STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of DTE Michigan Lateral Company for A Certificate of Public Convenience and Necessity to Convert and Operate Portions of its Pipeline System and to Construct and Operate Portions of a Pipeline System to Provide an Additional Supply Source to the Areas of Manistee, Traverse City, Alpena and Rogers City.	)	Case No. U-20894

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on June 30, 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 July 9, 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 July 16, 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
Kandra K. Robbins

Digitally signed by: Kandra K. Robbins
DN: CN = Kandra K. Robbins email = robbinsk1@michigan.gov C = US O = MOAHR OU = MOAHR - PSC
Date: 2021.06.30 12:40:52 -04'00'

June 30, 2021
Lansing, Michigan

Kandra K. Robbins
Administrative Law Judge

STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On February 10, 2021, DTE Michigan Lateral Company (DMLC or Company) filed its Application under Act 9 of 1929, MCL 483.101 *et seq* and the Michigan Public Service Commission Rules for the Production and Transmission of Natural Gas, Michigan Administrative Code 4 460.851 *et seq*. In its filing, the Company requested the Michigan Public Service Commission: (i) approve its request to convert existing pipelines in its Wet Header System from gas gathering to dry gas transmission service, (ii) approve its request to construct, operate, and maintain connector pipelines from the existing system to interconnect into existing DTE Gas transmission facilities serving DTE Gas in Traverse City, Alpena, Rogers City, and Manistee; (iii) approve the contract to provide transmission service and to recover the costs of the project that DMLC has executed with its customer DTE Gas Company. The contract is for Firm Transportation of 111,000 MMcf/d on DMLC

with a maximum daily quantity (MDQ) of 65,000 MMcf per day from Kalkaska, Michigan, to the DTE Gas system near Traverse City and Manistee, Michigan, and a MDQ of 46,000 MMcf per day from North Chester, Michigan to Rogers City. The levelized 20-year rate in the contract is a daily demand charge of $0.2427. The transportation contract between DMLC and DTE Gas recovers the fully embedded estimated costs of the new pipeline additions and conversion of the Wet Header System, plus 10%. DMLC requests a Commission order on or before July 31, 2021 to accommodate a build schedule with an in-service date in early 2022.

The Company's filing was accompanied by the testimony of witnesses Arthur R. Lyle, II, Darrell P. Grassmyer, Philip W. Coleman, and Steven M. Richman.

At the April 8, 2021 prehearing conference, the Company and Staff appeared, and intervention was granted to the Attorney General. Oral Argument was taken on North Bay Energy's Petition to Intervene. On April 19, 2021, a ruling was issued granting intervention to North Bay Energy, LLC. On April 15, 2021, Riverside Energy Michigan, LLC filed a Petitioner of Leave to Intervene. On April 19, 2021, DMLC filed an Objection to Riverside Energy's Petition. After Oral Argument on April 26, 2021, Riverside Energy's intervention was granted.

In accordance with the schedule established at the prehearing conference, Staff filed the testimony of Kevin P. Spence; the Attorney General filed testimony of Sebastian Coppola; North Bay Energy filed the testimony of Thad Shumway; and Riverside Energy filed the testimony of Jim Schramski. On May 24, 2021, DMLC filed rebuttal testimony of Arthur R. Lyle, II and Steven M. Richman. On May 28, 2021, the Attorney General filed

revised public testimony of Sebastian Coppola. On June 1, 2021, DMLC filed revised rebuttal testimony of Arthur R. Lyle, II and Steven M. Richman.

II.

OVERVIEW OF THE RECORD AND POSITIONS OF THE PARTIES

The evidentiary record is contained in three volumes of transcripts, and 59 exhibits. An overview of the testimony presented by each party is reviewed in the following sections.

