

STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of DTE Gas	)	
Company for reconciliation of its Gas Cost	)	Case No. U-20210
Recovery Plan (Case No. U-18412) for	)	
<u>the 12-month period April 2018-March 2019</u>	)	

**NOTICE OF PROPOSAL FOR DECISION**

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on December 18, 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 January 12, 2021, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before January 26, 2021.

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**

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December 18, 2020  
Lansing, Michigan

Sharon L. Feldman  
Administrative Law Judge

STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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<u>the 12-month period April 2018-March 2019 )</u>	

**PROPOSAL FOR DECISION**

I.

**PROCEDURAL HISTORY**

DTE Gas Company (DTE Gas) filed its application to reconcile its Gas Cost Recovery (GCR) plan for the 2018-2019 GCR year on June 24, 2019. The company's application reported a GCR underrecovery of \$13.2 million, including interest through the end of the period. For the Gas Choice Customer (GCC) program, the company's application reported an overrecovery of \$2.2 million, including interest through the end of the period. DTE Gas's reconciliation also includes a \$1 million GCR underrecovery for the prior GCR year, and an \$0.9 million underrecovery for the GCC program. The company's application was accompanied by testimony and exhibits from Lucian Bratu, Timothy J. Krysinski, Eric P. Schiffer, Gandolfo LoRe, and Larisa Jennings.

At the August 12, 2019 prehearing conference, DTE Gas and Staff attended, along with the following parties who were granted intervention: Attorney General Dana Nessel, the Residential Customer Group (RCG), and the Retail Energy Supply

Association (RESA). The schedule set at the prehearing conference was subsequently adjusted by agreement of the parties. On May 21, 2020, Staff filed the testimony and exhibits of Nyrhe U. Royal and Gretchen Wagner; the Attorney General filed the testimony and exhibits of Sebastian Coppola; and the RCG filed the testimony and exhibits of Geoffrey Crandall. DTE Gas filed the rebuttal testimony and exhibits of four witnesses (Messrs. Krysinki, Schiffer, Bratu, and LoRe) on June 25, 2020.

On July 21, 2020, Staff filed a motion to extend the schedule. The July 22, 2020 reassignment of this case from ALJ Snider to the undersigned ALJ necessitated a schedule revision, and Staff subsequently withdrew its motion. At the August 10, 2020 evidentiary hearing, held by video teleconference, Mr. Schiffer appeared and was cross-examined, while the testimony of the remaining witnesses was bound into the record, and all proposed exhibits were admitted, without the need for the witnesses to appear. DTE Gas, Staff, the Attorney General, and the RCG filed briefs on September 10 and reply briefs on October 1, 2020.

Following an overview of the record in section II below, the disputed issues presented in this matter are discussed in section III.

## II.

### **OVERVIEW OF THE RECORD**

The evidentiary record in this case is contained in 296 transcript pages and 72 exhibits.<sup>1</sup> This overview of the evidentiary record is intended to provide a general description of the testimony of each of the nine witnesses, while certain testimony is discussed in more detail in addressing disputed issues in section III.

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<sup>1</sup> Transcript references in this PFD are to Volume 2.  
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A. DTE Gas

DTE Gas presented the testimony of five witnesses and Exhibits A-1 through A-32. Mr. LoRe is the Manager within the controller's organization in DTE Energy Corporate Services, LLC with responsibility for supporting DTE Gas operations.<sup>2</sup> He presented the reconciliation calculations in Exhibit A-15, with supplemental data in Exhibit A-16 and interest calculations in Exhibit A-18. He identified a total GCR cost of gas sold of \$157 million for total GCR supplies of 137,892,122 Mcf. In addition, he reviewed the interest calculations for both GCR and GCC balances. Mr. LoRe explained "sales with no GCR factor," including lost and unaccounted for (LAUF) gas and gas-in-kind, are priced using the jurisdictional rate, consistent with the method adopted in Case No. U-7777-R. He identified the starting (prior year) underrecovery balance used for GCR customers and the starting overrecovery balance used for the GCC program, which was not final at the time he prepared the reconciliation. He also explained the pipeline reservation costs, SEC charge and failure fee revenue from GCC customers, and unauthorized sales penalties and excess storage fees received from end-use transportation customers.

Mr. Schiffer is a Senior Gas Supply and Planning Analyst for DTE Gas.<sup>3</sup> He presented Exhibits A-1 through A-7 with his direct testimony. Mr. Schiffer described the company's gas supply purchases for the GCR year, including volumes of 16.9 Bcf above the plan case projection and \$17 million above the plan forecast, and attested to the reasonableness and prudence of the company's gas supply decisions. He testified

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<sup>2</sup> Mr. LoRe's testimony, including his rebuttal, is transcribed at Tr 175-186; his qualifications are set forth at Tr 176-177.

<sup>3</sup> Mr. Schiffer's testimony, including his rebuttal testimony, cross-examination, and redirect, is transcribed at Tr 20-131; his qualifications are set forth at Tr 25-26.

that DTE has followed its fixed price purchase guidelines, with 75% of its projected supply requirements under contract by the end of 2017, and further described the company's purchases.<sup>4</sup> He testified that increased plan year volumes were primarily due to colder-than-normal weather, with increased total commodity costs attributable to both increased purchase volumes and spot prices above forecast levels. He attributed the higher spot prices to increased demand in the electric sector, due to nuclear outages as well as to weather, and to increased exports of liquid natural gas (LNG).<sup>5</sup> He presented additional details regarding the fixed price purchases in Exhibits A-1 and A-2, and a comparison of the plan forecast purchases to actuals in his Exhibit A-3, showing overall per Mcf costs \$0.16 below the plan forecast, not including transportation costs.

Addressing transportation costs, Mr. Schiffer explained that interstate transportation costs were approximately \$4.6 million below the plan forecast, citing several factors including reduced firm capacity and costs on the NEXUS pipeline, which did not begin operations until November 2018, refunds from the Great Lakes pipeline, and greater capacity release credits.<sup>6</sup> His Exhibit A-4 compares monthly volumes and costs to the plan forecast, and shows a total delivered cost of gas of \$466 million for 140 Bcf of gas, compared to the plan forecast of \$400 million for 123 Bcf.<sup>7</sup>

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<sup>4</sup> See Tr 27, 30, 35-42.

<sup>5</sup> See Tr 32-34.

<sup>6</sup> See Tr 27-28.

<sup>7</sup> See Tr 30-31, 55-56.

Acknowledging the Commission's order in the plan case, Case No. U-18412, Mr. Schiffer further addressed the company's contracting with NEXUS, and its utilization of the pipeline.<sup>8</sup> Mr. Schiffer also addressed DTE Gas purchases from its affiliate DTE Michigan Gathering Company (MGAT), based on the MichCon monthly city gate spot index, \$3.01/dth. He presented Exhibit A-7 to show all gas purchases from affiliates including MGAT, which he further described, including a discussion of the purchase of imbalance volumes.<sup>9</sup>

Citing the Commission's order in the company's then-most-recent rate case, Case No. U-18999, he testified that company's reconciliation of ANR-Alpena transportation costs is consistent with that order.<sup>10</sup> He testified that DTE included transportation costs above \$2.9 million per year as part of the costs recovered through the Supplier of Last Resort (SOLR) reservation charge through October 2018, consistent with the Commission's prior reconciliation orders, and included all costs after October 2018, when none of the related costs were recovered through base rates.<sup>11</sup>

Mr. Bratu is Senior Gas Supply & Planning Analysis in the Gas Supply and Planning Group at DTE Gas.<sup>12</sup> Mr. Bratu presented an overview of the company's gas operations during the GCR year, with comparisons of actual operations to the plan case normal weather operations in his Exhibits A-8 through A-13, including detail on actual sources and disposition of gas, actual heating degree days (HDD) compared to normal weather, storage balances, and actual peak day requirements. He explained the

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<sup>8</sup> See Tr 42-55.

<sup>9</sup> See Tr 58.

<sup>10</sup> See Tr 28.

<sup>11</sup> See Tr 59-60.

<sup>12</sup> Mr. Bratu's testimony, including his rebuttal testimony, is transcribed at Tr 133-152; his qualifications are set forth at Tr 134-135.

difference in actual relative to planned operations as attributable to several factors, including lower storage balances at the beginning of the GCR year due to colder-than-normal weather in the prior GCR year, increased sales in the GCR year also due to colder-than-normal weather, and increased company use and lost and unaccounted for (LAUF) gas.<sup>13</sup> He testified that the company's operations were reasonable and prudent and met the operational challenges presented.<sup>14</sup>

Ms. Jennings is Senior Strategist in Regulatory Affairs for DTE Energy Corporate Services, LLC.<sup>15</sup> She presented the GCR storage gas cost calculations in Exhibit A-17 and a reconciliation of the reservation charges for GCC customers in Exhibit A-19, showing a \$0.9 million overrecovery for the prior GCR year as the starting balance and a \$2.2 million overrecovery for the GCR year.

Mr. Krysinski is Principal Project Manager in the Regulatory Affairs Gas Strategy group in DTE Energy Corporate Services, LLC.<sup>16</sup> He presented a review of the regulatory actions DTE Gas took during the GCR year to minimize interstate pipeline transportation costs, including a review of a variety of regulatory events and an explanation of DTE Gas's participation in FERC and National Energy Board of Canada proceedings. He presented Exhibit A-14, containing the rates for each of the pipelines.

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<sup>13</sup> See Tr 38-146.

<sup>14</sup> See Tr 146-147.

<sup>15</sup> Ms. Jennings's testimony is transcribed at Tr 189-195; her qualifications are set forth at Tr 190-191.

<sup>16</sup> Mr. Krysinski's testimony, including his rebuttal testimony, is transcribed at Tr 155-168; his qualifications are set forth at Tr 146-158.

B. Staff

Staff presented the testimony of two witnesses and Exhibits S-1 through S-10. Ms. Royal is a Senior Public Utilities Engineer at the MPSC.<sup>17</sup> She presented Staff's position on the reasonableness and prudence of the utility's gas purchases and transportations contracts. She presented Exhibits S-7 through S-9. She noted the modification in the company's NEXUS contract and the Commission's plan case order directing the company to provide support in this case for the \$0.695/dth initial contract price. She recommended Commission approval of the company's gas purchases, testifying that DTE's fixed price purchases were consistent with its plan, and that although the spot purchases were not consistent with the plan, they were necessary due to colder-than-normal weather.<sup>18</sup> She addressed the TEAL amendment, testifying that the addition of the Clarington receipt point provided for greater supply and fuel diversity, citing Exhibit S-7, and recommending that the costs be approved. Ms. Royal did take issue with the company's proposed recovery of costs associated with DTE Gas Gathering Company's Antrim Expansion Project (AEP), citing Ms. Wagner's testimony. She also explained that during its review of the reconciliation, Staff found errors in how DTE Gas presented NYMEX data in its monthly contingency factor data and determination reports, testifying that DTE Gas needs to do a better job verifying the information it submits.<sup>19</sup>

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<sup>17</sup> Ms. Royal's testimony is transcribed at Tr 252-267; her qualifications are set forth at Tr 253-256.

