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 Electric Company for authority to implement a power supply cost recovery plan in its rate schedules for 2020 metered jurisdictional sales of electricity.)	Case No. U-20527

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 February 2, 2021.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before February 23, 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 March 9, 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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Date: 2021.02.02 14:36:58 -05'00'

February 2, 2021
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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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

This Proposal for Decision (PFD) addresses the September 30, 2019 application DTE Electric Company (DTE Electric) filed under Act 304, MCL 460.6j, for approval of its 2020 power supply cost recovery (PSCR) plan. DTE Electric's application was accompanied by the testimony and exhibits of eight witnesses. The application projected total PSCR costs of $1.396 billion and PSCR sales of 42,866 GWh, with a proposed PSCR factor of 1.66 mills/kWh. At the prehearing conference on December 10, 2019, the ALJ granted intervention to the Michigan Environmental Council (MEC), Attorney General Dana Nessel, the Association of Businesses Advocating Tariff Equity (ABATE) and the Residential Customer Group (RCG). Counsel for DTE Electric, Staff, and all intervenors attended the prehearing. Also at the prehearing, the ALJ set a schedule by agreement of the parties.

On February 20, 2020, MEC filed a motion for entry of a protective order and to revise the schedule. Following the March 10, 2020 hearing, the ALJ entered a protective order that was agreed to by all parties,[1] and revised the schedule as agreed to by all parties.[2] The schedule was extended again on June 1, 2020, by agreement of the parties.

Consistent with the revised schedule, MEC and Staff each filed the testimony and exhibits of one witness on June 17, and DTE Electric filed the rebuttal testimony of three witnesses on July 22, 2020. At an evidentiary hearing on August 25, 2020, held by videoconference, two DTE Electric witnesses were cross-examined on their testimony, while the testimony of all remaining witnesses was bound into the transcript without the need for them to appear. The testimony and exhibits are described in section II below. DTE Electric, Staff, and MEC filed briefs on September 30, and DTE Electric and MEC filed reply briefs on October 28, 2020.

II.

OVERVIEW OF THE RECORD

The record in this case is contained in three transcript volumes,[3] totaling 412 pages and 85 exhibits. This section provides a general overview of the record. It is not intended as a full recitation of the testimony of each witness; the testimony of each witness will be addressed in more detail in section III below as necessary to address the disputed issues.

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[1] See 2 Tr 13.
[2] See 2 Tr 14-15.
[3] The evidentiary hearing is transcribed in volume 3, and all transcript references in this PFD are to that volume unless otherwise specified.

A. DTE Electric

DTE Electric presented the direct testimony exhibits of eight witnesses, James A. Brunell, Marcus J. Rivard, Ryan C. Pratt, Christopher A. Bence, Trevor A Jarrait, Adam L. Gamez, Shayla D. Manning, and Barry Marietta, and Exhibits A-1 through A-44.

Mr. Brunell is a Consultant in Regulatory Affairs for DTE Energy Corporate Services, LLC.[4] He presented DTE Electric's calculation of the monthly PSCR factors for 2020 on Exhibit A-1 and the projected average annual PSCR billing factors for the period 2021 through 2024 on Exhibit A-2.[5] Mr. Brunell testified that the levelized monthly PSCR billing factor of 1.66 mills/kWh for 2020 incorporates the company's projected 2019 underrecovery of approximately $1 million, total projected PSCR costs and total system requirements from Exhibit A-3, sponsored by Mr. Rivard, a loss multiplier consistent with the company's then-pending rate case, and the base PSCR factor approved in the company's most recent rate case.[6] He explained that the company manages its PSCR factor within the established ceiling to reduce any projected overrecoveries.[7]

Mr. Brunell explained that beginning with its 2019 PSCR plan reconciliation, DTE Electric seeks approval to include two specific expense items as PSCR costs.[8] First, based on the Commission's May 2, 2019 order in Case No. U-20162 approving Rider 18, DTE Electric plans to include actual expenditures made to compensate distributed

[4] Mr. Brunell's direct testimony is transcribed at Tr 228-240. His background and qualifications are set forth at Tr 229-230. He sponsored Exhibits A-1 and A-2.
[5] See Tr 237-239.
[6] See Tr 231, 238, and Exhibit A-1.
[7] See Tr 235. Mr. Brunell stated the Company will use this methodology if the pending FERC decision results in meaningful continuing over-recovery balances. Id.
[8] See Tr 232-233.

generation customers under Rider 18 for energy outflow. He testified that no such costs have been included in the projected 2020 PSCR cost. Second, referencing Mr. Rivard's testimony, he explained that DTE Electric plans to treat certain incentive payments made to demand response (DR) customers as a capacity expense. Mr. Brunell also described the treatment of renewable energy costs, including the transfer price calculation and treatment of the costs and credits associated with the company's voluntary green pricing programs, consistent with prior Commission orders.[9]

Mr. Rivard is a Principal Market Engineer in the Power Supply Systems and Modeling team within DTE Electric's Generation Optimization department.[10] He testified in support of the company's projected generation, purchased power, and other associated PSCR expenses for 2020 and the 5-year forecast. His Exhibit A-3 shows the components of the projected PSCR expenses, and reflects the fuel cost projections supported by Mr. Bence, Mr. Pratt, and Mr. Jarrait, the transmission expense supported by Mr. Gamez, and the sales and output projections supported by Ms. Manning. Mr. Rivard also presented the underlying projections of generation by plant and wholesale energy purchases, as well as the sales projections for the five-year forecast period.

Mr. Rivard testified the company has sufficient capacity to meet the MISO Resource Adequacy requirements, presenting the company's capacity resource plan in Exhibit A-5. He testified MISO calculated a Planning Reserve Margin Requirement of 10,825 MW for the 2020 Resource Adequacy Planning Year,[11] while DTE Electric projects it has a total of 10,966 MW of Planning Resources for that planning year,

[9] See Tr 232-234.
[10] Mr. Rivard's testimony, including his direct and rebuttal testimony, is transcribed at Tr 243-275. His background and qualifications are set forth at Tr 244-245. He sponsored Exhibits A-3 through A-13.
[11] See Tr 252.

including generation and demand resources of 10,634 MW, and additional power purchase agreements with a combined value of 332 MW.[12] On this basis, DTE Electric expects to sell approximately 141 MW of capacity in the 2020 Resource Adequacy Planning Year.[13]

Mr. Rivard presented wholesale energy and capacity price projections for the five-year period in Exhibit A-4.[14] His Exhibit A-6 provides the calculation of the net power purchases and power purchase expense, including renewable energy, included on lines 8-10 of Exhibit A-3. Mr. Rivard also explained that the demand response expenditures and capacity included on Exhibits A-5 and A-6 represent the projected cost of demand response incentives approved by the Commission and the projected capacity credits associated with those incentives.[15]

Mr. Rivard presented generation forecasts by plant in Exhibit A-11, with net demonstrated capacity forecasts by plant shown in Exhibit A-13. He presented projected sorbent costs in Exhibit A-12. Mr. Rivard also detailed the company's projections of emission allowance inventories and emission allowance expenses.[16] He testified DTE Electric intends to use EPA-allocated emission allowances and emission allowances in inventory to meet its obligations, as shown in Exhibits A-7 to A-10, but will purchase additional allowances if necessary.[17]

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[12] See Tr 253.
[13] See Tr 253.
[14] See Tr 249-250.
[15] See Tr 256-257.
[16] See Tr 260-263.
[17] See Tr 263.

Mr. Pratt is a Manager of Procurement in the Fuel Supply department of DTE Electric.[18] He presented DTE Electric's natural gas supply procurement plans and projected natural gas expenses for the 2020 PSCR plan year and five-year forecast period. He testified that DTE Electric projects natural gas requirements of 19,724,000 MBtu and natural gas expense of $62 million for the plan year, including commodity and transportation costs, and expects requirements and expenses to remain relatively constant until the company's combined cycle gas turbine power plant, the Blue Water Energy Center, begins operating in 2022. By 2023, DTE Electric projects natural gas expenses of $254 million, and requirements of 72.9 million MBtu.[19]

Mr. Pratt testified that DTE Electric plans to meet its requirements through a combination of long-term agreements, agreements with local distribution companies, and spot market purchases. Mr. Pratt further described the company's plans specifically for the Blue Water Energy Center, including the construction of a dedicated lateral, and anticipated contracts for gas transportation and storage as well as for gas supply.[20] Mr. Pratt also noted DTE Electric's investment in a combined heat and power plant located at a Ford Motor Company facility in Dearborn, expected to begin operating in 2020. He explained the agreements in place to serve this plant, and he testified that the fuel costs would be recovered through sales of steam to Ford and the MISO energy market.[21]

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[18] Mr. Pratt's testimony, including his direct testimony, rebuttal testimony, and cross-examination, is transcribed at Tr 34-139. His background and qualifications are set forth at Tr 34-35. He sponsored Exhibits A-14, and A-24 through A-44. (Exhibit A-14 was co-sponsored by Mr. Pratt and Mr. Bence.)
[19] See Tr 39.
[2020] See Tr 40-43.
[21] See Tr 43-44. NEXUS Gas Transmission, LLC is a joint venture between a DTE Electric affiliate, DTE Gas Storage & Pipelines, and an Enbridge, Inc. affiliate, Spectra Energy Partners, LP.

Mr. Pratt's fuel expense forecast in Exhibit A-14 reflects the gas requirements determined by Mr. Rivard, projected natural gas costs based on a combination of Chicago Mercantile Exchange and New York Mercantile Exchange future prices and PACE Global long-term price forecasts, and transportation costs.[22]

Mr. Pratt also provided testimony to support natural gas transportation expenses associated with the NEXUS Gas Transmission, LLC (NEXUS) pipeline.[23] He discussed the original agreement, executed July 21, 2014, and subsequent amendments including the one executed in October 2018 to transport natural gas to an additional receipt point at Clarington on the Texas Eastern Appalachian Lease (TEAL) pipeline.[24] Prior to the TEAL amendment, the 20-year agreement provided firm transportation for 30,000 Dth/day from Kensington to the MichCon Citygate until the Blue Water Energy Center begins operations, with an additional 45,000 Dth/day capacity after that, at a rate of $0.695 per Dth/day plus 1.32% fuel. Mr. Pratt testified the amendment added Clarington as a receipt point for up to 15,000 Dth/day of that transportation capacity for a four-year period at an additional transportation charge of $0.15 per Dth/day, plus an expected additional fuel rate of 0.6%.[25] He testified this amendment allows the company access to cheaper supplies from eleven different receipt points in the Appalachian basin. Mr. Pratt also reviewed the company's decision-making underlying these agreements, including a landed cost analysis by DTE Gas and a third-party study performed by ICF Resources, LLC, referred to in this PFD as the ICF 2015 Study. Mr.