A. DMLC Testimony

DMLC presented four witnesses. The first, Mr. Arthur R. Lyle, II, is Manager of Midstream Business Development for DTE Gas Enterprises, LLC, the higher-level parent company of DMLS[1]. Mr. Lyle presented testimony to support the need and design requirements for the facilities required to provide proposed transmission services to DTE Gas Company including the construction of two new extension pipelines that will connect from existing pipeline assets (which DMLC proposes to convert from gathering to transmission status) to existing DTE Gas pipelines.[2]

Mr. Lyle testified that this project would provide additional pipeline connections and supply source methods to our customer DTE Gas. As part of DTE Gas's overall transmission system review, including initial feedback from state agencies, it identified areas with single sources of supply and significant market impact from any potential outages. As part of that review, DTE Gas identified Traverse City, Alpena, Rogers City, and Manistee as areas with single source risk. The Wet Header System extends from

[1] Tr. Vol. III, pg. 81
[2] Tr. Vol. III, pg. 81

near Manistee generally northeasterly up to the Rogers City area. This pipeline system was constructed beginning in the 1970s through the mid-1990s and was designed to transport production gas from Niagaran wells to a plant near Kalkaska, Michigan.[3]

Mr. Lyle testified that over the years the production connected to the system has declined significantly from hundreds of million cubic feet per day of natural gas production to less than twenty million cubic feet per day currently . This has left significant capacity available on the pipeline system and created a significant revenue deficiency for the pipeline as the rates have remained the same since an order received in 1993 at $0.022/Mcf for the mainline in MPSC Case No. U-10150. Sustainable efforts to reduce costs for operating the system have been achieved but are insufficient to offset the revenue loss resulting from the continued decline in volume. The Company explored the potential for a rate case to alleviate the revenue deficiency, and broached the subject with existing producers and shippers; but a rate increase sufficient to offset costs was unaffordable and so considered prohibitive. At that point, the Company sought other uses for the system and considered a shutdown of the asset[4].

He stated that DTE Michigan Lateral Company plans to convert existing mainlines of its Wet Header System to dry transmission service and construct connector pipelines from those to interconnect into existing DTE Gas transmission facilities. Additionally, an interconnection will be constructed in North Paradise Township, Grand Traverse County to provide service to the Traverse City 10 inch and loop pipelines. As shown on Exhibit A-3, for the service to Traverse City and Manistee, DMLC will use a new interconnect with

[3] Tr. Vol. III, pg. 83
[4] Tr. Vol. III, pg. 84

DTE Gas at Kalkaska to bring supply onto the system and convert its existing Blair Loop 24” (B24), Blair Loop 16” and Blair Loop extension 16” (BLE16) pipelines to transmission service and construct approximately 4 miles of 12” pipeline from its existing Norwalk launcher/receiver station to an interconnection in Brown Township with DTE Gas’s East Manistee 12” transmission pipeline (“West Service”). For the service to the Rogers City and Alpena areas, as also shown on Exhibit A-2, DMLC will use a new interconnect with the DTE Michigan Gathering Company system near the South Chester CO2 plant complex to bring supply onto the system and convert its existing North Chester 12”, Pigeon River 10”, Pigeon River 10” Extension and Presque Isle 10” (PI10) pipelines to transmission service and construct approximately 2 miles of 10” pipeline from its existing Belknap launcher/receiver station to an interconnection near Rogers City with DTE Gas’s Rogers City 8” transmission pipeline (“East Service”)[5].

He stated that DMLC has incurred costs of $10.5 million to date as shown on Exhibit A-5 page 1. This includes capital to replace or modify launcher and receiver facilities on the Blair 16” and extension lines as well as the Pigeon River 10” and Extension and PI10 pipelines of $3.2 million. The additional costs incurred were for review of pipeline records to verify the assets and records and identify areas where gaps may exist as well as the costs for ILI of the pipelines to be converted. The costs for ILI related work-to-date totals approximately $7.3 million. DMLC expects the additional work to be performed at a cost of $17.5 million. This includes the additional work to perform confirmation digs and remediation on the lines to be converted. It also includes additional material review and testing on each of the lines to be converted, as well as remediation

[5] Tr. Vol. III, pg. 85

of certain corrosion prevention measures identified related to casing and anode beds. Taken together, the total costs of the project for conversion of the pipelines are expected to be $28.0 million as shown on Exhibit A-5 page 1.[6]

He testified that the benefits of using an existing pipeline for providing the new service include environmental, social, and economic. The cost to convert the system is significantly less than construction of a similar amount of new pipeline. Further, the ability to use an existing asset that is otherwise uneconomic and significantly underutilized currently, extends the useful life of those assets[7].