<sup>18</sup> See Tr 260-262.

<sup>19</sup> See Tr 265-267.



Ms. Wagner is an Auditor in the Renewable Energy Section of the MPSC's Energy Resources Division.<sup>20</sup> She sponsored Exhibits S-1 through S-6 in support of her testimony. Ms. Wagner described several adjustments resulting from Staff's audit, reflected in Exhibit S-1. First, she explained that Staff corrected purchased gas volumes for the months of April, October and February, which affected the LAUF volumes. Second, she explained that Staff corrected billed sales volumes for March, which also affected the LAUF volumes. Third, she explained a series of Staff adjustments to accounting for the company's transactions with the affiliated Michigan Gathering Company (MGAT). These adjustments added the transportation expense associated with moving gas over the MGAT Antrim system, excluding the oxygen fees on the basis that they were not included in the agreement approved in Case No. U-17530, and added a \$300 monthly administrative charge beginning February 2018 (with the months of February through May not booked until June 2018) .<sup>21</sup> Additionally, she testified, Staff added receipt point fees under this agreement of \$225 per month, also beginning February 2018, but excluded receipt point fees of \$800 per month under an amendment to the transportation agreement Staff concluded had not been properly approved.<sup>22</sup> She testified that these adjustments also affected the calculation of the jurisdictional rate. And she explained Staff's concern that DTE Gas is not reviewing MGAT journal entries, also expressing a concern that DTE Gas may be violating the Code of Conduct by failing to maintain its own financial records, and recommending that

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<sup>20</sup> Ms. Wagner's testimony is transcribed at Tr 269-293; her qualifications are set forth at Tr 270-273.

<sup>21</sup> See Tr 276-280.

<sup>22</sup> See Tr 280-284.

the Commission direct DTE Gas to cease allowing its affiliate to book expenses on its behalf.<sup>23</sup>

Ms. Wagner described two additional adjustments, one to the company's calculation of total storage costs for the GCR and prior period storage adjustment as shown in Exhibit S-2,<sup>24</sup> and another to update the interest rate applied to the average overrecovery balance from the 10.1% DTE Gas used to the 10.0% rate approved in the company's rate case, Case No. U-18999. She also presented a revised calculation of the cumulative GCC reservation charge overrecovery in Exhibit S-4, and a revised pipeline reservation cost allocation in Exhibit S-5. She testified that Staff recommends that Commission use sales volumes to allocate pipeline reservation costs and sales volumes rather than a percentage of reservation revenues.<sup>25</sup>

### C. Attorney General

Mr. Coppola, an independent business consultant in the utility field, presented testimony on behalf of the Attorney General.<sup>26</sup> He recommended that the Commission disallow \$6.6 million in NEXUS transportation costs and related gas supply costs from Kensington and Clarington. In support of his recommendation, he presented Exhibits AG-1 through AG-10. Mr. Coppola compared DTE Gas's purchases at Kensington and Clarington, delivered on NEXUS at costs of \$6.30 and \$4.13 per dekatherm (dth), to other sources of supply delivered to DTE Gas during the GCR year, concluding that with one minor exception, the gas purchased on NEXUS cost significantly more than other

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<sup>23</sup> See Tr 284-286.

<sup>24</sup> See Tr 286-289.

<sup>25</sup> See Tr 293.

<sup>26</sup> Mr. Coppola's testimony is transcribed at Tr 211-231; his qualifications are set forth at Tr 212-214 and in Appendix A to his testimony, Tr 223-249.

sources.<sup>27</sup> The data and the associated disallowance calculation are presented in Exhibits AG-1 and AG-2.

Mr. Coppola disputed Mr. Schiffer's testimony that NEXUS has already had an effect on gas prices in the Midwest, and that NEXUS added supply diversity to DTE Gas's portfolio. Citing DTE Gas internal communications in Exhibit AG-5, Mr. Coppola testified that the basic problem with NEXUS was that DTE Gas signed up for 75,000 dth/day of capacity without first determining there would be sufficient supply at that location, viewing the TEAL amendment as an effort to salvage the deal.<sup>28</sup> Mr. Coppola rejected the comparison of the rates DTE Gas pays NEXUS to the FERC-approved tariff rates as a validation of the rate DTE Gas pays.<sup>29</sup> Mr. Coppola also presented an alternative disallowance calculation of \$6.1 million in his Exhibit AG-2, based only on the difference in the commodity costs for NEXUS supply compared to other spot market purchases. Mr. Coppola also recomputed the GCR and GCC reconciliation balances incorporating the \$6.6 million disallowance he recommended.

The Attorney General also presented Exhibits AG-11 to AG-24 through the cross-examination of Mr. Schiffer.

D. RCG

Mr. Crandall, a principal in and Vice President of the firm MSB Energy Associates, Inc., testified for the RCG.<sup>30</sup> Mr. Crandall identified three issues based on his review of the company's application. First, he testified that DTE Gas has not made

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<sup>27</sup> See Tr 219-222.

<sup>28</sup> See Tr 224.

<sup>29</sup> See Tr 227-229

<sup>30</sup> Mr. Crandall's testimony is transcribed at Tr 199-209; his qualifications are set forth at Tr 200-201 and in Exhibit RCG-1.

an effort to reduce supplier costs as a result of the Tax Cuts and Jobs Act (TCJA) of 2017.<sup>31</sup> Citing a FERC order in Exhibit RCG-2 as well as the Commission's orders adopting cost reductions for Michigan utilities as shown in Exhibit RCG-3, he testified that DTE Gas should reexamine its natural gas contracts and related costs, and further recommended that the Commission require DTE Gas to present evidence of actions taken during the GCR year to pursue cost savings or face a warning of potential future disallowances.<sup>32</sup> Second, citing Mr. Bratu's and Mr. Schiffer's testimony, he testified that the increased LAUF gas volumes cost GCR customers approximately \$7 million. He recommended that unless DTE Gas provides sufficient additional justification, the Commission should disallow recovery of this amount.<sup>33</sup> Third, he indicated that DTE Gas had not indicated whether it relies on a third-party manager for gas supplies, noting that the RCG still had pending discovery in this area at the time he filed his testimony.<sup>34</sup>

The RCG also presented Exhibits RCG-4 through RCG-6 with its direct case.

E. Rebuttal

In his rebuttal testimony, Mr. LoRe addressed Ms. Wagner's testimony regarding the accounting for affiliate transactions between DTE Gas and MGAT, asserting that separate books are maintained for every legal entity held by DTE Energy, and explained that because DTE Energy relies on the Systems, Applications & Products (SAP) accounting software, a corresponding credit to the intercompany accounts payable for DTE Gas is automatically booked when MGAT records a charge to the utility.<sup>35</sup>

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<sup>31</sup> See Tr 202-206.

<sup>32</sup> See Tr 202-206.

<sup>33</sup> See Tr 206-207.

<sup>34</sup> See Tr 208.

<sup>35</sup> See Tr 183-186.

In his rebuttal testimony, Mr. Schiffer disputed Mr. Coppola's recommended disallowance of NEXUS transportation costs and certain related gas supply costs, taking issue with elements of his analysis and with his conclusions, and presenting Exhibits A-20 through A-25 in further support of cost recovery.<sup>36</sup> Mr. Schiffer also responded to Mr. Crandall's testimony, stating that DTE Gas does not use third-party gas management agreements for gas supply acquisition.<sup>37</sup> Turning to Staff's recommendations, Mr. Schiffer addressed Ms. Wagner's testimony regarding the receipt point fees payable to MGAT for gas transportation.<sup>38</sup>

Mr. Schiffer was also cross-examined regarding his NEXUS-related testimony.

In his rebuttal testimony, Mr. Bratu addressed Mr. Crandall's concerns regarding the LAUF gas balances, disagreeing that GCR customers pay more for increased LAUF gas balances because company use and LAUF gas losses are recovered through base rates, citing the then-pending rate case, Case No. U-20642. After identifying potential causes of the 2.4 Bcf increase in company use and LAUF gas balances relative to the plan case projection, Mr. Bratu opined that these volumes are correlated with throughput, and thus the higher throughput volumes attributable to the colder-than-normal weather during the year contributed to the increase. He explained that DTE Gas needs to replace those volumes to avoid a shortfall.<sup>39</sup>

In his rebuttal testimony, Mr. Krysinski addressed Mr. Crandall's concerns regarding pipeline rates in light of the TCJA. He disputed Mr. Crandall's characterization of a FERC order, and referred to his discussion of the TCJA in his

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<sup>36</sup> See Tr 64-90.

<sup>37</sup> See Tr 91.

<sup>38</sup> See Tr 91-92.

<sup>39</sup> See Tr 148-152.

direct testimony.<sup>40</sup> He also presented discovery responses DTE Gas provided to the RCG as Exhibits A-26 through A-28.

### III.

#### **DISCUSSION**

Based on a review of the briefs, there is no dispute regarding several Staff adjustments, including: adjustments to purchased and billed sales volumes; adjustments to the LIFO rate and derivative storage costs; a revision of the interest rate applied to monthly overrecoveries as of October 2018 from 10.1% to 10.0%; a revised allocation of pipeline reservation costs; and a corresponding adjustment to the jurisdictional factor. The RCG agrees with DTE Gas's decision not to employ a gas management agent. The remaining disputes are discussed below as follows. The Attorney General's proposed disallowance related to the NEXUS agreements is discussed in section A. Staff's recommendations regarding DTE Gas's payments to MGAT are discussed in section B. The RCG's recommendations regarding Lost and Unaccounted for Gas balances are discussed in section C; its recommendations regarding the TCJA are discussed in section D.