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[22] See Tr 38.
[23] See Tr 44-57.
[24] See Tr 53.
[25] See Tr 52.

Pratt acknowledged a net cost to ratepayers over the five-year forecast attributable to the agreement, but he cited projected savings of $271 million over a 20-year period.[26]

Mr. Bence is a Manager of Procurement within the Fuel Supply department of DTE Electric.[27] He testified in support of the forecasted expenses for coal, oil, coke oven gas, blast furnace gas, and petcoke fuel for the 2020 plan year and the five-year period, as shown in Exhibit A-14, with long-term coal contract details presented in Exhibit A-15.

Mr. Bence testified the company intends to acquire coal during the forecast period using a combination of long-term and spot market purchases.[28] He explained how the delivered coal expense forecast is constructed based on estimated 2019 inventory quantities and costs, expected deliveries under existing coal and transportation contracts, and the projected delivered cost of spot purchases.[29] He further addressed some assumptions underlying the projected coal prices, including reliance on low sulfur western coal for approximately 90% of its coal volume, and the company's plans to continue use of reduced emission fuel (REF).[30]

Mr. Bence testified the 2020 PSCR plan and five-year forecast also include continued use of oven gas and blast furnace gas at the River Rouge Power Plant, and the use of petcoke at the Monroe Power Plant.[31] Mr. Bence also testified that DTE Electric expects to purchase No. 2 oil under contracts with a duration of three years or

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[26] See Tr 50.
[27] Mr. Bence's testimony, including his direct testimony, rebuttal testimony, and cross-examination, is transcribed at Tr 145-210. His background and qualifications are set forth at Tr 146-148. He sponsored Exhibit A-14 and A-15.
[28] See Tr 150-152.
[29] See Tr 149-150.
[30] See Tr 152.
[31] See Tr 156.

less, and explained that the projected cost of No. 2 oil is based on NYMEX futures prices plus transportation costs.[32]

Mr. Gamez is a Senior Strategist within the Regulatory Affairs Organization of DTE Energy Corporate Services, LLC.[33] Mr. Gamez presented the company's projected transmission expenses for 2020 and the five-year forecast period, and further explained the basis for the projected charges as shown in Exhibit A-16, broken down by MISO transmission service schedule. He testified that these expenses are required for participation in MISO Energy Market and the MISO Ancillary Service Markets.[34] Total 2020 base transmission costs as shown in Exhibit A-16 are projected to be approximately $365 million.[35] Mr. Gamez also testified that a final order in a pending FERC case, involving the MISO transmission owners' allowable return on equity could result in refunds from MISO and ITC that would reduce future expenses.[36]

Mr. Jarrait is a Senior Engineer in Nuclear Engineering within the Reactor Engineering work group for DTE Electric.[37] He testified in support of the reasonableness and prudence of DTE Electric's projected nuclear fuel expense for Fermi 2, shown in Exhibit A-17 for each year of the five-year forecast period. Mr. Jarrait reviewed the steps associated with the nuclear fuel cycle and explained DTE Electric's existing contracts for uranium, enrichment, and fabrication.[38] He testified that the projected nuclear fuel expense for 2020 is $45.12 million, developed in part using FUELMACS©

[32] See Tr 155.
[33] Mr. Gamez's direct testimony is transcribed at Tr 213-226. His background and qualifications are set forth at Tr 214-216. He sponsored Exhibit A-16.
[34] See 217.
[35] See Tr 225 and Exhibit A-16.
[36] See Tr 226.
[37] Mr. Jarrait's direct testimony is transcribed at Tr 290-302. His background and qualifications are set forth at Tr 291-292. He sponsored Exhibit A-17.
[38] See Tr 296.

computer software, with key inputs including the amortization of projected new fuel and the amortization of the remaining value of fuel currently in the reactor.[39] He noted that there are currently no regulatory costs, such as nuclear waste disposal fees addressed in Case No. U-17593, included in the cost projection.

Mr. Jarrait also explained the underlying generation forecast for Fermi 2, included in Exhibit A-17, testifying that projected generation is generally based on a 90% capacity factor and a typical 40-day refueling outage after an 18-month operating cycle, although the refueling outage planned for early 2020 will be 70 days.[40] He testified the company intends to transition to a new fuel type during the five-year plan period to increase the operating cycle from 18 months to 24 months and reduce the number of bundles required to operate, resulting in reduced fuel expense and improved fuel efficiency.[41]

Ms. Manning is the Supervisor of the Long-Term Forecasting department of DTE Electric.[42] She provided DTE Electric's weather-normalized sales and system output forecasts for the plan year and subsequent years of the five-year forecast period. She provided economic data, including Gross Domestic Product and Consumer Price Index forecasts, to describe the economic outlook in the company's service area.[43] Ms. Manning further explained the company's forecast development and assumptions, including regression and end-use modeling, with separate forecasts developed for each

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[39] See Tr 299-300.
[40] See Tr 297.
[41] See Tr 297-298.
[42] Ms. Manning's direct testimony is transcribed at Tr 277-288. Her background and qualifications are set forth at Tr 278-279. She sponsored Exhibits A-18 through A-23.
[43] See Tr 281-282.

major rate classification; residential, commercial and industrial, and other.[44] She testified total electric sales, including bundled sales, are forecast to decrease by approximately 0.6 percent annually over the forecast period, relative to a 2018 baseline, with a corresponding decrease in net system output. Annual weather-normalized sales, system output, and peak demand forecasts are presented in Exhibit A-18 for the service area in total, and separately for bundled sales and Choice sales in Exhibits A-20 and A-21 respectively. Monthly weather-normalized sales forecasts for 2019-2024 are presented in Exhibit A-19 and historical weather-normalized sales are shown in Exhibit A-22.

Mr. Marietta is a Manager for Air Quality Services within the Environmental Management & Resources department of DTE Energy Corporate Services, LLC.[45] He testified in support of DTE Electric's planned environmental compliance and associated expense projections. He explained how the company complies with the Mercury and Air Toxics Standards (MATS) and related State environmental regulations limiting mercury and other air pollutants in generation emissions, and the impacts of environmental regulations on the company's power plants.

Mr. Marietta described the emission technologies DTE Electric uses to comply with mercury limits, including activated carbon injection (ACI), installed flue-gas desulfurization (FGD), selective catalytic reduction (SCR), calcium bromide application (CaBr), and reduced emission fuel (REF). He testified the use of these emission technologies have been approved by the Commission is PSCR plan cases since

[44] See Tr 282-283.
[45] Mr. Marietta's direct testimony is transcribed at Tr 304-314. His background and qualifications are set forth at Tr 305-307.

2012.[46] Mr. Marietta testified the company also utilizes dry sorbent injection (DSI) as well as FGD to reduce HCl emissions, and uses electrostatic precipitators (ESP) along with DSI and ACI to reduce particulate matter. Responding to concerns expressed in prior cases regarding the projected quantity and cost of sorbents DTE Electric uses with ACI and DSI used to achieve MATS compliance, Mr. Marietta testified that the current projected total sorbent cost of $0.58/MWh is lower than initial projections DTE Electric made and confirms it had not underestimated those costs.[47] He also testified that a recent 2020 net present value analysis showed an increased net benefit from the sorbent technologies.

B. <u>MEC</u>

Michigan Environmental Council (MEC) presented the direct testimony of James F. Wilson, and Exhibits MEC-1 through MEC-44. Mr. Wilson is an economist and independent consultant with Wilson Energy Economics.[48] Mr. Wilson recommended that the Commission deny recovery of 2020 NEXUS pipeline costs. Noting that DTE Electric used only 33% of its NEXUS capacity to deliver gas to its generating plants from November 2018 through April 2020, he testified that during most of the pipeline's operation, there was no benefit to DTE Electric utilizing the pipeline for gas supply because gas prices were lower in Michigan.[49] Mr. Wilson calculated the net cost of the pipeline to PSCR customers will be $61.9 million over the five-year plan period.[50] Mr.

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[46] See Tr 309.
[47] See Tr 310-311.
[48] Mr. Wilson's direct testimony is transcribed at Tr 317-352. His background and qualifications are set forth at Tr 319-320. He sponsored Exhibits MEC-1 through MEC-30. Exhibits MEC-5, MEC-6, MEC-7, MEC-8, MEC-9, MEC-12, MEC-13, and MEC-14, and MEC-15 are confidential exhibits.
[49] See Tr 234.
[50] See Tr k, 325, 341-342.

