Commission determined in Case No. U-18403 that DTE Electric's NEXUS agreements did not violate the prohibition on cross-subsidization in the Code of Conduct; DTE Electric is nonetheless required to demonstrate compliance with the pricing provisions of the Code of Conduct in the reconciliation, in which the Commission will determine the amount of affiliate transaction costs DTE Electric may recover.

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

Sharon L. Feldman

Digitally signed by: Sharon L. Feldman
DN: CN = Sharon L. Feldman email = feldmans@michigan.gov C = US O = MOAHR OU = MOAHR - PSC
Date: 2020.01.24 10:26:09 -05'00'

Sharon L. Feldman
Administrative Law Judge

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