In his supplemental testimony, Mr. Lyle testified that all of the easements required for the revised route shown on Exhibit A-3 have been acquired from the landowners along the route. The path of the route changed slightly due to a single landowner along the existing pipeline corridor determining that they did not want to have an additional pipeline across their property. Rather than leave that parcel for potential condemnation proceedings, DMLC worked with adjacent landowners to find a viable alternative, creating the change in the overall route. This resulted in a slightly shorter and straighter route through that area[8].

Mr. Lyle sponsored Exhibits A-1, A-2, A-3, A-4 and A-5. Exhibit A-1 is a map of overall system for new service provision. Exhibit A-2 is a map of proposed Rogers City connector pipeline. Exhibit A-3 is the map of proposed Norwalk Manistee connector pipeline. Exhibit A-4 is the general engineering specifications of connector pipelines. Exhibit A-5 is the estimated costs for project. Cross-examination of Mr. Lyle was waived.

[6] Tr. Vol. III, pg. 87
[7] Tr. Vol. III, pg. 91
[8] Tr. Vol. III, pg. 96

Next, the Company presented the testimony of Darrell P. Grassmyer, Director-Environmental Engineering at DTE Energy, Inc. He testified regarding the assessment of the environmental effects of the proposed construction of the 12" Rogers City Connector ("RCC") and Norwalk Manistee Connector ("NMC") Pipelines. The RCC will consist of approximately 2.0 miles of 12-inch diameter natural gas pipeline. Construction of the RCC will enable DTE Michigan Lateral Company ("DMLC") to provide a service to DTE Gas Company ("DTE Gas") by providing an additional source of supply and second pipeline connection to serve the Rogers City and Alpena areas. The NMC will consist of approximately 4.0 miles of 12-inch diameter natural gas pipeline. Construction of the NMC will enable DMLC to provide a service to DTE Gas by providing an additional source of supply and second pipeline connection to serve the Manistee area[9].

Mr. Grassmyer testified that the Rogers City Connector and Norwalk Manistee Connector were each designed with the intention to avoid or minimize impacts to threatened and endangered wildlife species. The proposed Rogers City Connector avoids large, forested areas and kept within predominately agriculture fields and the Norwalk Manistee Connector is co-located with an existing pipeline right-of-way. A field survey was completed for the proposed right-of-way and general area of the project by Stantec, a third-party consultant hired by DMLC[10].

Mr. Grassmyer sponsored exhibits A-6.0 through A-6.15. In his supplemental testimony, he sponsored exhibits A-17.0 through A-17.8. Cross-examination of Mr. Grassmyer was waived. Exhibit A-6.0 is a detailed description of the existing

[9] Tr. Vol. III, pg. 111
[10] Tr. Vol. III, pg. 113

environmental features and planned route is contained in the Rogers City Connector and Norwalk Manistee Connector Pipelines Environmental Impact Report.

Mr. Philip W. Coleman, Director-Codes & Regulatory, for DTE Gas Enterprises, LLS, testified concerning DTE Michigan Lateral Company's plan for converting certain pipelines in the Wet Header System from unregulated gas gathering to regulated dry gas transmission service and pipeline safety standards applicable to the Wet Header System after the conversion to service is complete[11].