Wilson also concluded that DTE Electric's projections of net savings to customers over a 20-year period is not likely to materialize and that losses are likely to continue indefinitely. After explaining his view that the Commission should not have considered the potential for lower MichCon Citygate prices due to NEXUS,[51] a hallmark of the 2015 ICF Study predicting long-term savings from NEXUS, Mr. Wilson presented an analysis updating the 20-year savings analysis DTE Electric presented in Case No. U-20221. He concluded that the net cost over the life of the contract would be $187 million, with commodity cost savings of $155 million equal to 45% of the total NEXUS commitment of $342 million.[52] Mr. Wilson also disputed that the FERC tariffs and the agreements of other shippers are sufficient to establish that the rate DTE Electric pays is reasonable and prudent, and disputed that DTE Electric had adequately evaluated alternatives before committing to the NEXUS agreements.[53] To evaluate the agreement under the Code of Conduct, Mr. Wilson testified that market price should be considered to be the natural gas price differential between the NEXUS receipt points and the MichCon Citygate, presenting an analysis in Exhibit MEC-9 (confidential) to show gas cost savings below the pipeline cost over the first 18 months of operation.[54]

Mr. Wilson also addressed DTE Electric's planned reliance on coke oven gas and blast furnace gas through contracts with an affiliate, to supply the River Rouge plant. Citing discovery responses from DTE Electric that there is no market for the coke oven gas and blast furnace gas, and no alternative use to the producers, Mr. Wilson concluded that the fair market price is "more-or-less zero," and less than zero if the

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[51] See Tr 326-327.
[52] See Tr 326.
[53] See Tr 345-350.
[54] See Tr 338.

producers would pay a cost to dispose of the gas.[55] He acknowledged that if DTE Electric were to pay market value for the gases in accordance with his analysis, the company should bear the cost of piping to its plant.[56]

C. Staff

Staff presented the direct testimony of Jing Shi and Exhibit S-1. Ms. Shi is a Public Utilities Engineer in the Act 304 and Sales Forecasting Section of the Energy Operations Division.[57] In her testimony, Ms. Shi detailed Staff's review of the PSCR plan.[58] She compared the 2020 PSCR plan with the 2019 plan and provided a review of the differences, noting that the company's 2020 PSCR factor of 1.66 mills/kWh is lower than its 2019 PSCR factor of 1.81 mills/kWh.[59] Ms. Shi testified the primary differences in PSCR costs are increased purchase power expense and reduced generation fuel expense, while the projected net system requirement is projected to decline from 43,540 GWh to 42,866 GWh.[60]

Ms. Shi agreed with the company's treatment of the Voluntary Green Pricing program costs and credits.[61] Ms. Shi testified Staff agrees with the company regarding the TEAL amendments to the NEXUS agreement. She stated Staff found the modification to be reasonable and prudent in U-20221 and maintains the same position in this case.[62]

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[55] See Tr 351, also citing Exhibits MEC-27 and MEC-29.
[56] See Tr 351-352.
[57] Ms. Shi's testimony is transcribed at Tr 394-409. Her background and qualifications are set forth at Tr 395-397. She sponsored Exhibit S-1.
[58] See Tr 398-400.
[59] See Tr 401, Table 1, and Tr 403.
[60] See Tr 402.
[61] See Tr 402.
[62] See Tr 408-409.

Ms. Shi addressed the new line loss factor of 1.0730 DTE Electric used in its 2020 PSCR plan.[63] She stated the Commission approved a line loss multiplier of 1.0723 in the company's most recent rate case, which should be used in this PSCR plan case[64] However, she testified that both multipliers result in a 2020 PSCR factor of 1.66 mills/kWh using company projections.[65]

Ms. Shi also addressed the company's request for new costs related to Rider 18 and demand response capacity incentive payments. She did not dispute inclusion of Rider 18, and observed no costs were projected in the 2020 PSCR plan.[66] Ms. Shi did not dispute the propriety of the demand response customer capacity expense, however she disputed inclusion in the PSCR plan year, testifying that the expenses should be reconciled in a demand response reconciliation case, and further testifying that excluding these expenses will lower the PSCR factor to 1.64 mills/kWh.[67]

D. Rebuttal

DTE Electric presented the rebuttal testimony of three witnesses. In his rebuttal testimony, Mr. Pratt addressed the direct testimony of MEC witness Mr. Wilson related to the NEXUS pipeline. He asserted many of the arguments offered by Mr. Wilson have been rejected in prior Commission cases.[68] He rejected Mr. Wilson's evaluation that the NEXUS pipeline imposed $61.9 million in costs over a five year period, and he asserted the agreement should be evaluated over the 20-year term. Mr. Pratt also argued the

[63] See Tr 403.
[64] See Tr 402; citing U-20561.
[65] See Tr 402-403.
[66] See Tr 404; citing U-20162.
[67] See Tr 406-407.
[68] See Tr 59.

Commission previously found the original NEXUS agreement to be reasonable and prudent.[69]

Mr. Pratt testified that Mr. Wilson mischaracterized the costs associated with the TEAL amendments. He asserted that evaluation of the TEAL agreement should consider the additional rate of $0.15 Dth/day, not the cumulative rate of $0.845 Dth/day and testified “the Company’s analysis demonstrated a positive value justifying the execution of the TEAL amendments.”[70]

Mr. Pratt disputed Mr. Wilson’s testimony that the company’s asset manager could have more advantageously sold gas at Kensington, rather than at the MichCon Citygate, as speculative and unsupported.[71] He rejected Mr. Wilson’s evaluation of the company’s agreement as compared to other shippers.[72] And, he rejected any assertion that the company violated the Commission’s Code of Conduct.

Mr. Bence testified to rebut the direct testimony of Mr. Wilson related to the company’s oven gas and blast furnace gas agreements. Disputing Mr. Wilson’s assertion that the “lack of a visible market means that the market price should be zero,” Mr. Bence testified the “market price should be the delivered cost of alternative fuels.”[73] He testified that coke oven gas and blast furnace gas fuel expenses have been approved in prior Commission proceedings.[74]

Mr. Rivard provided rebuttal to the direct testimony of Staff witness Ms. Shi. He disputed Ms. Shi’s assertion that the demand response incentive credits should be

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[69] See Tr 64, citing the Commission’s February 7, 2019 order in Case No. U-18403, page 46.
[70] See Tr 65-66.
[71] See Tr 66
[72] See Tr 68-69.
[73] See Tr 159.
[74] See Tr 160, citing Case Nos. U-16047 and U-17319-R.

excluded as capital expenses to be addressed outside of the PSCR case. Mr. Rivard testified the expenses were not capital in nature but are incentive costs which result in capacity credits used to meet the company's planning reserve margin requirement.[75] He also pointed out that Consumer's Energy has included DR capacity incentive payments in its PSCR plan cases.[76]

III.

DISCUSSION

Following a review of the legal standards applicable to this PSCR plan proceeding in section A below, the disputed issues regarding DTE Electric's NEXUS pipeline agreements are discussed in section B, and the disputed issues regarding DTE Electric's contracts for coke oven and blast furnace gases are discussed in section C. Two additional issues raised by Staff, the inclusion of demand response costs and the appropriate line loss multiplier, are addressed in sections D and E.

A. Legal Standards

Act 304, MCL 460.6j *et seq*., provides for a PSCR clause that requires the utility to file annually "a complete power supply cost recovery plan describing the expected sources of electric power supply and changes in the cost of power supply anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific power supply cost recovery factor." MCL 460.6j(3). In addition, a PSCR plan must:

> [D]escribe all major contracts and power supply arrangements entered into by the utility for providing power supply during the specified 12-month

[75] See Tr 273-274.
[76] See Tr 274-275, citing Case No. U-18402.

> period. The description of the major contracts and arrangements shall include the price of fuel, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. For gas fuel supply contracts or arrangements, the description shall include whether the supply contracts or arrangements include long-term firm gas transportation and, if not, an explanation of how the utility proposes to ensure reliable and reasonably priced gas fuel supply to its generation facilities during the specified 12-month period. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to provide power supply in the manner described in the plan, in light of its existing sources of electrical generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility.[77]

Along with the PSCR plan, under MCL 460.6j(4) a rate-regulated electric utility must file:

> [A] 5-year forecast of the power supply requirements of its customers, its anticipated sources of supply, and projections of power supply costs, in light of its existing sources of electrical generation and sources of electrical generation under construction. The forecast shall include a description of all relevant major contracts and power supply arrangements entered into or contemplated by the utility, and any other information the commission may require.

MCL 460.6j(6) provides further direction to the Commission regarding its review of the plan:

> In its final order in a power supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the power supply cost recovery plan filed by an electric utility under subsection (3), and shall approve, disapprove, or amend the power supply cost recovery plan accordingly. In evaluating the decisions underlying the power supply cost recovery plan, the commission shall consider the cost and availability of the electrical generation available to the utility; the cost of short-term firm purchases available to the utility; the availability of interruptible service; the ability of the utility to reduce or to eliminate any firm sales to out-of-state customers if the utility is not a multi-state utility whose firm sales are subject to other regulatory authority; whether the utility has taken all appropriate actions to minimize the cost of fuel; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly power supply cost recovery factors requested by the utility in its power supply cost recovery plan. The

[77] MCL 460.6(j)(3).

> factors shall not reflect items the commission could reasonably anticipate would be disallowed under subsection (13). The factors ordered shall be described in fixed dollar amounts per unit of electricity, but may include specific amounts contingent on future events.

For the five-year forecast, the Commission must:

> [E]valuate the decisions underlying the 5-year forecast filed by a utility under subsection (4). The commission may also indicate any cost items in the 5-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or power supply cost recovery factors established in the future.[78]

Also relevant to the discussion that follows, in its October 29, 2001 order in Case No. U-12134, the Commission adopted a Code of Conduct governing affiliate transactions, attached as Exhibit A to that order, to comply with the requirements of section 10a of 2000 PA 141, then MCL 460.10a. Subsequently, to comply with the requirements of 2016 PA 341, MCL 460.10ee(1), the Commission adopted the Code of Conduct now set forth at Michigan Administrative Code, R 460.10101-460.10113. Both the former and current Code of Conduct were intended to prevent preferential treatment between affiliated companies and promote fair competition. The key provisions relevant to the disputes between the parties are essentially the same in both versions: cross-subsidization is not permitted[79] and affiliate transactions are subject to a price cap of the lower of market price or 10% over fully-allocated embedded costs.[80]

B. <u>NEXUS Pipeline</u>

The Commission has addressed DTE Electric's contracts with its affiliate NEXUS in several prior PSCR plan and reconciliation cases. While DTE Electric first entered

[78] MCL 460.6j(7).
[79] See R 460.10103; January29, 2001 order in Case No. U-12134, Exhibit A, section IIB.
[80] See R 460.10108(4); January 29, 2001 order in Case No. U-12134, Exhibit A, section IIIC.

into a contract with NEXUS in 2014, before the pipeline was constructed, the pipeline went into service and DTE Electric first incurred transportation costs for the pipeline in 2018. DTE Electric argues that its planned NEXUS expenses are reasonable and prudent. MEC argues that the company's contract was not reasonable when it was entered and has been shown to be unreasonable by current market data. The parties dispute the significance of some of the Commission's prior decisions, and have not addressed the most recent decision, which was issued after the briefs were submitted in this case. In the discussion that follows, the testimony and arguments of the parties are explained in subsection 1, subsection 2 reviews prior Commission decisions; subsection 3 presents findings, conclusions, and recommendations.