#### A. **NEXUS PIPELINE**

In the plan case, the Commission considered whether to issue a section 7 warning regarding the recovery of NEXUS pipeline transportation costs at the urging of the Michigan Environmental Council (MEC). The Commission concluded:

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<sup>40</sup> See Tr 170-173.  
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Based on an evaluation of the record evidence and a consideration of the parties' arguments and the analysis and recommendations in the PFD, the Commission accepts the ALJ's recommendations regarding DTE Gas' recovery of costs resulting from the NEXUS contract and therefore finds that DTE Gas should recognize the \$0.695 per dekatherm NEXUS pipeline costs are considered projected and not verified known costs. In its 2018-2019 GCR reconciliation, DTE Gas shall provide support in its application for the reasonableness of the \$0.695 per dekatherm price. DTE Gas' recovery of NEXUS pipeline transportation-related costs are deferred to the 2018-2019 reconciliation and shall be evaluated in that case.<sup>41</sup>

The Commission further adopted the findings and conclusions in the Proposal for (PFD) issued by Administrative Law Judge Martin D. Snider.<sup>42</sup> The Commission went on to cite its order in Case No. U-18403, also issued February 7, 2019:

The Commission notes that the NEXUS transportation agreement and associated costs have been a subject of contention in past GCR and power supply cost recovery (PSCR) plan cases where the Commission has ruled that NEXUS associated costs were outside of the GCR and PSCR plan years and that a decision would therefore be premature. See e.g., November 22, 2016 order in Case No. U-17691, pp. 10-11. Since NEXUS became operational in October 2018, DTE Gas' 2018-2019 GCR reconciliation will be the first applicable period for the Commission to review actual NEXUS transportation related costs. Today the Commission, in its order in Case No. U-18403, addressed in detail MEC's argument that the NEXUS contract is an affiliate transaction and violates the Code of Conduct. In its order, the Commission stated:

The Commission finds compelling DTE Electric's evidence that it executed the July 2014 precedent agreement based on DTE Gas Company's LCA [Landed Cost Analysis] 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 [the Michigan Environmental Council and Sierra Club] 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

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<sup>41</sup> February 7, 2019 order, page 6.

<sup>42</sup> February 7, 2019 order, pages 6-7.

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.

February 7, 2019 order in Case No. U-18403, pp. 42-43. The Commission appreciates the concerns expressed about the need for transparency between the regulated utility and NEXUS pipeline and will examine NEXUS cost in DTE Gas' gas cost recovery reconciliation.<sup>43</sup>

After reviewing the arguments of the parties and the Commission's prior orders addressing the pipeline, the PFD in that case concluded DTE Gas's NEXUS contract did not violate the Commission's Code of Conduct for affiliate transactions, rejected MEC's arguments critiquing the analyses proffered by DTE Gas estimating future savings of \$375 million, and adopted Staff's recommendation that the Commission should treat the 69.5 cents per dth rate as a projected cost in this matter and direct DTE Gas in its 2018/2019 GCR reconciliation to provide support for the reasonableness of the 69.5 cents per dth rate.

As noted in section II above, Mr. Schiffer presented direct testimony in response to the Commission's order, and additionally to support the TEAL amendment that DTE Gas executed after the close of the record in the plan case. Regarding the reasonableness of the \$0.695/dth and 1.32% fuel cost of the NEXUS contract (prior to the TEAL amendment), Mr. Schiffer compared the rate DTE Gas pays to the NEXUS tariff rates as shown in Exhibit A-26, concluding DTE Gas pays 15.6% below the tariff

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<sup>43</sup> February 7, 2019 order, pages 7-8.  
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level. He also discussed DTE Gas's bidding, and its choice of a fixed price for cost certainty, testifying that DTE Gas believes its total rates are below those of other shippers.<sup>44</sup> He also cited the Landed Cost Analyses that were presented in Case No. U-18412 and referenced in the Commission's order quoted above. The analyses were subsequently attached to a DTE Gas discovery response in this case and are included in the record in Exhibit AG-15.

The TEAL amendment executed in October 2018 added the Clarington receipt point for a period of four years, for half the capacity included in the underlying NEXUS agreement, at the cost of an additional \$0.15/dth. In support of the TEAL amendment, Mr. Schiffer relied on a 2018 analysis estimating \$4.8 million in savings from the amendment, explaining that DTE Gas did not bid for the TEAL capacity in 2015 because it expected to be able to use both Kensington and a Tennessee interconnection, but the latter was delayed.<sup>45</sup> He presented a summary chart showing the calculation of the savings attributable to expected price differentials between Kensington and Clarington at Tr 44, with supporting price quotes in Exhibit A-32. In his rebuttal testimony, acknowledging that the company's \$4.8 million savings estimate relied in part on the company's own price forecasts, Mr. Schiffer presented an alternative calculation based on S&P Market Intelligence price forecasts as of the time the company was evaluating the TEAL amendment. As reflected in supporting Exhibits A-20 through A-24, this data produced a savings estimate of \$4.3 million.<sup>46</sup>

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<sup>44</sup> See Tr 52-53.

<sup>45</sup> See Tr 42-45.

<sup>46</sup> See Tr 74-79.

Based on Mr. Schiffer's testimony, DTE Gas argues that because the \$0.695/dth reservation charge and 1.32% fuel rate it pays for NEXUS transportation from Kensington is both below the tariffed rate and below the rate paid by other shippers, it is "reasonable and prudent and an appropriate market rate available to other shippers."<sup>47</sup> It also argues that it did not get a special deal by virtue of its affiliation with NEXUS, but cites its "most favored nation" clause as a provision that could have provided additional benefits to GCR customers.<sup>48</sup>

In its brief, DTE Gas relies on Mr. Schiffer's explanation of the analysis DTE Gas undertook before entering into the TEAL amendment.<sup>49</sup> DTE Gas also cites *Attorney General v PSC*, 161 Mich App 506, 517 (1987) for the principal that the Commission must evaluate the utility's decisions "in light of existing conditions at the time [of] its decision."<sup>50</sup> The company further cites the subsequent analysis Mr. Schiffer performed, substituting S&P Market Intelligence gas price forecasts from 2018 for the combination of third-party and internal price forecasts included in the company's original analysis, contending that had the company used this alternate forecast, it would still have projected savings of \$4.3 million by entering into the TEAL amendment.<sup>51</sup> Finally, DTE Gas cites Exhibit A-24 and Mr. Schiffer's rebuttal testimony to show the TEAL amendment saved GCR customers \$0.3 million in the GCR year, and a total of \$2.3 million through April 2020.<sup>52</sup>

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<sup>47</sup> See DTE Gas brief, pages 25-26.

<sup>48</sup> See DTE Gas brief, pages 26-27.

<sup>49</sup> See DTE Gas brief, pages 21-24.

<sup>50</sup> See DTE Gas brief, pages 23-24.

<sup>51</sup> See DTE Gas brief, page 24.

<sup>52</sup> See DTE Gas brief, pages 24-25; Schiffer, Tr 80.

In its brief, however, DTE Gas did not acknowledge or address the concerns or analysis presented in Mr. Coppola's testimony. And in its reply brief, DTE Gas frames Mr. Coppola's analysis as directed entirely toward the TEAL amendment:

The AG argues that the contract amendment to add the Clarington receipt point will cost customers an additional \$6.6 million, despite the fact that the amendment has to date already saved customers more than \$2.3 million, in line with the \$4.8 million in savings the Company projected when it entered into the agreement."<sup>53</sup>

DTE Gas then cites the Commission's orders in Case Nos. U-18412 and U-18403, discussed above, as well as its January 12, 2017 order in Case No. U-17920, as concluding that the company's decision to contract with NEXUS was reasonable and prudent.<sup>54</sup> DTE Gas also takes issue with Mr. Coppola's analysis based on Mr. Schiffer's rebuttal testimony:

The problem lies with the AG's use of spot prices to estimate costs. The AG's analysis presumes much. For example, for DTE Gas to be able to achieve the "savings" the AG shows, it would have had to be able to acquire all its supply from every possible source at any particular time for the same rates. Mr. Coppola's analysis makes several important assumptions, including supply availability, no additional transportation costs, no sunk costs, market stability, and capacity availability.<sup>55</sup>

DTE Gas further argues that the Attorney General ignores the reliability benefits of firm transportation contracts and supply diversity, and urges that DTE Gas "[put] all its proverbial eggs in one basket."<sup>56</sup> Reiterating its savings calculations regarding the TEAL amendment, DTE Gas argues:

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<sup>53</sup> See DTE Gas brief, page 3; also see pages 5, 9.

<sup>54</sup> See DTE Gas brief, pages 3-4.

<sup>55</sup> See DTE Gas reply, page 5, also citing Schiffer, Tr 72-74.

<sup>56</sup> See DTE Gas reply, page 6.

In the face of this evidence, it is surprising that Mr. Coppola clings to his pessimistic and flawed forecast of future costs, in U-20234 Mr. Coppola estimated the amendment would cost customers \$8.4 million, and now he estimates \$6.6 million. Mr. Coppola's changed estimates show the fallacy of using ever-changing current spot prices to determine the reasonableness of decisions made years before.<sup>57</sup>

Staff supports recovery of DTE Gas's NEXUS costs, consistent with Ms. Royal's testimony: "Staff believes, based on the company's representation, that the NEXUS costs are valid in this case."<sup>58</sup>

The Attorney General argues that the Commission should disallow \$6.6 million in transportation and commodity costs associated with the NEXUS pipeline. As noted above, Mr. Coppola compared the delivered cost of gas from other pipelines to the NEXUS gas deliveries in deriving his recommended disallowance. He explained that in recognition of DTE Gas's inability to contract for gas supplies in advance of the opening of the NEXUS pipeline, so that it was limited to spot market purchases, he compared the cost of the NEXUS spot purchases DTE Gas made during the GCR year to the estimated cost of spot purchases made on the pipelines DTE Gas acknowledged were displaced by the 75,000 dth of capacity purchased from NEXUS: ANR-SW, PEPL, and Vector.<sup>59</sup> As shown in Exhibit AG-2, he concluded that the incremental cost of the NEXUS supply was \$6.64 million more than spot purchases delivered through the pipelines NEXUS displaced.<sup>60</sup> Mr. Coppola also disputed Mr. Schiffer's contention that evidence shows NEXUS has already led to lower prices at the MichCon citygate, characterizing the Gas Daily article Mr. Schiffer cited as "purely anecdotal and

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<sup>57</sup> See DTE Gas reply, page 9.

<sup>58</sup> See Staff brief, page 3.

<sup>59</sup> See Tr 220.