Mr. Coleman testified that a conversion of service occurs when an operator places an existing steel pipeline that was previously not subject to regulation into use in a service that is subject to regulation. The conversion-of-service requirements for gas pipeline facilities are codified in the Pipeline and Hazardous Materials Safety Administration's (PHMSA) federal gas pipeline safety standards at 49 C.F.R. § 192.14. The Michigan Public Service Commission (Commission) incorporates PHMSA's conversion-of-service requirements by reference into the 24th Edition of the Michigan Gas Safety Standards, which apply to operators of intrastate gas pipeline facilities under the terms of the Commission's annual PHMSA certification[12].

He testified that DMLC has developed a comprehensive written plan for converting the following unregulated gas gathering lines in the Wet Header System to regulated dry gas transmission service: (1) the Blair 16" Loop and Extension, (2) the Blair 24" Loop, (3) the North Chester 12", (4) the Pigeon River 10" and Extension and (5) the Presque Isle 10". DMLC obtained assistance from two third-party engineering firms in developing the

[11] Tr. Vol. III, pg. 123
[12] Tr. Vol. III, pg. 124

plan: (1) Kiefner & Associates (Kiefner) and (2) Lake Superior Consulting, LLC (LSC). Kiefner prepared a comprehensive integrity assessment for each of the pipelines in the Wet Header System and assisted in developing the various procedures required under § 192.14. LSC performed a comprehensive review of the historical records for the Wet Header System[13].

He testified that the existing pipelines in the Wet Header System will be subject to the requirements in Part 192 and the Michigan Gas Safety Standards for the operations and maintenance, operator qualification, and integrity management of gas transmission lines. Any new pipelines, or existing pipelines that are replaced, relocated, or otherwise changed, will also be subject to the requirements in Part 192 and the Michigan Gas Safety Standards for the design, construction, initial inspection, and initial testing of gas transmission lines. DMLC has established comprehensive procedures for complying with these requirements, and those procedures will be applied to the Wet Header System after the conversion to gas transmission service is complete[14].

Mr. Coleman sponsored Exhibit A-7, the Wet Header system Conversion Service Plan and Exhibits 8.1 through A-8.6 which is the Lake Superior Consulting, LLR review of Historical Records for the Wet Header Systems. Cross-examination of Mr. Coleman was waived.

Steven M. Richman, Director, Gas Storage and Pipelines within DTE Midstream for DTE Gas Enterprises, testified concerning reasonableness of the revenue requirements to provide firm transportation service between DMLC and DTE Gas on the

[13] Tr. Vol. III, pg. 125
[14] Tr. Vol. III, pg. 130

converted Wet Header System assets and new Connector pipelines, including the negotiated rate, to show that the rate agreed to consists of DMLC's fully embedded costs plus a return of 10%, and to show that approval of this contract will not impact the rates of any other customer of DMLC[15].

Mr. Richman testified DMLC and DTE Gas have entered into a contract for DMLC to provide firm transportation services to DTE Gas on the DMLC converted Wet Header System and the two new extended connector pipelines for a maximum daily quantity (MDQ) of 65,000 MMcf per day from Kalkaska, Michigan to the DTE Gas system near Traverse City and Manistee, Michigan, and MDQ of 46,000 MMcf per day from North Chester, Michigan to Rogers City, Michigan also to interconnect into DTE Gas system[16].

Mr. Richmann explained the method to estimate the revenue requirements in Exhibits A-9, A-10 and A-11. He stated that for the O&M cost in the converted Wet Header System assets he used an average of the actual operating costs for the most recent three years, which will reflect the most accurate forecasted O&M expenses as well as an average actual cost for the last four years of the corporate overhead costs allocated to the asset. The average sum of these costs attributed to the asset for 2022 is $1.29 million. The fully embedded O&M costs were escalated by 3% annually for subsequent years to account for inflation and the general expected increase in cost to provide the service. Additionally, In-line Inspection (ILI) costs for each segment of the asset are included in the model and will recur every 10 years as recommended by DTE Midstream's Project Engineers to be a prudent operator, unless the segment is in a High Consequence Area