1. Positions of the parties

In this case, DTE Electric witness Mr. Pratt addressed the NEXUS agreements currently in place, and the projected cost and utilization. Mr. Pratt reviewed the history of DTE Electric's agreements with NEXUS Gas Transmission, LLC, beginning with the Precedent Agreement executed on July 31, 2014, with amendments and related agreements through October 26, 2018.[81] He also reviewed the evidence DTE Electric presented in previous cases in support of the company's decisions, and the Commission's order in Case No. U-18403. Linking the company's initial interest in the pipeline in 2013 to its contemporaneous consideration of gas-fired generation, he cited the company's consultation with DTE Gas Company, and the landed cost analysis (LCA) in Exhibit A-38:

[81] See Tr 45-46; Exhibits A-27 through A-37 and Exhibits A-42 and A-43.

> The landed cost analysis performed by DTE Gas in July 2014 (Exhibit A-38) showed that contracting for transportation capacity on NEXUS would be expected to result in among the lowest landed cost between competing alternatives. Additionally, contracting with NEXUS was expected to be even more beneficial because it is a greenfield pipeline that increases gas deliverability and introduces new supply into the region. As discussed in more detail below, new greenfield pipeline capacity into Michigan would be expected to lower gas prices in the demand region, further reducing gas supply costs for DTE Electric and all Michigan consumers.[82]

He testified that the results of this analysis were confirmed in the ICF 2015 Study, included in this record as Exhibit A-41. He testified that this analysis projected that lower-cost gas supplies projected to be available via the NEXUS pipeline would reduce DTE Electric's PSCR expense by $79 million over the 20-year period from 2017 through 2037, and that the construction and operation of NEXUS would have the effect of reducing gas prices at the MichCon Citygate for additional savings of $271 million.[83] Mr. Pratt acknowledged that the NEXUS agreement is expected to increase fuel expense by $7.5 million in 2020, and by $61 million over the entire five-year forecast period as shown in his Exhibit A-25, testifying that this projection does not include the benefit of reduced Citygate prices due to the construction and operation of the pipeline.

Mr. Pratt reviewed the key terms of the company's agreements. The principal agreement provides transportation capacity of 30,000 Dth/day on the NEXUS pipeline from the Kensington receipt point to the MichCon Citygate, until the Blue Water Energy Center is operational and 75,000 Dth/day after that, for a 20-year term, at a rate of $0.695 per Dth/day and a fuel rate of 1.32%. The October 2018 TEAL amendment added the Clarington receipt point for four years for half the capacity, at an additional

[82] Tr 48.
[83] See Tr 49-50; also see Exhibit A-24 for the calculation of the $271 million saving estimate based on the analysis in the ICF 2015 Study.

cost of $0.15 per Dth/day plus an additional 0.6% fuel.[84] Mr. Pratt also addressed the company's rationale for entering into the TEAL amendment, explaining that since the contract with NEXUS was first executed in 2014, "the natural gas market in the Utica and Marcellus basins has shifted," with most of the drilling activity now located around Clarington:[85]

> At the time the decision was made, DTE Electric's analysis showed that contracting with NEXUS for TEAL capacity to access the Clarington receipt point was expected to reduce the Company's natural gas expense by approximately $2.4 million as compared to purchasing at Kensington over the four-year term. Furthermore, DTE Electric's customers benefit from regional diversity of supply with increased supply reliability and mitigated price risk.[86]

He also discussed the approved FERC tariffs for the pipeline, and testified that the below-tariff rates DTE Electric pays are in line with rates paid by other shippers.[87] Mr. Pratt testified that DTE Electric expects to use "a significant portion" of the pipeline capacity for its gas-fired peaking plants:

> On days when peakers are not operating, gas can be injected into storage for use on future days. If gas-fired peakers are not running and storage capacity is not available, the marketer will deliver the gas to third parties. Once BWEC is operational in 2022, the Company expects to utilize all of its NEXUS capacity.[88]

Mr. Wilson took issue with DTE Electric's projection, as noted above, recommending that the projected NEXUS costs be excluded. He essentially agreed with DTE Electric's calculation that during the five-year forecast period, the delivered cost of gas is projected to be approximately $60 million more than the delivered cost of

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[84] See Tr 51-53.
[85] See Tr 54.
[86] See Tr 53.
[87] See Tr 54-56.
[88] Tr 56.

alternative gas supplies.[89] Mr. Wilson testified that DTE Electric has only used approximately 33% of its contracted capacity for its power plants, with the remaining capacity managed by a third-party Asset Manager. He also testified that there was little to no value associated with moving gas from Kensington, because market prices were often lower in Michigan, while gas from Clarington did provide value on many days.[90]

Mr. Wilson testified that he updated a portion of the ICF 2015 Study that estimated 20-year savings of $79 million, concluding that current market forward prices show that NEXUS will impose a net cost on DTE Electric's customers of $187 million over the life of the contract, using a total contract cost of $342 million less $155 million in commodity cost savings.[91] Mr. Wilson testified that natural gas production has declined in recent months due to low prices and the Covid-19 pandemic. Mr. Wilson also took issue with the ICF 2015 Study conclusion that the NEXUS pipeline would have the effect of lowering the market price of gas available in Michigan, testifying that study overstated the price impact:

> Any impact of NEXUS capacity on Michigan prices is likely to be short term and offset by other changes to natural gas infrastructure and electric power generating capacity, as I have explained in detail in my earlier testimony regarding the NEXUS pipeline.[92]

He also testified that any such price impacts are not relevant "because they do not depend in any way on DTE Electric's commitment to NEXUS," and because "it would be

[89] See Tr 325f, 341-342; Mr. Wilson calculated $61.9 million; Mr. Pratt calculated $61.0 million.
[90] See Tr 324-325, 333-338.
[91] See Tr 326, 342-345; Exhibit MEC-11.
[92] See Tr 326.

poor public policy" to consider any such effect.[93] Mr. Wilson cited earlier analyses he presented to the Commission, with a summary chart at Tr 328:

> That the NEXUS cost would exceed its value was predictable, and indeed forward prices, and my cost estimates based on them (summarized in Exhibit MEC-2), have predicted it since before DTE Electric waived the last of the agreement's conditions precedent.[94]

He testified that while production in Marcellus/Utica grew rapidly from 2012 to 2016, it has been slower than other regions in the last three years, characterizing this shift as leading to an "increasingly competitive market with attractively-priced supply available to Michigan from other producing regions," such as the Permian and Haynesville regions.[95] He testified that this led to the lower basis differential between the MichCon Citygate and Kensington, presenting forward prices to show projected increases in the basis out of the Marcellus/Utica region around 2023. He testified that the ICF forecasts consistently predicted much higher basis differentials between Kensington and MichCon, citing Exhibit MEC-4 and Exhibit MEC-5 (confidential), and providing an explanation.[96]

Mr. Wilson addressed the FERC tariff for the NEXUS pipeline, testifying it is not relevant to a determination of the value of the transportation service to customers, and further citing DTE Electric's acknowledgement that it is unaware of any shipper with a long-term contract paying tariffed rates.[97] He also testified that DTE Electric had not supported its claim to pay the lowest rates of any NEXUS shipper.[98] Mr. Wilson

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[93] See Tr 327.
[94] See Tr 328.
[95] See Tr 330-331.
[96] See Tr 332-333.
[97] See Tr 345-346.
[98] See Tr 346-347.

presented Exhibits MEC-9 (confidential) and MEC-11 to compare the cost of alternatives available to DTE Electric, also citing DTE Electric discovery responses in Exhibits MEC 43 through MEC-47. He testified that DTE Electric did not need to hold firm capacity from the Marcellus/Utica region to take advantage of the economical supplies available there, explaining the benefits of holding firm capacity from “closer, liquid trading points,” and noting the abundant storage available in Michigan.[99]

In his rebuttal testimony, Mr. Pratt contended that Mr. Wilson repeated many of the same arguments rejected in prior plan and reconciliation cases, citing the records in Case Nos. U-17920, U-18143, U-18403, U-20221, and U-20203,[100] and addressing the Commission’s order in Case No. U-18403 in more detail.[101] Mr. Pratt testified that DTE Electric did not issue a formal request for proposal for pipeline capacity prior to contracting with NEXUS because “there were no other pipelines offering transportation service that would provide the desired benefits of a direct pipeline interconnection with Utica and Marcellus natural gas production facilities from a greenfield pipeline that would increase natural gas deliverability into Michigan.”[102] He recognized Rover and ANR East as alternatives DTE Electric considered, but cited DTE Gas’s landed cost analysis to show NEXUS was the least cost option among greenfield pipelines. Mr. Pratt also disputed that the projected losses over the five-year plan period establish that the decision to contract with NEXUS was unreasonable, testifying that the contract should be evaluated over its 20-year term.[103] Referencing the 2015 ICF Study

[99] See Tr 349-350.
[100] See Tr 58-59.
[101] See Tr 64-65.
[102] See Tr 61.
[103] See Tr 61-62.

estimating savings of $271 million attributable to a forecast reduction in MichCon Citygate gas prices with construction of the NEXUS pipeline, Mr. Pratt disputed Mr. Wilson's claim that DTE Electric did not need to contract with NEXUS to obtain the benefits of lower prices. He testified that the pipeline would not have been developed "without contracts supporting a significant percentage of the proposed capacity," and that DTE Electric's commitment was "a contributing factor to the approval and construction" of the pipeline.[104] He also disputed Mr. Wilson's use of recent market forwards to reevaluate the reasonableness of the contract decision, characterizing it as a post-hoc analysis.[105] He testified that DTE Electric does plan to use the NEXUS capacity when the Blue Water Energy Center becomes operational, explaining that DTE Electric has contracted with DTE Gas to transport the gas delivered by NEXUS to DTE Gas at Ypsilanti to both the Washington 10 storage field and to the new plant.[106]

Mr. Pratt addressed the TEAL amendment further, testifying that the incremental cost of $0.15 per Dth/day should be used to evaluate the amendment, because "the Commission had already determined that the Company was reasonable and prudent in entering the NEXUS agreement."[107] He also disputed Mr. Wilson's testimony that the company's Asset Manager should have sold gas at the Kensington point instead of the MichCon Citygate to capture higher prices at Kensington, responding that the prices in confidential Exhibit MEC-14 were not necessarily the prices at which the gas could have been sold.[108] In further support of the TEAL amendment, he testified that the value the