<sup>60</sup> See Tr 221.

speculative,” and contending that a decline in the basis premium of prices at MichCon relative to NYMEX began in 2015, well before the NEXUS pipeline opened.<sup>61</sup> Mr. Coppola also disputed Mr. Schiffer’s comparison of the rates DTE Gas pays NEXUS to the tariffed rate and to rates paid by other shippers as irrelevant, contending DTE Gas should have provided a capacity analysis:

When assessing the reasonableness of the NEXUS transportation capacity cost into Michigan, the comparison is to the transportation cost from other pipelines bringing gas into Michigan from the Marcellus-Utica basins and from other basins. In this regard, Mr. Schiffer’s analysis fails to meet the basic tenets of reasonable and economic decision-making.<sup>62</sup>

Consistent with Mr. Coppola’s testimony, and contrary to DTE Gas’s characterization, the Attorney General does not focus her objections on the TEAL amendment, characterizing it as making the underlying NEXUS agreement “slightly better.” Instead, the Attorney General argues that the company incurred higher costs as a result of its contract with NEXUS in its entirety.<sup>63</sup> The Attorney General argues that the company’s decision to acquire the NEXUS capacity is subject to review in this case, based on the Commission’s direction in the plan case.<sup>64</sup>

The Attorney General reviews Mr. Coppola’s analysis and exhibits, beginning with the premise that DTE Gas acknowledged that the NEXUS capacity it obtained displaced capacity on three other pipelines in DTE Gas’s transportation portfolio. She argues that Exhibit AG-1 shows the total cost of gas delivered through NEXUS was substantially higher than other sources, with the incremental cost of \$6.6 million calculated in Exhibit AG-2. Focusing only on commodity costs as shown in Exhibit AG-

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<sup>61</sup> See Tr 222-223, 226-227

<sup>62</sup> See Tr 228.

<sup>63</sup> See Attorney General brief, page 6.

<sup>64</sup> See Attorney General brief, pages 30-31.

3, the Attorney General argues that spot prices were higher, not lower, at Kensington or Clarington in comparison to other sources.<sup>65</sup>

The Attorney General specifically addresses Mr. Schiffer's rebuttal testimony, contending that the analysis Mr. Coppola performed to evaluate DTE Gas's purchase of NEXUS capacity included both fixed and variable costs, which Mr. Schiffer identified as the appropriate elements. The Attorney General also cites Exhibits AG-14 And AG-15, the latter of which contains the 2014 Landed Cost Analysis DTE Gas relies on to support its decision to contract with NEXUS.<sup>66</sup> The Attorney General further argues that the capacity costs for ANR-ML-7 and ANR-Southwest were lower than the NEXUS rate originally subscribed (\$0.675 per dth), and could have been still lower had DTE Gas attempted to negotiate long-term contracts for this pipeline capacity.<sup>67</sup> The Attorney General also argues that Mr. Coppola used the commodity costs at the purchase locations accessed by NEXUS. She challenges as inaccurate Mr. Schiffer's claim that Mr. Coppola proposed that a comparison of spot prices, i.e. commodity costs only, should determine where DTE Gas should source its supply, citing Tr 67 and Exhibit AG-13.<sup>68</sup> She also notes Mr. Schiffer's acknowledgement that Mr. Coppola did not use pricing data for months beyond the GCR year. The Attorney General further challenges DTE Gas's claim to a history of price forecast accuracy.<sup>69</sup>

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<sup>65</sup> See Attorney General brief, pages 11-12.

<sup>66</sup> See Attorney General brief, pages 12-13.

<sup>67</sup> See Attorney General brief, page 14.

<sup>68</sup> See Attorney General brief, page 15.

<sup>69</sup> See Attorney General brief, page 19.

The Attorney General takes issue with DTE Gas's reliance on a Gas Daily article,<sup>70</sup> without further analysis, to support its claim that the influx of gas from the Appalachian region due to the NEXUS and Rover pipelines has reduced prices and price volatility.<sup>71</sup> The Attorney General further argues that the need for supply diversity does not justify the additional costs associated with NEXUS:

The Company has had access to multiple sources of gas supply before and after the contract with NEXUS. DTE Gas has interconnections with five other interstate pipelines bringing natural gas into Michigan from various basins in North America, including the Marcellus-Utica area. This abundance of gas supply diversity is validated by the fact that none of the other natural gas utilities in Michigan have contracted for capacity with NEXUS and are instead relying on less costly capacity on the other pipelines to bring Marcellus-Utica natural gas into Michigan.<sup>72</sup>

The Attorney General also directly disputes DTE Gas's claim that the NEXUS pipeline lowered the cost of gas supplies into Michigan, for the reasons explained by Mr. Coppola in his testimony.<sup>73</sup> The Attorney General dismisses the company's justification of the rates paid for the NEXUS capacity based on the tariffed rates and rates paid by other shippers, arguing that the company is using the wrong test, but should justify the rates paid by reference to other pipeline alternatives.<sup>74</sup> She also disputes that the proper comparison is to other greenfield projects.<sup>75</sup>

Responding further to the Mr. Schiffer's rebuttal testimony, the Attorney General cites Exhibit AG-11 and cross-examination of Mr. Schiffer at Tr 90 to show that DTE Gas did not conduct a specific analysis prior to entering the NEXUS agreement, but

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<sup>70</sup> See Schiffer, Tr 47-48.

<sup>71</sup> See Attorney General brief, pages 20-21.

<sup>72</sup> See Attorney General brief, page 21.

<sup>73</sup> See Attorney General brief, pages 24-25.

<sup>74</sup> See Attorney General brief, pages 25-26.

<sup>75</sup> See Attorney General brief, page 27.

continues to rely on its landed cost analysis, Exhibits A-15, which the Attorney General objects to as faulty because it used maximum tariff rates for other pipelines and did not solicit bids.<sup>76</sup> The Attorney General also argues that the lease payments NEXUS makes for the use of a DTE Gas pipeline and facilities is not a benefit to the company or its customers because those lease payments cover the actual costs of additional facilities DTE Gas was required to build.<sup>77</sup> The Attorney General also points out that Mr. Schiffer's rebuttal testimony refers to capacity release revenues of \$500,000, while only \$170,000 of this amount was attributable to capacity released on NEXUS, citing Exhibit AG-23.

Specifically addressing the TEAL amendment, the Attorney General argues that it "is a case of making a bad situation slightly better," because DTE Gas failed to determine there would be sufficient gas at the Kensington location when it entered the original NEXUS agreement. While the Attorney General objects to the rate paid under the TEAL amendment as well as the rate paid under the underlying NEXUS agreement, the basis for the Attorney General's position is primarily that DTE Gas should not have contracted for the NEXUS capacity. The Attorney General cites internal communications in Exhibit AG-5, and the limited utilization of the capacity from Kensington rather than Clarington.<sup>78</sup>

Both Mr. Coppola's analysis and Mr. Schiffer's analysis of actual prices support that purchases from Clarington were less expensive than purchases from Kensington, even when the additional transportation costs are included, and were less expensive

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<sup>76</sup> See Attorney General brief, page 28, pages 13-14.

<sup>77</sup> See Attorney General brief, page 29.

<sup>78</sup> See Attorney General brief, pages 22-24.



than alternatives when only variable transportation and commodity costs are considered. In this light, DTE Gas's decision to contract for the TEAL capacity does not appear unreasonable or imprudent.

Turning to the underlying NEXUS agreement, the dispute between the parties is primarily a dispute over the interpretation of the Commission's plan case order, which both directed DTE Gas to justify the rate paid and also approved of its Landed Cost Analysis as justification for its decision to enter into the agreement. While DTE Gas wrongly portrays the Attorney General's concern as directed at the TEAL amendment, and although DTE Gas neglected to address the Attorney General's arguments in response to Mr. Schiffer's rebuttal testimony,<sup>79</sup> a review of the Commission's plan case order and the other orders cited by DTE Gas does show that the Commission found the company's decision to contract with NEXUS to be reasonable. As noted above, the Commission affirmed the ALJs analysis and conclusions. The ALJ found DTE Gas's analysis persuasive that the company reasonably anticipated savings of \$375 million,<sup>80</sup> and rejected the argument that the company failed to properly consider alternatives to the NEXUS transportation. As also noted above, in its plan case order, the Commission also quoted with approval its order in DTE Electric's 2018 PSCR plan case that approved of the company's July 2014 Landed Cost Analysis. After reviewing the plan case order carefully, this PFD concludes that the Commission did not intend to require

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<sup>79</sup> Indeed, DTE Gas's reply brief still contends that the Attorney General takes issue only with the TEAL amendment, and that the Attorney General's \$6.6 million disallowance is based on the TEAL amendment. See DTE Gas brief, page 3. Moreover, while DTE Gas reiterates Mr. Schiffer's rebuttal testimony, nowhere in its reply brief does DTE Gas respond to the Attorney General's critique of Mr. Schiffer's rebuttal testimony.

<sup>80</sup> See PFD, Case No. u-18412, page 74 ("The evidence presented shows DTE Gas initiated the NEXUS July 2014 PA not to benefit an affiliate but to make the best economic decision possible at that time which subsequently would result in projected customer savings of \$375 million. See 3 Tr. 139-141.")

DTE Gas to present a revised justification of its initial decision to contract with NEXUS, but to justify the rate it agreed to under that contract.

This begs the question of what type of analysis is required to justify the rate, given that the decision to proceed with the contract was approved. While the Commission held open the question of the rate paid, the Commission did not indicate what DTE Gas needed to show to justify that rate. The Attorney General argues the price should not exceed the cost of alternatives, properly considered. DTE Gas argues that the price should be evaluated only in the context of what NEXUS was charging, i.e. its tariffed rate and the discounts offered to other shippers. DTE Gas's view that it bargained as well as any other shipper for transportation is a plausible response to the Commission's order, if one assumes that the company's determination to contract with NEXUS was reasonable. Because the NEXUS pipeline was projected to have the effect of lowering MichCon city gate prices, a comparison of actual prices available at the MichCon city gate to NEXUS delivered prices does not establish that the NEXUS costs are unreasonable. This PFD recognizes the Attorney General's concern that DTE Gas is relying on only anecdotal evidence that city gate prices were driven below where they would have been but for NEXUS, but no party established that the projected effect could be accurately evaluated *ex post*. While Mr. Coppola demonstrated that city gate prices had been falling relative to the NYMEX benchmark prior to NEXUS,<sup>81</sup> that does not establish the absence of an effect created by NEXUS.

Most recently, in its December 9, 2020 order in Case No. U-20203, the Commission addressed DTE Electric's contract with NEXUS. The Commission

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<sup>81</sup> See Coppola, Tr 226-227.  
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concluded that for DTE Electric, it should not be able to recover a transportation rate in excess of the original rate agreed for the NEXUS transportation from Kensington, \$0.695/dth. The Commission found that DTE Electric did not demonstrate that it had taken adequate steps to attempt to renegotiate its contract when confronted with changing market dynamics such that the gas prices at Kensington were not what had been forecast.<sup>82</sup> In this case, however, no party established or argued that DTE Gas had the opportunity or ability to renegotiate that contract during the GCR year.