[15] Tr. Vol. III, pg. 134
[16] Tr. Vol. III, pg. 135

(HCA), in which case the ILIs are scheduled to be completed every seven years. These costs were estimated using the most recent actual costs for ILI, which are considered the base year for each segment and escalated by 3% annually, to account for the increase in costs to perform the service and forecasted for the year they are schedule to recur. For the Norwalk Manistee Connector, the estimated O&M cost is $56,000 for year one of the service. ILI costs are included in 2031 and 2041 for inline inspections from a 2021 cost base estimate assumption of $350,000 (escalated annually by 3% to account for the expected increase in cost to perform the service). For the Rogers City Connector, the estimated O&M cost is $18,000 for year one of the service. ILI costs from the 2021 cost base estimate of $250,000 (escalated annually by 3% to account for the expected increase in cost to perform the service) were included in 2031 and 2041 for in-line inspections. Capital costs for the new construction laterals are depreciated over the full length of the contracts supporting the project of 20 years[17].

Mr. Richman stated that the revenue requirements were determined from 1) the estimated costs to convert the existing Wet Header System assets, which includes all the ILI and capital costs to date and the estimated costs to complete, including remediation, 2) construction of the new lateral builds (NMC and RCC connectors) as described above, 3) the estimated O&M required to operate and maintain the pipelines, and 4) costs for required ILI analysis over the 20-year transportation agreement to serve DTE Gas. A levelized rate for the service to DTE Gas was calculated using an unlevered cash flow

[17] Tr. Vol. III, pg. 136

model including these assumptions over the 20 years of the firm contract to achieve a 10% return on fully allocated embedded costs[18].

Mr. Richman testified regarding the total transportation rate including assumptions and calculations. He stated that the levelized 20-year rate in the contract is a daily demand charge of $0.2427 for Firm Transportation of 111,000 MMcf/d on DMLC with a maximum daily quantity (MDQ) of 65,000 MMcf per day from Kalkaska, Michigan to the DTE Gas system near Traverse City and Manistee, Michigan, and a MDQ of 46,000 MMcf per day from North Chester, Michigan to Rogers City. The demand charge consists of these components: (1) $0.1670 for 111,000 MMcf/d transport on the converted Wet Header System assets; (2) $0.0865 for 65,000 MMcf/d on the Norwalk Manistee Connector; and (3) $0.0605 for 46,000 MMCf/d on the Rogers City Connector. The daily demand charge equates to a levelized Monthly Demand Charge for this service of $819,977 and levelized annual Demand Charge of $9,839,725[19].

Mr. Richman testified that the contract recovers the fully embedded estimated costs of the new pipeline additions and conversion of the Wet Header System plus 10% and that there are no other customers for DMLC.[20]

Mr. Richman sponsored Exhibits A-9, A-10, A-11 and A-12. Cross-examination of Mr. Richman was waived. Exhibit A-9 is the Wet Header System 5-year EBITDA Summary. Exhibit A-10 is the Norwalk Manistee Connector 5-year EBITD Summary. Exhibit A-11 is the Rogers City Connector 5-year EBITDA Summary. Exhibit A-12 is the DMLC-DTE Gas Firm Transportation Contract.

[18] Tr. Vol. III, pg. 137
[19] Tr. Vol. III, pg. 137
[20] Tr. Vol. III, pg. 138

B. Staff Testimony

Kevin P. Spence, a Public Utilities Engineer in the Gas Operations Section of the Energy Operations Division of the Michigan Public Service Commission, was the only witness on behalf of Staff.

Mr. Spence provided Staff's recommendations concerning the application. Mr. Spence described the proposed project pursuant to the application as the Company states that the Wet Header Conversion Project will provide additional pipeline connections, and supply source methods, to their customer, DTE Gas. In addition to converting portions of the existing Wet Header System from gas gathering to dry gas transmission, DMLC is proposing to construct the proposed NMC and RCC pipelines to facilitate service to the Traverse City, Alpena, Rogers City, and Manistee areas which currently are single source of supply areas[21].