[104] See Tr 63.
[105] See Tr 62.
[106] See Tr 63-64.
[107] See Tr 65.
[108] See Tr 66.

company projected from entering the TEAL amendment have been borne out by recent experience, the capacity release credits do provide a benefit to PSCR customers, and the supply reliability benefits are significant.[109] Additionally, he testified that Mr. Wilson erroneously disputed that DTE Electric pays a lower rate than other shippers on NEXUS, and cited Case No. U-18403 to show the Commission has already determined that DTE Electric did not violate the Code of Conduct in entering the contract. He also testified that it is not appropriate to determine the lower of market price or ten percent above fully allocated cost each year "because pricing terms are not renegotiated each year," and the appropriate determination of market pricing is when the contracts were executed.[110] He also reiterated that the FERC tariffs should be considered a measure of fully-allocated costs for the pipeline.[111]

In its brief, DTE Electric relies on the Commission's prior decisions in Case Nos. U-17920, U-18403, and U-20221, as well as Mr. Pratt's testimony to support the reasonableness and prudence of its projected NEXUS costs. DTE Electric also cites to a PFD issued in Case Nos. U-20203, a case in which the Commission had not yet issued a final order.[112] DTE Electric argues that the decisions in these cases comport with the requirements of Act 304,[113] while contending that MEC's proposed disallowances are based on hindsight in disregard of "the fundamental nature of this PSCR plan case, and utility decision-making in general."[114] DTE Electric specifically discusses the TEAL amendment, citing its estimated savings of $2.4 million and

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[109] See Tr 66-67.
[110] See Tr 70.
[111] See Tr 71.
[112] See DTE Electric brief, pages 25-32.
[113] See DTE Electric brief, pages 32-35.
[114] See DTE Electric brief, page 35.

comparing the cost to tariffed rates in support of its argument that the contract is reasonable and prudent. [115]

Citing Mr. Wilson's testimony, MEC argues that the Commission should caution DTE Electric regarding the recoverability of NEXUS costs in the reconciliation. MEC reviewed prior Commission orders addressing DTE Electric's contracts with NEXUS, arguing that these orders left unresolved issues including issues related to the pricing provisions of the contract, the contract capacity and DTE Electric's management of that capacity, and compliance with the pricing provisions of the Code of Conduct.[116] MEC argues that the NEXUS agreements will impose significant costs on ratepayers, objecting to DTE Electric's limited use of NEXUS capacity, and arguing that the assumptions in the ICF 2015 Study DTE Electric relied on to justify the agreements from an early stage "were never realistic and have not come to pass."[117]

MEC argues that changing market conditions have decreased the price advantage between the Utica/Marcellas region and Michigan, and increased the losses projected for the five-year forecast period compared to past forecasts, presenting a chart in its brief at page 14.[118] In light of these changed market conditions, MEC argues that DTE Electric should have renegotiated the contract terms, citing cross-examination of Mr. Pratt acknowledging that DTE Electric had attempted to do that.[119] MEC also cites Exhibit MEC-41 to show that DTE Electric recognized risk associated with the long-term contract with NEXUS initially, but failed to negotiate a contract clause that

[115] See DTE Electric brief, pages 35-36, citing Pratt, Tr 53-54.
[116] See MEC brief, pages 7-11.
[117] See MEC brief, page 12.
[118] See MEC brief, pages 13-17.
[119] See MEC brief, pages 16-17, citing Pratt, Tr 129-131.

would have protected ratepayers.[120] MEC asks the Commission to find that DTE Electric's NEXUS costs will be reviewed in the reconciliation and denied "if they are unreasonable under current circumstances."[121] MEC cites several prior Commission orders to show that evaluating costs in a reconciliation in light of changed circumstances is appropriate and distinguishable from an impermissible hindsight review.[122] It argues that the Commission has the authority to evaluate DTE Electric's costs in the reconciliation in light of current market conditions, and has the authority to issue a section 7 warning for the five-year forecast period or, alternatively, to develop a performance standard that ties cost recovery to contract value. MEC also argues that the Commission should make clear that it will review NEXUS costs for compliance with the Code of Conduct in the reconciliation, as well as DTE Electric's utilization and management of NEXUS capacity.

In its reply brief, DTE Electric characterizes any reliance on contemporary market data as impermissible hindsight.[123] In a footnote, DTE Electric responds to MEC's argument that the reasonableness and prudence of the agreement should be reevaluated in light of changed circumstances, noting that in its order in Case No. U-18403, the Commission acknowledged projected losses over the five-year forecast period, but nonetheless found the company's decision to enter into the NEXUS agreements reasonable and prudent.[124] DTE Electric disputes that the Commission's decision in an Indiana Michigan Company case, Case No. U-18404, is applicable. DTE

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[120] See MEC brief, pages 17-18.
[121] See MEC brief, pages 18-22.
[122] See MEC brief, pages 18-22, citing the December 19, 1991 order in Case No. U-9173-R, June 26, 2012 order in Case No. U-16830, and June 7, 2019 order in Case No. U-18404.
[123] See DTE reply, pages 4-6, 11-13.
[124] See DTE Electric reply, page 4 at n3.

Electric instead cites *Attorney General v PSC*, 161 Mich App 506 (1987) to support its argument that a determination of whether a utility's actions under Act 304 are reasonable and prudent must be made in light of conditions existing at the time the decision was made.[125] DTE Electric also argues that MEC ignores the benefit of supply reliability attributable to the transportation agreement.[126] Regarding MEC's proposed disallowance options, DTE Electric argues that they are not reasonable or lawful, contending that there is no basis for a disallowance or section 7 warning, and that the option to adopt a "performance standard" or mechanism for future cases is contrary to the reasonableness and prudence standard of MCL 460.6j. DTE Electric also disputes MEC's claim that MCL 460.6j(13)(f), addressing charges for fuel not taken, arguing that this provision is designed for "take or pay" clauses in fuel contracts and does not apply to contracts for transportation capacity.[127] DTE Electric reiterates its view that its decision to enter the TEAL amendment was reasonable and prudent,[128] and disputes that it violated the Code of Conduct.[129]

Staff does not object to the projected NEXUS costs, but argues:

> Staff continues to maintain the same position as in the last PSCR plan case where the NEXUS agreement and the TEAL amendment would allow DTE Electric to gain access to additional supply sources, especially during catastrophic circumstances, such as the period of the 2019 Polar Vortex. However, per the Commission's order in DTE Electric's 2019 PSCR plan, Staff also recommends that the ALJ and the Commission explicitly order the Company to provide adequate support for the reasonableness and prudence of the amounts associated with the TEAL contract in its 2020

[125] See DTE Electric reply, pages 5-6.
[126] See DTE Electric reply, pages 6-7.
[127] See DTE Electric reply, pages 15-17.
[128] See DTE Electric reply, pages 13-15.
[129] See DTE Electric reply, pages 17-21.

> reconciliation. This will ensure that these costs will be examined, along with any applicable Code of Conduct issues.[130]

2. Prior Commission decisions

As the foregoing discussion shows, DTE Electric and MEC dispute the significance of prior Commission decisions addressing NEXUS. All but the most recent case — the Commission's December 9, 2020 order in Case No. U-20203 — are cited and discussed by the parties as explained above.

In its January 12, 2017 order in Case No. U-17920, addressing the company's 2016 PSCR plan, the Commission noted that DTE Electric did not project any expenses under the contract until 2017, after the plan year under consideration. The Commission noted that the PFD in that case found that the agreements presented appeared to be reasonable and prudent, and the Commission agreed with the PFD's analysis and decisions. Citing its November 22, 2016 order in Case No. U-17691, page 18, the Commission found that costs associated with NEXUS should not be recoverable absent a transparent evidentiary presentation examining the full nature of NEXUS arrangements, but declined to issue a section 7 warning.

In its December 20, 2017 order addressing DTE Electric's 2017 PSCR plan in Case No. U-18143, the Commission recognized that the pipeline would not be completed in 2017 and thus excluded costs from the projected PSCR expense.[131] Noting that the PFD in that case had concluded that the Commission should not reach a determination on the recoverability of NEXUS costs absent a "transparent evidentiary presentation examining the full nature of the NEXUS arrangements, including its full and

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[130] See Staff brief, page 6.
[131] See December 20, 2017 order, page 27.

actual construction costs,"[132] the Commission also agreed with MEC that a future evidentiary presentation of construction costs would be beyond the scope of a PSCR proceeding.[133]

In its February 7, 2019 order in Case No. U-18403, addressing DTE Electric's 2018 PSCR plan, the Commission explained its adoption of the PFD in that case with a modification:

> The Commission finds compelling DTE Electric's evidence that it executed the July 2014 precedent agreement based on DTE Gas Company's [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 accusation that the ALJ improperly shifted the burden of proof to MEC/SC to show that the NEXUS arrangement violated the Commission's Code of Conduct. Instead, the Commission finds that the ALJ's analysis accurately concluded that MEC/SC had not successfully rebutted DTE Electric's assertion that the utility proved it entered into the NEXUS agreement not to subsidize the pipeline's construction but because the transportation capacity offered by its affiliate would result in the lowest landed costs went 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.
>
> The Commission likewise agrees with the ALJ's determination . .. that, although DTE Electric failed to present through testimony and documentary evidence "the full nature of the NEXUS arrangements" in this PSCR plan case, it cannot be said that the record contains any new evidence that would invalidate the Commission's determination in Case No. U-17920 that DTE Electric's decision to execute and continue the NEXUS precedent agreement was reasonable.

* * *

[132] See December 20, 2017 order, page 8, citing November 1, 2017 PFD, pages 31-32.
[133] See December 20, 2017 order, page 27.