B. MGAT Antrim Expansion Project (AEP) Transactions

Beginning in October of 2017, DTE Gas began transporting gas on MGAT's Antrim Expansion Project (AEP) pipeline. As discussed in more detail below, transportation on the AEP from a point of interconnection with DTE Gas at Kalkaska to another point of interconnection with DTE Gas at Gaylord was intended to replace more expensive transportation on Great Lakes Pipeline, and was a subject of the company's 2017-2018 GCR plan filing in Case No. U-18512 as well as a rate case filing in Case No. U-18999.

In the course of its reconciliation audit in this case, Staff identified issues with several components of the DTE Gas's AEP transportation expense report. Underlying the dispute related to these components is a dispute between Staff and DTE Gas regarding its contractual obligations. Staff looks to an agreement, referred to as the Gas Transportation Agreement, of the form that MGAT sought and obtained approval for in Case No. U-17530, as the source of DTE Gas's obligations. DTE Gas argues that it amended this agreement on September 1, 2017, with the amendment referred to as

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<sup>82</sup> See December 9, 2020 order, pages 26-28.  
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the “Antrim System Delivery Point Agreement,” before transportation under the agreement began in December 28, 2017.<sup>83</sup> Staff objects that this contract amendment was not approved by the Commission under Act 9, and disputes that DTE Gas obtained approval of this agreement in prior cases, including Case No. U-18152.

With this background, Staff took issue with several components of the company’s claimed transportation expenses. First, Staff called to DTE Gas’s attention a \$300 monthly administrative fee payable under the Gas Transportation Agreement. Ms. Wagner explained that as a result of Staff’s audit request, DTE Gas realized its error in February 2020, and arranged to be backbilled for the monthly charges to January 2018. DTE Gas planned to include the entire backbilled amount as an expense in its 2019/2020 reconciliation. Staff recognized that DTE Gas was not billed for transportation on the AEP by MGAT until June 2018; Staff also determined that while an argument could be made that no backbilling for this administrative fee was allowed under the Gas Transportation Agreement, a 24-month period would go back no further than February 2018. In its direct case as shown in Exhibit S-1, Staff thus recognized the February-June 2018 administrative fees as a June 2018 expense, and recognized the \$300 fee in each subsequent month of the GCR year.<sup>84</sup> After explaining this, Ms. Wagner also testified that the Commission could deny recovery of these costs.

In its reconciliation filing, DTE Gas did include an \$800 monthly “receipt point” fee attributable to transportation on the AEP. While DTE Gas asserts that it was contractually obligated to pay this monthly fee under its amended transportation

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<sup>83</sup> See Exhibit S-6, page 5. Exhibit S-10, page 11, says the facility was ready for use in November 2017.

<sup>84</sup> See Wagner, Tr 277-280.

contract, the Antrim Delivery Point Agreement, Staff looked to the Gas Transportation Agreement and concluded that agreement limited the receipt point fees to \$225 per month. In its direct case, Staff included the monthly receipt point fee of \$225 in Exhibit S-1, recording the fees for February-June 2018 as a June 2018 expense because MGAT did not bill DTE Gas for AEP transportation until June 2018.<sup>85</sup> Ms. Wagner explained that DTE Gas booked the \$800 receipt point fee from October 2017 through June 2018 as a June 2018 transportation expense, and that Staff removed all \$800 payments because it concluded the contract amendment had not been approved.<sup>86</sup> Ms. Wagner also testified the commission could deny recovery of the receipt point fees.<sup>87</sup> In addition to maintaining it is legally obligated to pay the \$800 fee, DTE Gas contends the Commission approved the fee in Case No. U-18152.

As an additional adjustment, Ms. Wagner explained that Staff excluded oxygen fees MGAT charged to DTE Gas that were not provided for in the contract.<sup>88</sup> DTE Gas agreed with Staff that the transportation charges should not include an oxygen fee.

In her testimony, Ms. Wagner described several concerns with the accounting for the transportation charges between the affiliated companies, and recommended that the Commission issue a section 7 warning for future cases. Although Staff's filing included both the \$300 fee and a \$225 receipt fee in lieu of the \$800 fee, based on its review of additional discovery responses included in Exhibit S-10, Staff's brief recommends disallowing both the \$300 and \$225 fees, contending the charges should not be

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<sup>85</sup> See Wagner, Tr 280-282.

<sup>86</sup> See Wagner, Tr 282-284.

<sup>87</sup> See Tr 281.

<sup>88</sup> See Wagner, Tr 277.

recognized “for reasons beyond simple billing errors.”<sup>89</sup> Staff further argues that the Commission should consider a show cause proceeding to address potential accounting and Code of Conduct violations.

Although not directly addressing Staff’s adjustments in its initial brief,<sup>90</sup> DTE Gas disputed Staff’s MGAT-related adjustments and its call for a show cause proceeding in its reply brief, labeling them as “without merit.”<sup>91</sup> Relying in part on Mr. Schiffer’s and Mr. LoRe’s rebuttal testimony and in part on the same discovery responses in Exhibit S-10, DTE Gas disputes Staff’s recommendations and argues that the Commission should include both a \$300 monthly administrative fee and an \$800 monthly receipt point fee in the cost of gas for the GCR year.

The RCG supports Staff’s concerns and concurs with Staff’s recommendations. It also argues as an alternative that the Commission should recognize only the lower of supplier input or output volumes to make sure MGAT is not being overcompensated for measurement imbalances.<sup>92</sup>

The key dispute between DTE Gas and Staff regarding the AEP is DTE Gas’s accounting for affiliate transactions with MGAT. The amount in dispute regarding DTE Gas’s use of the AEP is not material to this reconciliation. The total over the 12 months of the GCR year for the disputed \$300 administrative fee and \$800 receipt point fee is \$13,200, while GCR sales over the GCR year were 137,888,464 Mcf as shown in

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<sup>89</sup> See Staff brief, pages 4-10.

<sup>90</sup> This omission is inexplicable, as Ms. Wagner’s testimony was clear and comprehensive, and DTE Gas filed rebuttal testimony in response. This PFD notes that DTE Gas’s argument turns on a legal claim that a minimum should have been presented in DTE Gas’s initial brief so that Staff could respond to the company’s analysis.

<sup>91</sup> See DTE Gas reply brief, pages 9-16.

<sup>92</sup> See RCG brief, pages 12-13; RCG reply, page 1.

Exhibit S-1, or approximately \$0.0000957/Mcf or less than 1/100<sup>th</sup> of a cent per Mcf. As a percentage of the total cost of gas sold as shown on line 35 of Exhibit S-1, the amount in dispute is less than 0.003% of the cost of gas. The monthly fees associated with the prior GCR period, October 2017 through March 2018, which DTE Gas booked in June 2018, would total another \$4,800. In the discussion that follows, Staff's accounting concerns are discussed in subsection 1, the specific fees at issue are discussed in subsections 2 and 3, and recommendations are presented in subsection 4.

1. Accounting issues

After describing the numerous revisions Staff made to the company's AEP expenses as reported in this reconciliation, Ms. Wagner explained her concern that DTE Gas is not reviewing its subsidiary's charges, but is letting MGAT book expenses on DTE Gas's behalf without review or oversight.<sup>93</sup> She testified:

Staff is concerned that DTE Gas is not reviewing journal entries made by MGAT. The Company's purchased gas invoices are all stamped with 3 lines and indicated on line one the approved amount to be paid, line two issued for the signoff by the Gas Supply Manager and line 3 is the date it is signed for payment approval, pro to the due date. The journal entries provided by DTE Gas do not include an approved amount, signature or date. The Company told Staff the reason the transportation costs were not billed/booked until June 2018 is because there was turnover at MGAT and they were missed. The Company also told Staff that MGAT books both sides of the transaction (i.e. MGAT's revenue and DTE Gas' expense), because of a corporate one touch policy. DTE Gas was not aware that it was paying the oxygen fee and not paying the administrative fee until Staff began asking questions about the [Delivery Point] Agreement and the fees booked by MGAT in the journal entry as shown by DTE Gas' responses to Staff's audit request, Exhibit S-6, page 1.<sup>94</sup>

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<sup>93</sup> See Tr 284.

<sup>94</sup> See Tr 284.

Ms. Wagner explained the consequence not only in terms of errors in the booked expenses, but also delays in the booking of expenses. Citing R 460.10104(3), she testified that Staff believes DTE Gas is in violation of the Code of Conduct by not keeping its books in a manner consistent with Generally Accepted Accounting Principles (GAAP):

GAAP requires each economic entity to separately maintain its financial records. GAAP also requires the use of accrual basis accounting, which forces the Company to book the financial transactions in the accounting period in which they occur. In addition, GAAP requires the matching principle, whereby, costs are booked in the same time period as the revenues they helped generate. If MGAT is booking expenses on behalf of DTE Gas then separate financial records are not being maintained by the Company. The Company was not booking the costs discussed above in a manner consistent with accrual basis accounting and they were not booked in the same time period as the revenue they help generate, if any. In addition, these booking errors are shifting costs from one GCR period to another and could result in undue burden to future rate payers. As shown by the Company in response to a Staff audit request, Exhibit S-6, page 2, the Company plans to book 25 months of the administrative fee in February 2020.<sup>95</sup>

Based on her concerns, Ms. Wagner recommended that the Commission warn the company that its accounting practice is not appropriate and should cease.<sup>96</sup>

DTE Gas presented Mr. LoRe's rebuttal testimony to address Ms. Wagner's concerns. He testified that DTE Energy uses the SAP financial software, which is integrated with all affiliates to allow inter-company transactions to be recorded efficiently:

The way SAP operates, when an affiliate originates a charge to the utility, SAP automatically records a corresponding credit to the intercompany payables account on the books of the utility. This results in the revenue at the affiliate being recorded in the same accounting period as the related

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<sup>95</sup> See Tr 285.