Mr. Spence testified that Staff held an interagency meeting to permit input of additional agencies necessary in establishing Staff position in this matter.[22] Mr. Spence stated that per the Company's application, construction for the proposed Wet Header System Conversion Project is planned to begin in the summer of 2021, consisting of work identified in the Wet Header System Conversion of Service Plan, Exhibit A-7 of Company witness Philip W. Coleman, as well as the new construction of the NMC and RCC pipelines. Additionally, in its application, the Company requests a Commission order on or before July 31, 2021, to accommodate a build schedule with an in-service date in early 2022.[23]

[21] Tr. Vol. III, pg. 164
[22] Tr. Vol. III, pg. 167
[23] Tr. Vol. III, pg. 169

Mr. Spence testified that Staff reviewed the Company's filings in this proceeding with a focus on, but not exclusive to, the project route, necessity, engineering specifications, and environmental impact. Staff worked with the Company to obtain additional information via discovery requests.[24]

Mr. Spence testified that Staff has concerns with the construction and operation of the pipeline disrupting the farming operations of the agricultural landowners. Specifically, Staff is concerned with the construction operations of the proposed NMC and RCC pipelines resulting in insufficient depth of cover to prevent incidents due to farming activities and the short-term loss of crop yield due to the construction of the NMC and RCC pipelines. He testified that while the supplemental testimony of Mr. Grassmyer addressed some concerns, Staff remains concerned that that the minimum depth of cover for the NMC and RCC pipeline will be insufficient to prevent incidents due to farming activities. Staff recommends that the minimum depth of cover for the proposed NMC and RCC pipelines be five feet in all agricultural fields. In addition, Staff recommends that should the Company determine, as may be necessary upon actual construction, that the route of the proposed NMC or RCC pipeline must change, Staff recommends that the Company limit such location changes to minor deviations from the proposed route filed to the docket in the Company's application, direct testimony, supplemental direct testimony, and exhibits of Company witnesses. Such minor deviations from the proposed route are to allow for engineering revisions, and to reflect route changes necessitated by surface, final design, or actual field conditions. Staff considers a "minor deviation" to the proposed pipeline route to be any alteration in location of no more than 150 feet from the centerline

[24] Tr. Vol. III, pg. 170

of the proposed route, which does not cross the property of any landowner, or their predecessor, who did not receive notice of this case.[25]

Mr. Spence testified that the proposed Wet Header System Conversion Project would serve to add resiliency to DTE Gas' transmission system and reduce single source of supply risk to the Traverse City, Alpena, Rogers City, and Manistee areas. This reduction in single source of supply risk reduces the maximum number of potential customer outages should there be a disruption to DTE Gas' infrastructure and, thereby, serve the public convenience and necessity[26].

Concerning the engineering aspects of the project, Mr. Spence testified that should the Commission approve the Company's application, Staff recommends the following: (1) The Company shall obtain GPS coordinates of all girth weld locations for the NMC and RCC pipelines; (2) No later than one year after the in-service date of the NMC and RCC pipelines, an in line inspection of the pipelines shall be conducted. Specifically, the inspections shall consist of a geometry tool capable of detecting dents or other anomalous conditions that may have arisen during construction of the pipelines. The remediation of dents shall occur in accordance with the 49 CFR Part 192 Subpart O and ASME B31.8S versions adopted as of the project completion; (3) No later than three months after the in-service date of the NMC and RCC pipelines, an above-ground electrical survey of the pipelines shall be performed. Specifically, these inspections will attempt to identify defects in the pipeline coating that could cause future corrosion if not addressed. All detected anomalies that become anodic when the cathodic protection system is off shall be

[25] Tr. Vol. III, pgs. 175-176
[26] Tr. Vol. III, pg. 179

remediated within one year after detection. Within six months of the electrical surveys, the data gained from the electrical surveys will be used to place additional external corrosion control test stations, as necessary, at any identifiable and significant dips in electric potential in accordance with 49 CFR 18 192.469[27].