> The Commission likewise agrees with the ALJ's assessment that there is consensus among the parties that the NEXUS agreement will result in projected losses for the 2018 PSCR year, and the five-year forecast, but that, "against the larger backdrop of the underlying rationale and circumstances" that led the utility to enter into a long-term capacity arrangement with NEXUS, the Staff identified cost benefits to DTE Electric and its customers that will result from brining additional quantities of natural gas into Michigan from the Marcellus/Utica basin, a low cost region.[134]

The only modification the Commission made to the PFD was concluding that the long-term benefits over 20 years of the NEXUS agreement could be considered in a PSCR proceeding:

> Unlike the ALJ's recommendation that limits the scope of the Commission's evaluation in this PSCR plan proceeding to costs and savings incurred during the PSCR period, the Commission agrees with DTE Electric's observation that the NEXUS precedent agreement is not a five-year contract, but a 20-year contract with long-term savings projected in the ICF 2015 Report admitted as Exhibit A-27. The Commission further agrees with DTE Electric that the words "other relevant factors" in MCL 460.6j(6) permit the Commission to consider the long-term benefits of the 20-year contract that the utility presented. These benefits include a projected long-term savings of $67.4 million from 2018 through 2038 and the $271 million savings for its customers due to NEXUS driving projected MichCon Citygate prices lower during the 20-year term of the NEXUS agreement.[135]

The Commission disagreed that the benefits were speculative or conjectural and concluded it was satisfied that DTE Electric had taken all steps to minimize the cost of fuel by entering into the agreement.[136] The Commission expressly rejected the claim that DTE Electric should have walked away from the agreement or declined to waive certain protections of the agreement.[137] The Commission determined it would treat the contract rate of $0.695 per Dth/day as a projected cost and directed DTE Electric to

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[134] February 7, 2019 order, pages 42-43.
[135] February 7, 2019 order, pages 43-44.
[136] February 7, 2019 order, page 44.
[137] February 7, 2019 order, pages 45-46.

provide a more substantive discussion of the reasonableness of the rate in the upcoming reconciliation.

In its May 8, 2020 order in Case No. U-20221, DTE Electric's 2019 PSCR plan, the Commission had its first chance to address the TEAL amendment executed in 2018. The Commission addressed four issues related to NEXUS. First, it rejected challenges to DTE Electric's decision to enter the NEXUS agreements addressed in previous cases. Second, the Commission addressed the TEAL amendment for the first time, agreeing with the PFD in that case regarding the deficiencies in the record and the need to warn DTE Electric it may not recover the full costs of the TEAL amendment. Third, the Commission addressed the concern raised by MEC that DTE Electric was not planning to use the full contract capacity to provide gas to its generating plants. The Commission recognized that DTE Electric may recover reasonable and prudent transportation costs, but also recognize that its efforts to manage its purchases would be reviewed in the reconciliation:

> Specifically, the Commission will want to see additional evidence that the transportation capacity costs incurred were reasonably and prudently tied to power supply costs. While asset management agreements with natural gas marketers to use excess capacity are not inherently inappropriate, the Commission shares MEC's concerns over costs being included in the PSCR that are ultimately for fuel not used for power generation. As such, DTE Electric will need to show that the level of contracted transportation capacity is in the best interests of its electric customers.[138]

Fourth, the Commission addressed the Code of Conduct, concluding that DTE Electric has an ongoing obligation to demonstrate compliance with the Code of Conduct in the reconciliation:

[138] See May 8, 2020 order, pages 13-14.

> The Commission agrees that while DTE Electric is not required to relitigate the original NEXUS agreement decided in the February 7 order [in Case No. U-18403], the company does have an ongoing obligation to demonstrate compliance with the pricing provisions of the Code of Conduct in the reconciliation, which in turn will provide the Commission with the required information to determine the amount of affiliate transaction costs DTE Electric may recover. Further, DTE Electric must demonstrate compliance with the Code of Conduct when new evidence or a showing of changed circumstances applies to a question of fact.[139]

On December 9, 2020, after briefs were filed in this docket, the Commission issued an order in Case No. U-20203, the reconciliation of DTE Electric's 2018 PSCR plan. In that order, the Commission limited the transportation rate DTE Electric could recover to $0.695 per Dth/day, for both NEXUS and TEAL. Reviewing its earlier decisions in Case No. U-18403 and U-20221, the Commission concluded that the reasonableness of the costs for the underlying contract and the TEAL amendment were at issue in that reconciliation case:

> In 2019, the Commission confirmed the reasonableness and prudence of the NEXUS long-term firm gas transportation contract in Case No. U-18403, DTE Electric's corresponding PSCR plan case. February 7 order, pp. 42-45. In so doing, however, the Commission set aside its reasonableness determination of the contract's negotiated rate for non-fuel charges, instead treating the rate as a projected cost in that case and requiring DTE Electric to provide a more substantive discussion of the reasonableness of this rate in the instant case in order to receive full recovery of its NEXUS transportation costs. Id., pp. 45-46. Thereafter, on October 26, 2018, DTE Electric executed an amendment to the NEXUS contract, known as the TEAL amendment, by adding an additional receipt point at Clarington. The reasonableness of the costs for the underlying contract and the TEAL amendment are thus at issue in this case. Moreover, in the most recent PSCR plan case approved by the Commission, the Commission cautioned DTE Electric, pursuant to MCL 460.6j(7), that it may not recover the costs of fuel purchased under the amendment absent additional justification in the corresponding reconciliation proceeding. May 8 order, p. 10.[140]

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[139] May 8, 2020 order, page 16.
[140] December 9, 2020 order, page 23.

The Commission then concluded that DTE Electric had not justified its decision to enter into the TEAL amendment or established that it had taken reasonable and prudent actions to minimize fuel expenses under its NEXUS contract in light of changed market conditions:

> Through the PSCR process, utilities must demonstrate reasonable and prudent actions to minimize cost of fuel. MCL 460.6j(3). While MCL 460.6j(3) encourages long-term contracts in PSCR matters, this does not absolve a utility from monitoring and responding to market conditions and system needs and making good faith efforts to manage existing contracts. Such efforts may entail meaningful attempts to renegotiate contract provisions to ensure continued value for ratepayers as market conditions change. Through the TEAL amendment, DTE Electric opened up a new supply point at Clarington that was expected to have a more favorable basis differential than the Kensington location. DTE Electric also previously negotiated changes in the NEXUS volumes paid under the fixed transportation contract. Thus, before NEXUS was even in service for DTE Electric under its agreement, the contract had been amended multiple times, including the TEAL amendment.
>
> Based on the volumes secured and the pricing at both Clarington and Kensington, it is clear that market conditions have changed in a meaningful manner with the basis differential in prices not what was expected in order to utilize the full amount under contract. DTE Electric paid the full transportation charge for the full contracted volumes but appears to not have been able to access gas at these locations at the most economical prices it expected to serve its power generation needs.
>
> Exhibit AG-16. Even with the third-party marketer, sales from the Kensington location were far less than expected. The Commission nevertheless recognizes that having firm transportation capacity still provides reliability and resilience benefits and Act 304 acknowledges value in fuel diversity and firm contracts. MCL 460.6j(3). Moreover, the Commission has previously accepted DTE Electric's arguments that the construction of NEXUS—by bringing in an additional source of supply—will also produce savings for DTE Electric ratepayers by lowering MichCon hub prices. While the record shows that actual 2018 MichCon hub prices were lower than the 2018 projections when the contract was approved, which is favorable and could conceivably help mitigate the higher-than-expected prices upstream, 3 Tr 70; Exhibits A-31, A-32, DTE Electric presented no new data or explanation to support whether and how

NEXUS actually contributed to this price depression or how such pricing benefits its ratepayers. DTE Electric merely referenced the original study by ICF and indicated that, "[a]lthough MichCon CityGate prices have been reduced by the infusion of affordable Utica/Marcellus shale gas from the construction and operation of NEXUS, the exact magnitude by which prices have been reduced cannot be measured." 3 Tr 70, 78; Exhibit A-31.

The Commission is mindful that NEXUS was in-service for a mere two months at the end of the annual reconciliation period in this case and that market conditions can fluctuate over time. Such near-term fluctuations need not always warrant an immediate response. Nonetheless, there is compelling information that the conditions present when DTE Electric first entered the contract have changed and as a result the company purchased far less gas from NEXUS. DTE Electric attempted to mitigate this by adding the Clarington receipt point through the TEAL amendment, yet this change came at an incremental cost. When examining the underlying transportation rate of $0.695/Dth and the incremental rate of $0.15/Dth for TEAL, the Commission finds that DTE Electric has not demonstrated the reasonableness of the combined transportation rate of $0.845/Dth given the volumes utilized nor has the company demonstrated it is taking adequate steps to renegotiate the agreement for the benefit of ratepayers given changing market dynamics. This level of due diligence is especially important given the affiliate relationships involved. The Commission deferred to this reconciliation proceeding the reasonableness of the $0.695/Dth NEXUS rate and has not previously approved the TEAL amendment. Although the Commission finds that the TEAL amendment helped mitigate some of the losses experienced at Kensington, it came at an incremental cost. The underlying base rate was not altered through these negotiations or other efforts despite conditions materially changing, prompting the amendment. Under the circumstances, with DTE Electric using only a fraction of the gas from NEXUS to supply its power plants while still paying transportation charges assuming 100% utilization of the contracted amount, the Commission finds that it is appropriate to cap recovery at the $0.695/Dth rate included in the original contract approved by the Commission. DTE Electric has not shown that the total amount, with the incremental expenses for the TEAL amendment, is reasonable. Rather, DTE Electric falls back on the outdated cost-benefit study used to support the original contract. While the Commission realizes the complexity of attempting to isolate the effects of NEXUS on MichCon hub prices, DTE Electric did not present any new evidence on NEXUS's impact on current pricing dynamics at the MichCon hub and the connection to PSCR costs based on actual fuel procurement to serve DTE Electric's power plants during the reconciliation period. DTE also failed to

> respond to intervenor testimony questioning the impact of NEXUS on MichCon hub prices.[141]

In its reconciliation order in Case No. U-20203, the Commission also addressed arguments regarding the Code of Conduct. Recognizing that previously approved long-term affiliate contracts do not need to be examined repeatedly for compliance, the Commission also found that DTE Electric had not established compliance with the Code of Conduct in light of the TEAL amendment:

> [T]he Commission does not find that a previously approved long-term affiliate contract would repeatedly need to be examined under Code rules. Notwithstanding, the Commission finds that the TEAL amendment would trigger the market pricing test for an affiliate transaction pursuant to Rule 8(4). The record has information on gas futures prices and various pipeline arrangements supplied by intervenors but these are not suitable comparisons for determining market prices for the underlying contract of this type or the amendment. This lack of a market price comparison— despite these being long-standing provisions with the Commission— also supports the determination to disallow the incremental $0.15/Dth for the TEAL amendment. 3 Tr 64, 131; Exhibit MEC- 28; MEC's initial brief, pp. 49-52; MEC's exceptions, pp. 32-33; May 8 order, pp. 5-10.[142]

3. Findings and Conclusions

While DTE Electric contends that prior Commission orders have resolved the NEXUS concerns raised by MEC, the Commission's orders in Case Nos. U-20221 and U-20203 show that the prior Commission orders in Case Nos. U-18143, U-18403 and U-20221 did not establish the reasonableness of the transportation reservation rate under the NEXUS agreement including the TEAL amendment.