<sup>96</sup> See Tr 286.



cost at the Utility. Under the SAP process, the inter-company payables and receivables are automatically recorded at the individual entities, facilitating the completion of stand-alone financial statements for each entity. Intercompany invoicing is generally not required as the system handles intercompany transactions and settlements automatically via system postings to all necessary intercompany accounts when intercompany journals are used. Each month, the MGAT Accountant provides an electronic copy of the journal entry recorded in SAP to the DTE Gas Accountant, for his or her review.<sup>97</sup>

He concluded that this results in separate financial records being maintained for each entity, and complies with DTE Energy's Affiliate Transaction Policy, GAAP, the MPSC Uniform System of Accounts, and the FERC Uniform System of Accounts.<sup>98</sup>

In its brief, Staff maintains that DTE Gas is out of compliance with R 460.10104.<sup>99</sup> Reviewing additional discovery responses provided by DTE Gas in Exhibit S-10, Staff identifies other objectionable elements of the company's transactions with MGAT.<sup>100</sup> As noted above, the parties dispute whether DTE Gas received "approval" of the terms of its amended contract with MGAT; DTE Gas also relies on the complexity of the Gaylord interconnection to justify the fee, while acknowledging that DTE Gas constructed the Gaylord interconnection. Citing Exhibit S-10, pages 20-28, Staff says it asked the company questions to understand the relationships between DTE Gas and MGAT. In these discovery responses, in addition to acknowledging that it constructed the Gaylord interconnection, DTE Gas acknowledged that it is responsible for operation and maintenance of MGAT's system, and charges the subsidiary the "fully loaded cost" of these services; DTE Gas also may purchase equipment "at MGAT's

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<sup>97</sup> See Tr 185.

<sup>98</sup> See Tr 185.

<sup>99</sup> See Staff brief, page 11.

<sup>100</sup> See Staff brief, pages 28-30, 33-34.

expense if used only for MGAT's facilities."<sup>101</sup> Although DTE Gas acknowledges that it charged \$1.7 million to MGAT over the GCR year for operations and maintenance services, reflecting 19,900 employee hours, DTE Gas asserted it does not prepare invoices for these charges and it refused to provide Staff with the general ledger records for the reconciliation period on the grounds that "accounting for these types of expenses and revenues occurs in general rate cases."<sup>102</sup> Staff objects to the failure of DTE Gas to maintain invoices to support its charges to MGAT, and to DTE Gas's refusal to provide accounting records it requested, citing MCL 460.56 and MCL 460.10ee(15).<sup>103</sup> Staff argues that the Commission should consider issuing an order for DTE Gas and MGAT to show cause why it should not be held in violation of law. Staff addressed Mr. LoRe's testimony in its brief at page 13, arguing it does not alleviate Staff's concern. In its reply brief, Staff argues that prudent utility management "would not take actions that violate GAAP," or fail to assure that the amended MGAT contract was submitted to the Commission for approval.<sup>104</sup>

As noted above, DTE Gas did not address Ms. Wagner's concerns in its initial brief.<sup>105</sup> In its reply brief, DTE Gas relies on Mr. LoRe's testimony explaining the company's system in which an affiliate such as MGAT books the charge to DTE Gas in the DTE Energy accounting system, and the system then books the related credit to the DTE Gas intercompany payables account, arguing that its accounting practices do not

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<sup>101</sup> See Exhibit S-10, pages 20-23, 28.

<sup>102</sup> See Exhibit S-10, pages 24, 26.

<sup>103</sup> See Staff brief, pages 29-30.

<sup>104</sup> See Staff reply, page 5-6.

<sup>105</sup> See Staff brief, page 34.

violate the Code of Conduct. DTE Gas contends that Staff “misunderstands” its accounting system:

Staff’s criticisms arose because it apparently cannot understand how DTE Gas did not realize that it was not being charged for a \$300 a month administration fee and was being charged for a monthly oxygen charge, which ranged from \$59.60 to \$378.46. . . . In the scope of all the transactions that DTE Gas reviews, it is not surprising that the omission of a \$300 fee and the addition of a separate charge of similar amount might go unnoticed, as the total amount of each month was roughly approximate. Nevertheless, Ms. Wagner is correct that DTE Gas did not notice the billing errors. But this is not due to any violation of the code of conduct, but more likely is due to the fact that the amounts were so small.<sup>106</sup>

DTE Gas did not address Staff’s analysis of Exhibit S-10 in its reply brief.

This PFD finds merit in Staff’s concerns. While DTE Gas argues that its SAP system does not violate the Code of Conduct, it acknowledges that the system generates a copy of the journal entries recorded to DTE Gas’s accountant, without explaining why that review did not take place. As Ms. Wagner testified:

Staff is concerned that DTE Gas is not reviewing journal entries made by MGAT. The Company’s purchased gas invoices are all stamped with 3 lines and indicated on line one the approved amount to be paid, line two is used for the sign off by the Gas Supply Manager and line 3 is the date it is signed for payment approval, prior to the due date. **The journal entries provide by DTE Gas do not include an approved amount, signature, or date.**<sup>107</sup>

This lack of review, and the corresponding failure to follow the established accounting procedures, led to Staff’s concern “that DTE Gas is blindly allowing an affiliate to book expenses on its behalf *without any oversight or review.*”<sup>108</sup> DTE Gas did not rebut this testimony. While to DTE Gas, the question is one of the company’s accounting

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<sup>106</sup> See DTE Gas brief, page 15.

<sup>107</sup> See Tr 284.

<sup>108</sup> See Tr 284.

“miss[ing] errors on a few bills amounting to an underpayment of \$19,476 over a period of 10 months,”<sup>109</sup> DTE Gas fails to recognize that Staff’s concern is with the lack of formal review, not the existence of errors in a review that actually took place. Thus, DTE Gas’s assertion that the errors “more likely” were due to the small magnitude of the difference between what was charged and what should have been charged is lacking in record support; there is no support for the contention that DTE Gas reviewed the charges by MGAT. DTE Gas also does not explain its failure to provide Staff with requested records reflecting other transactions between MGAT and DTE Gas, given the relationship of those transactions to the concerns Staff raised in this case.

2. \$800 receipt point fee

As noted above, Staff initially rejected the \$800 receipt point fee because the Staff concluded Antrim Delivery Point agreement had not been properly approved under Act 9, and exceeded the \$250 monthly receipt point fee in the Gas Transportation Agreement that was approved.<sup>110</sup> In its brief, Staff also argues that DTE Gas has not justified paying a receipt point fee that is more than triple the fee approved in Case No. U-17530, also noting that DTE Gas funded the construction of the Gaylord interconnection.<sup>111</sup>

In his rebuttal, Mr. Schiffer contended that the receipt point fees are essentially outside the contract, separately agreed upon and “disparate from the MPSC-approved transportation agreement and rate.”<sup>112</sup> He corrected his rebuttal testimony as originally filed, however, to delete the assertion that MGAT had sought approval of the contracts

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<sup>109</sup> See DTE Gas reply, page 16.

<sup>110</sup> See Wagner, Tr 282-284.

<sup>111</sup> See Staff brief, pages 16-20.

<sup>112</sup> See Tr 91.

for receipt point fees. He testified that the \$225 fees included in the approved MGAT agreement were “Antrim production receipt-point fees,” while the \$800 receipt-point fee is for “interconnection receipt point fees,” which cover the cost of additional equipment. Mr. Schiffer further testified that the \$800 fee “has been the standard fee since before 2005.”<sup>113</sup>

Although not addressing these fees in its initial brief, DTE Gas relies on Mr. Schiffer’s rebuttal in its reply brief. It also reproduces pictures of the Antrim receipt point and the Gaylord interconnection included in its discovery response to Staff, Exhibit S-10 to show the differences in size and complexity.<sup>114</sup> DTE Gas cites Mr. Lawshe’s testimony from Case No. U-18152 to support its argument that the Commission approved the \$800 in fees in its order in that case. In the cited portion of the testimony from Case No. U-18152, which DTE Gas included in a discovery response to Staff, Mr. Lawshe testified:

DTE Gas will spend approximately \$2.6 million to construct the AEP Gaylord interconnect with metering and related equipment. DTE Gas will also pay AEP a monthly fee of \$800/month for this interconnect, plus a monthly fee of \$300/month for transportation service, plus a gas transportation charge of \$0.03626/Mcf for all volumes of gas transported. Only the monthly fees and gas transportation charges will be billed and recovered through cost of gas; the construction costs will be charged and recovered through base rates. [Exhibit S-10, p 13 (emphasis added); MPSC Case No. U-18152, 2018 GCR Application Testimony and Exhibits Dkt No 1, p 122 (GRL Testimony, p 40).]<sup>115</sup>

DTE Gas also argues that by constructing the Gaylord interconnection, customers saved an estimated \$25 million.

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<sup>113</sup> See Tr 91. The Gaylord interconnection began operations in November 2017.

<sup>114</sup> See DTE Gas reply, pages 10-11.

<sup>115</sup> See DTE Gas reply, page 13.

DTE Gas argues that Act 9 does not require approval of an agreement to pay receipt fees because they are not “a rate or charge for receiving or delivering gas” within the language of MCL 483.110.<sup>116</sup> It argues instead that the fee “[i]n essence . . . is a rental fee for DTE Gas use of MGAT’s property.”<sup>117</sup> DTE Gas further argues that if Act 9 requires approval of the agreement, the Commission should not “punish” DTE Gas for something MGAT was supposed to do.”<sup>118</sup> It contends Staff’s adjustments “ignore corporate formalities,” by tasking DTE Gas with the responsibility for obtaining approval of the contract, and further argues that “DTE Gas is obligated to pay the fees to MGAT, regardless whether MGAT sought Commission approval.”<sup>119</sup> Finally, DTE Gas argues that if the settlement agreement in Case No. U-17530 limited the amount MGAT could charge DTE Gas, the Commission should allow DTE Gas to recover the \$225/month fee included in the contract approved in that case.<sup>120</sup>

Staff disputes that the Commission approved the fees at issue in Case No. U-18152, explaining that the Commission approved a settlement agreement in that case with the standard settlement language limiting the precedential effect of the agreement.<sup>121</sup> It also explains the scope of a plan case review, arguing the Commission does not approve future costs, but reviews them in the reconciliation.

In evaluating the parties’ arguments, this PFD first notes that the contract DTE Gas relies on as the source of its obligation to pay the \$800 fee, the Antrim Delivery

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<sup>116</sup> See DTE Gas reply, page 12. Note that in discovery, DTE declined to state the company’s position whether Act 9 applied to the contract. See Exhibit S-10, page 4.

<sup>117</sup> See DTE Gas reply, page 12.

<sup>118</sup> See DTE Gas reply, page 13.

<sup>119</sup> See DTE Gas reply, page 12.

<sup>120</sup> See DTE Gas reply, page 14.

<sup>121</sup> See Staff brief, pages 24-28.

Point Agreement, is not in this record, making it difficult to accept DTE Gas's representations regarding its obligations under this agreement or the extent of its liability to meet these obligations if the contract amendment requires Act 9 approval. It is well-established that the best evidence of the terms of an agreement is the agreement itself.