Mr. Spence stated that Staff is supportive of the proposed NMC and RCC pipeline routes. The Company has demonstrated that the proper environmental mitigation techniques will be followed during construction for both the NMC and RCC pipelines and that the environmental report for both proposed pipeline routes is complete[28].

Mr. Spence testified that Staff does not have any concerns with the Company's proposed Wet Header Conversion to Service Plan. The plan is thorough and includes an in-depth analysis and set of procedures[29].

Mr. Spence testified that Staff recommends, should the Commission approve the Company's Wet Header System Conversion Project, that the Company's conversion of service, from gas gathering to dry gas transmission, not take place until Lambda is granted approval to, and has completed construction of, an Act 9 natural gas pipeline project to assure the continued operation of the current Wet Header System producers, or until May 1, 2022, whichever occurs first.[30] Staff's recommendation allows the Company to construct both the NMC and RCC pipelines within the Company's proposed timeline. However, Staff's recommendation, should the Commission approve, would prevent the Company from commencing dry gas transmission service until Lambda has

[27] Tr. Vol. III, pgs. 180-181
[28] Tr. Vol. III, pg. 184
[29] Tr. Vol. III, pg. 186
[30] Tr. Vol. III, pg. 187

a system in place, and in operation, allowing the producers utilizing the existing Wet Header System to continue un-obstructed operations.[31]

Mr. Spence testified that should the two Act 9 projects not be properly coordinated, producers currently utilizing the existing Wet Header System could become isolated from market and be forced to shut-in their production wells. Based on discovery requests, the Company identified 10 active shippers utilizing the existing Wet Header System with approximately 16 MMcf/d of production gas flowing across the system.[32]

Mr. Spence testified that Staff recommends that, should the Commission approve the Company's proposed Wet Header System Conversion Project, all contingency costs associated with the proposed project be disallowed. Furthermore, Staff recommends the Company recalculate its rates, excluding the contingency expenditures, and file the recalculated rates in this docket.[33] Mr. Spence testified that the Company, through discovery response STDMLC-5.1, has identified a total of $5,721,993 as estimated contingency costs for the proposed project. Contingency expenditures are those set aside for uncertain or unpredictable events occurring. Due to accuracies in engineering, design, and project cost analysis, as well as cost savings which may be realized during project construction, contingency expenditures may not be spent either in whole or in part. Staff cannot review the identified capital expenditures for reasonableness and prudence at this time. Due to the uncertainty of these expenditures being incurred, the identified contingency expenditures are an unreasonable cost to pass on to DTE Gas to be recovered as part of the Firm Transportation Contract between DMLC and DTE Gas. If

[31] Tr. Vol. III, pg. 188
[32] Tr. Vol. III, pgs. 188-189
[33] Tr. Vol. III, pg. 192

the need should arise for contingency expenditures, and the Company can prove they were spent justly and prudently, Staff recommends the Company file a rate amendment once construction of the Wet Header System Conversion Project is complete.[34]

Mr. Spence stated Staff is supportive of the Company's application on the basis of the proposed pipeline routes, engineering specifications, project necessity, and environmental impact. However, Staff wishes to reiterate its concern once again regarding the need to properly coordinate the Company's conversion of service, from gas gathering to dry gas transmission, with Lambda's forthcoming Act 9 application which would assure the current producing company's ability to continue un-hindered operations. Therefore, Staff recommends the Commission grant a certificate of public convenience and necessity, pursuant to Act 9, to DTE Michigan Lateral Company to construct, operate, and maintain the NMC and RCC connector pipelines; and approve the conversion of existing pipelines in its Wet Header System from gas gathering to dry gas transmission service upon the filing, approval, construction, and operation of Lambda's forthcoming Act 9 application, or by May 1, 2022, whichever occurs first.[35]