Consistent with prior Commission decisions in DTE Electric PSCR plan cases involving projected NEXUS costs, including Case Nos. U-18403, and U-20221, it would

[141] December 9, 2020 order, pages 26-29.
[142] December 9, 2020 order, page 29.

be appropriate to indicate that the costs are accepted as projected costs only, with DTE Electric obligated to justify the reasonableness and prudence of the transportation rates in the reconciliation. In light of the Commission's decision in Case Nos. U-20221 and U-20203, however, it is also appropriate to specifically caution DTE Electric that it may not be permitted to recover the additional $0.15 per Dth/day under the TEAL amendment.

This PFD finds that the record in this case does not contain material additional information not considered in Case No. U-20203. DTE Electric acknowledges this in its brief: "The evidentiary record in this Case No. U-20527 is not materially different than the evidentiary records in Case Nos. U-17920, U-18403 and U-20221."[143] Thus, there is no basis on this record to disregard the conclusions the Commission reached in Case No. U-20203.

The Commission has consistently held that it is appropriate to consider long-term savings over the 20-year term of the NEXUS agreement, notwithstanding projected losses over the five-year plan forecast period. There were two elements to DTE Electric's projected savings over the 20-year contract term, savings due to the impact of the greenfield NEXUS pipeline on prices at the MichCon Citygate, and savings due to the availability of lower-cost gas in the Utica/Marcellus region. As discussed above, Mr. Pratt reviewed these savings estimates in his testimony, presenting the landed cost analysis performed by DTE Gas in July 2014 as Exhibit A-38 and the 2015 ICF Study as Exhibit A-41. Focusing on the 2015 ICF Study, Mr. Pratt identified projected savings of $79 million through 2037 from lower gas costs available via NEXUS ($0.13/Dth

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[143] DTE Electric brief, page 30; also see page 32.

lower).[144] Citing the 2015 ICF Study and his 2016 calculations in Exhibit A-24, Mr. Pratt testified that the $0.21/Dth MichCon Citygate price reduction equated to $271 million in savings.[145]

Regarding savings attributable to the availability of lower-cost gas for delivery on the NEXUS pipeline, in Case No. U-20203, the Commission found that market conditions had changed "in a meaningful manner" since DTE Electric entered into its initial agreements with NEXUS.[146] Similarly in this case, the record confirms that market conditions have changed, so that DTE Electric was not able to access gas at Kensington at the most economical prices it expected.[147] The parties essentially agree that the five-year forecast cost of the NEXUS agreement will be approximately $61 million. Additionally, as MEC argues and as Mr. Pratt acknowledged, the estimated five-year losses have increased each year in successive PSCR cases.[148] Mr. Pratt also acknowledged on cross-examination that DTE Electric has not provided an updated forecast through the 20-year contract term.[149] He stated his belief that "directionally and on order of magnitude," the savings estimate is still a reasonable assumption.[150]

In Case No. U-20203, the Commission acknowledged that DTE Electric entered the TEAL amendment to mitigate the fact that market conditions changed, but found that DTE Electric had not established the reasonableness of the combined rate, "given the volumes utilized," and had not "demonstrated it is taking adequate steps to

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[144] See Tr 49.
[145] See Tr 49-50.
[146] December 9, 2020 order, page 26.
[147] See Pratt, Tr 54; Wilson, Tr 329-333.
[148] See Tr 83-84, Exhibit MEC-38.
[149] See Tr 117-118.
[150] See Tr 117.

renegotiate the agreement for the benefit of ratepayers."[151] Correspondingly in this case, DTE Electric did not refute Mr. Wilson's testimony that over the five-year forecast period, the NEXUS capacity will be unnecessary and unused from November through March each year.[152]

Regarding long-term savings associated with lower MichCon Citygate prices, in Case No. U-20203 the Commission found that although 2018 MichCon Citygate prices were lower than projected, "DTE Electric presented no new data or explanation to support whether and how NEXUS actually contributed to this price depression or how such pricing benefits its ratepayers."[153] Similarly, in this case, in response to Mr. Wilson's testimony disputing such a benefit, Mr. Pratt cited the 2015 ICF Study again in his rebuttal testimony.[154] In cross-examination, Mr. Pratt expressed his belief that if the analysis in Exhibits A-41 and A-24 were redone, "it would be directionally the same," but acknowledged DTE Electric has not updated the analysis.[155] As the Commission stated in Case No. U-20203, "DTE Electric merely referenced the original study by ICF and indicated that '[a]lthough MichCon CityGate prices have been reduced by the infusion of affordable Utica/Marcellus shale gas from the construction and operation of NEXUS, the exact magnitude by which prices have been reduced cannot be measured."[156] The Commission further found that DTE Electric was relying on "the outdated cost-benefit study used to support the original contract," "did not present any new evidence on NEXUS's impact on current pricing dynamics at the MichCon hub and the connection to

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[151] December 9 order, pages 27-28.
[152] See Tr 340-341, also citing Mr. Pratt's workpapers.
[153] December 9, 2020 order, page 27.
[154] See Tr 62-63.
[155] See Tr 114.
[156] December 9, 2020 order, page 27.

PSCR costs based on actual fuel procurement," and "also failed to respond to intervenor testimony questioning the impact of NEXUS on MichCon hub prices."

As DTE Electric argues, there is an element of hindsight in MEC's analysis, in challenging the reasonableness of the 2015 ICF Study that DTE Electric and the Commission relied on in prior cases. Nonetheless, the Commission found that DTE Electric's choice to amend the agreement by entering into the TEAL amendment, increasing the transportation rate, raised anew the question of the reasonableness of the agreement and the alternatives including renegotiation of the underlying agreement. Thus, the Commission explained that DTE Electric's obligation to demonstrate it had taken adequate steps to renegotiate the agreement "is especially important given the affiliate relationships involved."[157]

Turning to the Code of Conduct, the Commission clarified that a previously approved long-term affiliate contract would not need to be reexamined repeatedly under Code rules, as DTE Electric maintains, but found that the new TEAL amendment would trigger the market pricing test for an affiliate.[158] The Commission then found that record before it inadequate to establish market prices for the underlying contract or the amendment. In this case, DTE Electric primarily relied on prior Commission orders as sufficient to establish compliance with the Code of Conduct.

Based on the similarities of the record in this case to the record before the Commission in Case No. U-20203, this PFD concludes that on the basis of the present record, the Commission would be expected to reach the same conclusion and preclude

[157] December 9, 2020 order, page 28.
[158] December 9, 2020 order, page 29.

recovery of the TEAL amendment transportation rates. A review of the Commission's order in Case No. U-20203 shows, however, that the Commission did not intend to foreclose further review and further cost recovery in subsequent reconciliation cases. In its order, the Commission acknowledged that the pipeline was in service for only two months at the end of the 2018 reconciliation period at issue in that case, thus indicating that it did not intend the limit it imposed on NEXUS cost recovery in that case to resolve the issue of recoverability for future cases. This PFD interprets the Commission order to require DTE Electric to demonstrate either the reasonableness of the combined cost of the NEXUS agreement with the TEAL amendment "given the volumes utilized" or demonstrate that it "is taking adequate steps to renegotiate the agreement for the benefit of ratepayers given changing market dynamics," before it may recover additional amounts going forward. DTE Electric will also need to demonstrate compliance with the pricing provisions of the Code of Conduct.

C. Coke Oven Gas and Blast Furnace Gas

Exhibit A-14 shows DTE Electric's projected plan year expenditures of $2.4 million for coke oven gas (COG) and $1.3 million for blast furnace gas (BFG) to be used at the River Rouge plant. Mr. Bence testified that DTE Electric purchases these fuels from DTE Energy Services under contracts executed in 2009 and 2013, with prices pegged to 80% of the cost of coal on a per MMBtu basis for COG and 77% of the cost of coal on a per MMBtu basis for BFG.[159] He testified that since River Rouge will not be

[159] See Tr 155.

burning coal, DTE Electric expected to renegotiate the contracts as of June 2020 to reflect 30% of the cost of natural gas consumed at the plant.[160]

Mr. Wilson also addressed DTE Electric's purchases of COG and BFG. Noting the recent amendment to the contract with DTE Electric's affiliate EES Coke, Mr. Wilson testified that there is no market for these gases, and cited DTE Electric's belief that if it does not purchase the gases, they will be flared. Mr. Wilson testified that because there is no market for the gas, the fair market value is zero, and may be negative if there is a cost to EES Coke to flare the gas.[161] He acknowledged that if DTE Electric is not charged for the gas consistent with this market price, it should bear the cost of pipelines to transport the gas. Mr. Wilson cited discovery responses from DTE Electric in Exhibits MEC-27 to MEC-30 in support of his testimony. Mr. Wilson provided the same assessment for blast furnace gas but testified that DTE Electric does not anticipate receiving any additional BFG and has not amended its contract.