DTE Gas is also unclear whether the new agreement abrogated or amended the Gas Transportation Agreement of the form approved in Case No. U-17530. Section 7.3 of that agreement states:

DTE Gathering agrees that the Receipt Point fees under its Antrim Receipt Point Agreement(s) ("Receipt Point Agreement") for deliveries into the AEP shall be \$225 on a monthly basis from the Effective Date of this Agreement. The Parties further acknowledge that the Receipt Points are an integral part of the AEP and will continue to be operated by DTE Gathering. In the event of a conflict between this Agreement and the Receipt Point Agreement relating solely to the monthly fee, this Agreement shall control.

Section 20.6 states:

This Agreement and Exhibit A, Exhibit B, Exhibit C and Exhibit D constitute the entire agreement between DTE Gather and Shipper concerning the subject matter hereof. Any prior understandings, representations, promises, undertakings, agreements or inducements, whether written or oral, concerning the subject matter hereof not contained herein shall have no force and effect. This Agreement may be modified or amended only by a writing duly executed by both parties.

Mr. Schiffer characterized the Delivery Point Agreement as "separate" from this approved agreement, while in its discovery response in Exhibit S-6, page 5, DTE Gas states the 2014 Gas Transportation Agreement "was never used."

Turning to DTE Gas's reliance on the Commission's December 7, 2017 order in Case No. U-18152 as approval for the charges, just as DTE Gas points out, in his prefiled testimony in Case No. U-18152, Mr. Lawshe explained DTE Gas's plan to replace its transportation contract with Great Lakes Gas Transmission with

transportation service from MGAT on the AEP, to move gas from an existing interconnection with DTE Gas near Kalkaska and deliver it to a new interconnection near Gaylord. As quoted above, he stated in this testimony that DTE would spend approximately \$2.6 million to construct the interconnection with metering and related equipment and pay a monthly fee of \$800/month for the interconnection plus a \$300 monthly fee for transportation service as well as a volumetric charge.

A review of the Commission's December 7, 2017 order approving the settlement agreement in Case No. U-18152, however, shows that the Commission did not expressly approve the amendment to DTE Gas's transportation contract with MGAT, but instead all approvals were limited to the specific GCR plan before the Commission and were not to be given precedential effect under the terms of the settlement agreement. Specifically, in its order: the Commission approved the settlement agreement; the Commission approved the company's gas cost recovery plan for the 12-month period ended March 31, 2018; the Commission approved a maximum base GCR factor of \$3.16 per Mcf, subject to adjustment by an approved contingency factor matrix; the Commission approved a SOLR reservation charge; the Commission approved DTE Gas's "interstate contingency plans" that were proposed in the event the NEXUS pipeline was not operational by November 1, 2017; and the Commission approved recovery of certain ANR-Alpena transportation costs. As set forth in paragraph 16 of the approved settlement agreement:

This settlement agreement ("Settlement Agreement") is entered into for the sole and express purpose of reaching a compromise among the Parties. All offers of settlement and discussions relating to this Settlement Agreement are considered privileged under MRE 408. If the Commission approves this Settlement Agreement without modification, neither the Parties to this settlement nor the Commission shall make any reference to,



or use this Settlement Agreement or the order approving it, as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding; provided, however, such references may be made to enforce or implement the Settlement Agreement and the order approving it.

Because the Settlement Agreement and the Commission's order approving it did not expressly "approve" the charges identified in Mr. Lawshe's testimony, but instead only approved the plan and factor, without precedential effect, DTE Gas cannot rely on that plan approval beyond the specific GCR year that was the subject of that settlement agreement. To attempt to extract a broader approval, beyond the specific provisions of the settlement agreement, violates the settlement precedent language of paragraph 16 of the settlement agreement.

It is also worth noting that DTE Gas filed that case on December 29, 2016, including the testimony of Mr. Lawshe on which DTE Gas relies, and evidentiary hearings were never held. The contract DTE Gas cites was apparently dated September 1, 2017,<sup>122</sup> just two weeks before the settlement agreement was filed in that case, with nothing in the record in that case to suggest that the parties were provided with a copy of the contract amendment.

This PFD also finds Staff's analysis persuasive that an amendment to the Gas Transportation Agreement required approval under Act 9. Staff cites MCL 483.110, which states:

A common purchaser or common carrier of natural gas, before receiving the gas for transmission or delivery, shall file with the commission a schedule of *the rates and price at which the common purchaser or common carrier will receive gas at delivery stations from a well, field, or*

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<sup>122</sup> See Exhibit S-6, page 5. (DTE Gas's response here is clearly missing some verbiage. It states: "The AEP transportation agreement start date was 11/1/2014 (but was never used). The AEP agreement amendment [sic] on 9/1/2017 and the first flowing of gas was 12/28/2017.")

*source of supply, as well as the rates or charges at which the common purchaser or common carrier will deliver gas to connecting carriers or distributing lines or customers, and, if the common purchaser or common carrier is operating as a carrier for hire, the rates and charges which the common purchaser or common carrier will charge for the service to be performed by it. A common purchaser or common carrier operating as a carrier for hire also shall file a copy of each contract for purchasing, receiving, or supplying gas. . . . Thereafter, a common purchaser or common carrier of natural gas may alter or amend its price paid, rates, charges, and conditions of service by application to and approval by the commission in the same manner and by the same process and under the same legal limitations and like right as are now provided by statute for the regulation by the commission of the rates for electricity transmitted in this state and process of appeal provided in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.*

In view of this language, DTE Gas's claim that an additional charge for receiving or delivering gas is not covered by this statutory section because receipt or delivery of gas is outside the scope of transportation contract is untenable. Even if that statute did not expressly reference "receive gas" and "deliver gas," regulating the transportation of gas only once it is in a pipeline would appear to provide illusory protection. Imagine a regulated fare for train travel, which allowed the railroad to charge unregulated fees for allowing passengers on and off the train. Similarly, DTE Gas's attempt to distinguish the receipt/delivery point fees as akin to equipment rental is unpersuasive. This distinction makes no sense, since all pipeline transportation could similarly be viewed as akin to renting someone else's property, i.e. space in the pipeline.

As Staff recognizes, there is also some ambiguity on this record as to what the \$800 monthly fee is for. DTE Gas and MGAT label the \$800/month charge a "receipt point charge" as shown by the invoices in Exhibit S-10, and as explained by Ms. Wagner. DTE Gas also goes to great trouble to distinguish a "production receipt point" from an "interconnection receipt point" or simply "interconnection point." In its reply brief

at page 10, DTE Gas states that “MGAT charges DTE Gas \$800/month for the Gaylord interconnection receipt point.” Nonetheless, as far as GCR customers go, the Gaylord interconnection is a delivery point. Putting aside that DTE Gas constructed the interconnection, the Gas Transportation Agreement approved in Case No. U-17530 did not include charges for the listed delivery points, including DTE Gas’s interconnection at Kalkaska. Note, too, that DTE Gas stated in its interrogatory responses that no other shippers nominated gas on the AEP for delivery to DTE Gas at Gaylord,<sup>123</sup> but then provided an invoice to a third-party shipper nominating gas onto the AEP with the Gaylord interconnection as a receipt point.<sup>124</sup> DTE Gas has the responsibility to establish what the charge is for, and as noted above, DTE Gas did not even provide a copy of the document for the record on which it claims the charge is based.

DTE Gas relies heavily on its discovery response at pages 16-18 of Exhibit S-10, explaining the difference between “production receipt points,” and the “interconnection points” by describing the monitoring systems in place at points of interconnection, including “oxygen monitor, dew point monitor and chromatograph,” and that they are much larger.<sup>125</sup> DTE Gas argues the monitors “allow the Company to monitor and verify gas quality prior to receipt of the gas as well as any delivery from the system to end users.”<sup>126</sup> These arguments are unpersuasive given the lack of evidence regarding the transactions related to the installation and operation of this equipment.

Additionally, DTE Gas’s claims about the complexity of receipt points are also unpersuasive in view of the contract provisions in Attachment C to the approved

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<sup>123</sup> See Exhibit S-10, pages 8-10.

<sup>124</sup> See Exhibit S-10, pages 29-31.

<sup>125</sup> DTE reply, pages 10-11.

<sup>126</sup> See DTE Gas reply, page 12.

agreement. Pages 9-10 state: "Installation of and continual use of a gas chromatograph at any Receipt Point(s) or Delivery Point(s) may be substituted for the other gas analysis provisions under this Section." At pages 10-11, an ultrasonic meter is contemplated: "The volume of gas delivered at each Receipt Point or Delivery Point shall be measured utilizing one of the following . . . (c) An ultrasonic meter."

This PFD finds that because DTE Gas refused to provide Staff with the information it requested regarding the costs DTE Gas incurs to operate and maintain the system and the costs recovered from MGAT, and failed to establish with reference to an actual agreement what the fee is for, DTE Gas has failed to establish that the \$800 fee is reasonable under the circumstances.

3. \$300 administrative fee

For similar reasons to its challenge to the reasonableness of the \$800 receipt point fee, Staff argues that DTE Gas has not established it is reasonable for it to pay the \$300 administrative fee.<sup>127</sup> Staff argues:

Supposedly, a single purported MGAT employee executes work worth \$300 in the form of an administrative overhead fee, but there is no proof, and it appears to be a DTE [Gas] employee actually doing the work.<sup>128</sup>

Staff again notes DTE Gas's refusal to provide supporting documents relating to the work DTE Gas does for MGAT. Staff also references its other accounting concerns as discussed above:

Staff is not able to determine what DTE Gas is charging MGAT for or if DTE Gas is charging MGAT enough to cover all costs including the employee's salary packages . . . office supplies and equipment. Staff is concerned that ratepayer funds are being moved from the fully regulated

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<sup>127</sup> See Staff brief, pages 22-24.

<sup>128</sup> See Staff brief, page 22.

utility, to its affiliate company, which is subject to Act 9, without proper justification, documentation, and accountability.<sup>129</sup>

As noted above, DTE Gas contends that Staff's concerns are based on faulty contract interpretation, a disregard for corporate formalities, and a misunderstanding of its accounting practices. DTE Gas views the dispute as primarily one of billing errors, arguing that the contract allows for billing errors to be remedied for up to 24 months, and disputes Staff's view that to correct a bill going back 24 months, a bill had to be submitted.<sup>130</sup> While DTE Gas maintains that the fee payment was approved in case No. U-18152, DTE Gas does not address Staff's contention that the record in this reconciliation case does not support the reasonableness of the fee.