In his rebuttal testimony, Mr. Bence contended that since the COG and BFG contracts have been in place for approximately 10 years, they have been accepted by the Commission.[162] He also disputed that the absence of a visible market means the market price should be zero: "[I]n the absence of a visible market, the Company asserts that the market price should be the delivered cost of alternative fuels consumed at River Rouge Power Plant."[163] He also contended that Mr. Wilson's analysis is equivalent to contending that affiliated companies are required to subsidize DTE Electric, ignoring the

[160] See Tr 155-156.
[161] See Tr 352.
[162] See Tr 159-161.
[163] See Tr 159.

expense of the underlying steel and coke production that produced the COG and BFG.[164]

In its brief, MEC argues that DTE Electric's purchase of COG and BFG from its affiliate are subject to the Code of Conduct price cap, and that DTE failed to show compliance. MEC relies on Mr. Wilson's testimony that the market price of these gases should be considered to be zero. MEC also notes Mr. Bence's agreement that there is no visible market for these gases.[165] It argues that DTE Electric's reliance on the cost of alternate fuels as a measure of the market price is not sufficient to justify the payments under the Code of Conduct. MEC also cites cross-examination of Mr. Bence, arguing that his acknowledgement that DTE Electric may have been able to reduce the costs of gas from its affiliate on demand calls into question why DTE Electric was not paying lower prices all along.[166] MEC further argues that by acknowledging the price paid for COG may have influenced EES Coke's decision whether to produce coke, Mr. Bence acknowledged that DTE Electric may be subsidizing EES Coke to remain in business, which is prohibited by the Code of Conduct.[167]

In its reply brief, MEC addresses DTE Electric's reliance on prior Commission decisions by arguing that DTE Electric has the burden to establish that its COG and BFG contracts meet the affiliate price cap in the Code of Conduct, and arguing that even if the Commission had expressly considered these contracts in prior cases, such consideration would not preclude the Commission from reviewing the 2020 contract costs. MEC cites the Commission's May 8, 2020 order in Case No. U-20221, also

[164] See Tr 160.
[165] See MEC brief, page 31 at n 157, citing Bence, Tr 202.
[166] See MEC brief, page 31 at n 160, citing Bence, Tr 170.
[167] See MEC brief, pages 34-35, citing Bence, Tr 210; also see Bence, Tr 207-209.

discussed above, to show that DTE Electric has an ongoing obligation to demonstrate compliance with the Code of Conduct in the reconciliation.[168] MEC also continues to dispute that the market price should be measured by the market price of alternatives.[169] Specifically addressing DTE Electric's claim that MEC's position ignores the underlying costs of producing the gases, MEC argues that DTE Electric did not provide evidence of the cost of producing the gases, and thus did not establish that its proposed pricing is at the lower of market cost or 10% above fully allocated costs. MEC further argues that because COG is a byproduct of the production of coke, it is illogical to assign the full cost of coke production to the waste product.[170]

Noting DTE Electric's reliance on prior Commission orders in plan and reconciliation cases, MEC argues that DTE Electric did not show the arrangements were ever reviewed by the Commission.[171] In disputing that the agreements were "implicitly approved" in prior orders, MEC cites the Commission's order in Case No. U-12615, in which the Commission rejected Wisconsin Electric Power Company's claim in a PSCR plan case that it had previously approved a long-term power purchase agreement when it included costs associated with that agreement in rates.[172] MEC cites Mr. Bence's cross-examination to show the limited references to COG and BFG in those cases.[173]

In its brief, DTE Electric relies on Mr. Bence's rebuttal testimony, arguing that the Commission has routinely approved recovery of the expenses of such transactions

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[168] See MEC reply, pages 20-21.
[169] See MEC reply, pages 21-22.
[170] See MEC reply, page 23-24.
[171] See MEC brief, pages 31-33.
[172] See MEC brief, page 33.
[173] See MEC brief, pages 31-33.

since 2010.[174] Paraphrasing Mr. Bence's rebuttal testimony at Tr 159-162, DTE Electric argues that "MEC's new Code of Conduct theory is not only illogical, it assumes an incorrect cost paradigm that ignores the only discernible comparable market value as well as the underlying costs of producing COG and BFG." In its reply brief, DTE Electric also disputes that the Commission's decision in Case No. U-12615 is applicable, distinguishing in on the ground that case involved the required statutory approval of a long-term power purchase agreement under then MCL 460.6j.[175]

There is no dispute that the BFG and COG contracts are with an affiliate and are thus subject to the Code of Conduct. DTE Electric contracts with its affiliate DTE Energy Services for both products;[176] COG is also produced by EES Coke Battery, LLC, another affiliate of DTE Electric.[177] There is also no dispute that DTE Electric's contract for COG was amended in 2020 to reflect pricing relative to the cost of natural gas rather than coal, since coal will no longer be burned at the River Rouge plant.[178] This PFD concludes that DTE Electric has not shown that the Commission ever evaluated these agreements for compliance with the Code of Conduct, even though costs were included in prior PSCR plan and reconciliation cases, and thus DTE Electric should expect to demonstrate such compliance in the reconciliation of its 2020 plan year in order to recover any such expense. This PFD notes that even if the Commission had considered Code of Conduct compliance in the past, DTE Electric would be obligated to demonstrate compliance for its COG contract, in light of the recent (2020) amendment.

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[174] See DTE Electric brief, pages 16-17, 22.
[175] See DTE Electric reply, pages 21-22.
[176] See Bence, Tr 155.
[177] See Wilson, Tr 351.
[178] See Bence, Tr 161.

As discussed above in section B, the Commission's December 9, 2020 order in Case No. U-20203 addressing the Code of Conduct makes clear that even agreements that have been previously determined to be in compliance with the Code of Conduct will be reevaluated when the agreements are amended.

Had the Commission evaluated DTE Electric's BFG and COG contracts under the Code of Conduct in the past, or had any party presented an example of a Commission decision under similar circumstances, perhaps there would be an established framework to show how to apply the Code of Conduct to what is essentially a byproduct, with no other potential sellers or purchasers to create a market. On this record, MEC's arguments that the market price may be viewed as near zero, or less than zero if there is a cost for disposing of the waste, is more persuasive than DTE Electric's argument that the market price should be measured by the cost of alternate fuels. Mr. Wilson looked at what the producer should be willing to sell the gas for. It is axiomatic that in a competitive market, cost would be driven to marginal cost. MEC's analysis has the benefit of considering the market from the production perspective rather than only from the perspective of a purchaser. DTE Electric, on the other hand, argues that the market value should be determined only by the value to DTE Electric customers as the purchaser of the byproduct. DTE Electric thus focuses on the maximum amount it should be willing to pay, without regard to the additional value that could be obtained in a competitive market. Stated another way, the cost of alternate fuels represents the most that a purchaser would be willing to pay, and is more akin to a price ceiling than a market price. Because DTE Electric focuses on the "value" to DTE Electric customers without explaining how or where the line is drawn between actual cost and the amount DTE Electric customers are asked to pay, it has failed to justify the reasonableness of the amount it has chosen to pay.

Market price is also not the end of the inquiry under the Code of Conduct. DTE Electric did not present information on this record regarding the cost prong of the Code of Conduct pricing test. As MEC argues, it would not be appropriate to allocate the entire cost of producing coke entirely to the byproduct COG, nor is it clear what DTE Energy Services, with whom DTE Electric directly contracts, itself pays for the gases.

As noted above, MEC also raises the question whether DTE Electric's purchase can be considered a subsidy of one of its affiliates, since the payment for the byproduct COG reduces the overall cost of producing coke and may be a factor in the producer's decision to continue production. While Mr. Bence asserted that DTE Electric "successfully negotiated" the 2020 amendment to the COG agreement,[179] the record is devoid of details regarding this negotiation. Also missing from Mr. Bence's rebuttal testimony is any discussion of DTE Energy's role. Consistent with the Commission's prior decisions addressing affiliate transactions, DTE Electric should expect to make a transparent evidentiary presentation regarding its negotiations in seeking to recover such costs in the reconciliation.

Because compliance with the Code of Conduct is a question for the reconciliation, this PFD makes no findings regarding the market price or fully allocated costs, but does find a section 7 warning to DTE Electric regarding the COG costs to be appropriate. DTE Electric is required to show that it has taken all reasonable steps to minimize the cost of fuel for customers. If an arms-length bargain would have resulted

[179] See Tr 161.

in a lower cost for the coke over or blast furnace gas, even though the rate DTE Electric is paying is below the cost of coal or gas alternatives, DTE Electric should expect a disallowance of the difference. Likewise, DTE Electric should not expect to recover more than the pricing standards of the Code of Conduct would permit. Based on the present record, DTE Electric has not established that it has taken reasonable steps to minimize the cost of the coke oven and blast furnace gases, or that it has complied with the pricing provisions of the Code of Conduct.

D. Demand Response Capacity Incentive Payments

Staff initially raised a concern with the DR capacity incentive payments DTE Electric included in PSCR expense. In its brief, Staff cites Mr. Rivard's rebuttal testimony at Tr 272 as well as a portion of the record in Case No. U-18402 in concluding that DR capacity incentive payments should be included in PSCR expense as DTE Electric has proposed.[180] Therefore, this PFD concludes that this issue has been resolved.

E. Line Loss Multiplier

Consistent with Ms. Shi's testimony, Staff also raised a concern with the line loss factor DTE Electric used in its PSCR factor calculation in Exhibit A-1. Citing the Commission's May 8, 2020 decision in DTE Electric's last rate case, Case No. U-20561, Staff argues the Commission in that case adopted Staff's line loss factor of 7.23% rather than the line loss factor of 7.3% that DTE Electric proposed in that case and used in Exhibit A-1 in this plan case. DTE Electric did not address this recommendation in its rebuttal testimony or in its reply brief. In his direct testimony, Mr. Brunell indicated that

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[180] See Staff brief, pages 8-11.

the rate case was pending and that the factor used in Exhibit A-1 was the factor DTE Electric proposed in that case.[181] Acknowledging Ms. Shi's testimony that correcting the line loss multiplier to 7.23% does not alter the resulting PSCR factor calculation in Exhibit A-1,[182] this PFD nonetheless finds that DTE Electric should be directed to use the correct factor in future filings until the factor is further revised by Commission order.

IV.

CONCLUSION

For the reasons discussed above, this PFD recommends that the Commission adopt the following findings and conclusions:

A. DTE Electric should be cautioned regarding recovery of NEXUS costs as discussed in section III.B above;

B. DTE Electric should be cautioned regarding recovery of coke oven and blast furnace gas costs as discussed in section III.C above;

C. DTE Electric's PSCR plan is otherwise reasonable and prudent and its five-year forecast should otherwise be accepted;

D. DTE Electric should expressly be authorized to include DR capacity incentive payments as it has proposed, as discussed in section III.D above;

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[181] See Tr 238.
[182] See Tr 403-404.

E. DTE Electric's PSCR factor calculation should be accepted, with the proviso that DTE Electric must use the appropriate line loss multiplier in future filings, as discussed in section III.E above.

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

Sharon L. Feldman

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Administrative Law Judge

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