This PFD agrees with Staff that DTE Gas has not supported the reasonableness of the administrative fee on this record. As explained above, this PFD rejects DTE Gas's conclusion that the fees were approved by virtue of the Commission's order approving the settlement agreement in Case No. U-18152. While the \$300 fee as part of the Gas Transportation Agreement was approved in Case No. U-17530, the complete agreement between DTE Gas and MGAT is not in this record.

#### 4. Conclusions

As noted above, DTE Gas asks to have the \$300 monthly administrative fee and \$800 receipt point fee included in the reconciliation, while Staff argues that no allowance for receipt point fees or administrative fees should be provided for in this

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<sup>129</sup> See Staff brief, page 23.

<sup>130</sup> See DTE Gas reply, page 10. Staff raises this argument in its brief at pages 4-5; Staff cites Ms. Wagner's testimony at Tr 279-280, acknowledging that nonetheless Staff initially decided to include the administrative fees in this reconciliation. Staff's change of position is not primarily related to this argument.

reconciliation. The RCG supports Staff's concerns, but argues as an alternative that imbalance volumes on the AEP should be disregarded.

First, as discussed in subsection 1 above, this PFD finds Staff raised legitimate concerns with DTE Gas's accounting for affiliate transactions with MGAT. While DTE Energy may for administrative purposes have "both sides" of a transaction booked, each company must ensure that it reviews costs and revenues assigned to it, and has a timely and expeditious process for correcting any errors. DTE Gas did not address Staff's accounting concerns. As explained by Mr. LoRe, DTE Gas relies exclusively on the SAP accounting program in use for all of the DTE Energy companies. DTE Gas has not refuted Ms. Wagner's testimony that DTE Gas did not actually undertake the reviews called for in the described procedure. The claim DTE Gas made in its reply brief, that errors in the amounts claimed by MGAT were "more likely" not noticed because of the small magnitude of differences relative to what should have been charged is speculative and does not refute Ms. Wagner's testimony that the internal procedures were not followed.

Turning to the fees, as discussed in subsections 2 and 3, DTE Gas did not establish the extent of its contractual obligations to pay these fees, acknowledges that the contract was not approved under Act 9, and did not establish that the fees are reasonable relative to actual costs or in the context of DTE Gas's construction of the Gaylord interconnection and its and operation of MGAT's system. The Commission has looked for consistency between amounts recovered in GCR cases and amounts recovered in base rates, to avoid duplicative or overrecovery.

Given that the costs at issue in this case are not material to DTE Gas's GCR costs, this PFD recommends that the Commission either adopt Staff's recommendation for a show cause proceeding or otherwise direct Staff to investigate the company's affiliate transactions with MGAT further as the Commission deems administratively appropriate. As Staff notes, the Commission has broad authority to examine the books and records of DTE Gas. Because DTE Gas was prepared to book the entirety of the administrative fees in 2020, the Commission may determine it is appropriate to allow the company to recover some or all of the fees paid to MGAT in a future reconciliation. For purposes of this reconciliation, this PFD concludes that DTE Gas should not be allowed to recover either an administrative fee or receipt point fee associated with transportation on the AEP. While DTE Gas argues this is punitive, the amount at issue is *de minimis*, and DTE Gas has failed to meet its burden of proof to show that the payments are reasonable and prudent and lawful. This PFD notes the RCG recommends an alternative remedy to prohibit recovery of imbalance volumes related to the AEP. This PFD rejects that remedy as not sufficiently related to the accounting concerns Staff identified or to the ambiguities surrounding DTE Gas's agreements with MGAT.

C. Company Use, and Lost and Accounted For Gas

Mr. Bratu compared the company use and lost and unaccounted for (LAUF) gas reported in the reconciliation to the plan case projection, acknowledging that the actuals were 2.4 Bcf above the plan case forecast, 8.2 Bcf as shown on Exhibit A-9, line 3, compared to a projected total of 5.8 Bcf. Mr. Bratu merely asserted this increase was attributable to "increased system losses." As Ms. Wagner explained, Staff revised certain of the sales volumes reported by the company. As shown on Exhibit S-1, lines 6

and 7, this had the effect of slightly increasing the total of company use and LAUF gas from 8.19 Bcf to 8.23 Bcf. Mr. Crandall expressed a concern with the increase in company use and LAUF gas values over plan levels, and testified that DTE Gas had failed to support the increase. He noted Mr. Bratu's limited explanation and testified that the increased losses equate in value to approximately \$7 million. Pending an explanation, he recommended that the costs be disallowed.<sup>131</sup>

In his rebuttal testimony, Mr. Bratu focused on the two components separately, noting that an increase in company use accounted for 0.9 Bcf of the increase, and testified that a 1.5 Bcf increase in LAUF gas is not unusual.<sup>132</sup> He testified that the differences could be attributable to a number of factors, including fuel for compressors, gas processing at storage facilities, and gas to heat company buildings.<sup>133</sup> He further explained:

Company use volume is directly impacted by the system's throughput. This is also true for losses. As I described in my direct testimony [at Tr 139] the actual sendout was higher than plan for the 2018-19 gas year primarily due to the colder than normal weather experienced at that time.<sup>134</sup>

Mr. Bratu testified that while higher than projected company use and lost gas volumes must be replaced to meet customer requirements, the cost of company use and LAUF gas volumes are not recovered through the GCR factor, but are addressed and recovered through base rates.<sup>135</sup>

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<sup>131</sup> See Tr 206-207.

<sup>132</sup> See Tr 151.

<sup>133</sup> See Tr 151.

<sup>134</sup> See Tr 151.

<sup>135</sup> See Tr 150.



In its brief, the RCG addressed Mr. Bratu's rebuttal testimony, reviewing elements of the company's general rate case, Case No. U-20642.<sup>136</sup> The RCG argues that projected test years are used in rate cases, and further that the five-year average used in Case No. U-20642 was below the level reported in this case. Further, the RCG notes DTE Gas's admission that the company use and LAUF volumes above plan levels may need to be replaced, and argues that increased company use and LAUF gas can affect the company's storage balances if it does not purchase additional volumes.<sup>137</sup>

The RCG argues:

The remedy for addressing this issue is for the ALJ to either adopt RCG's proposed downward adjustment of \$7,000,000 in this case, or for the ALJ to rule that DTE should not include or recover in this GCR reconciliation case for any gas costs associated with company use or lost and unaccounted for gas. This should include the ruling that DTE should not indirectly recover for those costs via the GCR to restore its gas storage levels to DTE's policy of having 11.2 Bcf of gas in storage by the end of the gas injection season on October 31, 2019. Such a ruling would be consistent with DTE's testimony in rebuttal in this case that gas costs associated with company use and lost gas is not included in this GCR reconciliation.<sup>138</sup>

In its reply brief, DTE Gas relies on Mr. Bratu's rebuttal testimony as explained above.<sup>139</sup>

This PFD finds Mr. Bratu's testimony persuasive that company use and LAUF gas volumes can vary for a variety of reasons, and that the approximately 2.4 Bcf increase over plan levels correlates with a significant increase in throughput due to colder-than-normal weather. Based on a review of Exhibit S-1, which clearly shows the company use and LAUF gas volumes subtracted from purchased volumes to compute

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<sup>136</sup> See RCG brief, pages 3-4.

<sup>137</sup> See RCG brief, pages 4-5.

<sup>138</sup> See RCG brief, page 5.

<sup>139</sup> See DTE Gas reply, page 17.

total GCR supply in line 10, this PFD finds Mr. Bratu's testimony persuasive that the cost of company use and LAUF gas volumes is not recovered through the GCR factor, i.e. through this reconciliation. While as RCG seems to argue, unanticipated LAUF volumes may interfere with the company's ability to follow through with its plan, there is no suggestion on this record that DTE Gas was unreasonable or imprudent in its planning relative to the potential for company use and LAUF volumes to vary from forecast. As Mr. Bratu testified, while DTE Gas "made the reasonable and prudent decision to increase GCR purchases by the same amount," DTE Gas considers this typical.<sup>140</sup> No party challenged this testimony, or showed an adverse impact to customers from the underprojection.

D. Tax Cuts and Jobs Act (TCJA)

Based on Mr. Crandall's testimony, the RCG also argues that DTE Gas has not shown that it has taken reasonable steps to minimize its gas costs by seeking lower prices from certain suppliers benefiting from the TCJA. The RCG reviews Mr. Crandall's testimony and exhibits, and cites a discovery response in Exhibit RCG-6.<sup>141</sup>

As the RCG recognizes, Mr. Krysinski presented both direct and rebuttal testimony on this topic. The RCG argues in response:

DTE's testimony on this issue generally lists and discusses the status of these FERC regulated pipelines and indicates only that DTE intervened in said FERC cases. However, RCG asserts that DTE's mere intervention in FERC cases involving pipelines service DTE does not, by itself, constitute an adequate showing of what positions and remedies DTE has pursued in said cases to aggressively seek reductions in the rates charged by said pipelines to reflect the tax reduction.<sup>142</sup>

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<sup>140</sup> See Tr 150, 152.

<sup>141</sup> See RCG brief, pages 8-9.

<sup>142</sup> See RCG brief, page 9.

The RCG also argues that DTE Gas has not identified any action taken with regard to NEXUS. The RCG does acknowledge that the pipeline cases DTE Gas identifies before the FERC are still open, and it acknowledges that it is not proposing a downward adjustment in this case. Instead, the RCG asks that DTE Gas be required to present more complete information in its ongoing plan and reconciliation cases.

In its reply brief, DTE Gas cites the Commission's May 8, 2020 order in Case No. U-20235, arguing the Commission rejected "nearly identical" arguments in that case. DTE Gas argues that it has extensively participated in several cases regarding the TCJA, advocated for lower rates, and participated in cases that resulted in rate reductions related to the TCJA. Addressing NEXUS, DTE Gas argues that it has a negotiated rate with NEXUS, and that FERC has recognized that changes in pipeline maximum rates do not affect negotiated rates.<sup>143</sup>

This PFD finds DTE Gas has adequately demonstrated it is working to lower its transportation costs through regulatory proceedings.

#### IV.

#### **CONCLUSION**

For the reasons discussed above, this PFD recommends that the Commission accept DTE Gas's GCR and GCC reconciliation as modified by Staff, including disallowance of the administrative and receipt point fees DTE Gas claims are payable to MGAT.

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<sup>143</sup> See DTE Gas reply, pages 18-19.  
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Additionally, for the reasons discussed above, this PFD recommends that the Commission investigate DTE Gas's accounting for affiliate transactions with MGAT to ensure compliance with GAAP and the Code of Conduct.

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

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Administrative Law Judge

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