Mr. Spence sponsored 14 exhibits and cross-examination was waived. Exhibit S-1 is the Interagency Meeting Agenda for the Wet Header Conversion Project. Exhibit S-2 is the Michigan Native American Tribal Leader Notification. Exhibit S-3 is the Public Comments in Favor of the Application. Exhibit S-4 is Public Comment of Concern. Exhibit S-5 is the DTE Gas Traverse City-Alpena Reinforcement Project Presentation. Exhibit S-6, S-7 and S-8 are Company discovery responses. Exhibit S-9 is the Lambda Energy

[34] Tr. Vol. III, pg. 193
[35] Tr. Vol. III, pg. 196

Resources, LLC proposed construction schedules. Exhibit S-10, S-11, S-12, S-13, and S-14 are Company discovery responses.

C. Attorney General Testimony

Sebastian Coppola, a business consultant specializing in financial and strategic business issues in the fields of energy and utility regulation, testified on behalf of the Attorney General. Mr. Coppola's testimony presents his independent analysis of DMLC's application to obtain certificate of public convenience and necessity to convert a portion of its pipelines to dry gas transmission service, build and operate additional connecting pipelines, and establish transportation service rates.[36]

Mr. Coppola testified that the Company has calculated rates and proposed demand charges that are excessive, based on still unknown and contingent capital investments with highly inflated costs using a methodology that does not conform to traditional ratemaking. Mr. Coppola stated that the resulting proposed demand charges are neither fair nor reasonable because it is included in a transportation service agreement between the Company and DTE Gas.[37] As a result, Mr. Coppola recommended that the Commission reject the Company's proposed rates and demand charges, and instead adopt the demand charges he calculated under a traditional and generally accepted cost of service model. The combined demand charge he calculated per Mcf is $0.1836. In comparison, the Company has proposed a combined demand rate of $0.2427 per Mcf. Based on his calculations, the total amount of demand charges for

[36] Mr. Coppola presented revised testimony due to an oversight in not including the present value of the annual transportation volumes when calculating the rate per Mcf and the annual demand charge.
[37] Tr. Vol. III, pg. 207

the three pipelines is $5,650,407. This is in contrast to the Company's calculated total demand charge of $9,839,725, which is higher by $4,189,318.[38]

Mr. Coppola stated that the Company did not use a traditional cost of service model to arrive at the rates and demand charges proposed for each of the pipeline segments. Instead, he contends that the Company used a cash flow model for each of the pipeline segments, targeting an overall return of 10% on the projected capital investments and operating costs. The models use an artificial demand charge rate to multiply against the capacity volumes in order to achieve that targeted return of 10%. The demand charges used to arrive at the 10% target return are shown in Exhibits A-9 through A-11 and they make up the composite rate of $0.2427 per Dth in Exhibit A in the transportation service agreement in Exhibit A-12.[39]

Next, he argues that for unclear reasons the Company added a 10% margin on forecasted O&M and pipeline integrity costs over the 20-year term of the transportation agreement. The Company amortized the capital investment costs for each of the three projects over the 20-year term of the transportation agreement, although the assets have a useful life longer than 20 years. The Company's approach accelerates the recovery of the capital investment and increases the demand charge. He contends the Company uses a 3% annual inflation factor to increase O&M expense over the 20-year term of the projects with no specific basis or support. He states that the Company's calculations assume that the three pipeline segments will be in service beginning in 2022.[40]

[38] Tr. Vol. III, pg. 207
[39] Tr. Vol. III, pg. 213
[40] Tr. Vol. III, pg. 214

Mr. Coppola states that based on the approach, assumptions, and calculations performed by DMLC to arrive at the proposed demand charges, there are several issues that render the results unacceptable and the proposed rates unfair and unreasonable. He argues first, the Company does not use a traditional and generally accepted cost of service model in setting rates for regulated assets. Instead, the Company uses a hybrid cash flow model. Second, in its financial models, the Company included capital investments that have not yet been incurred and that contain significant contingency costs. Third, DMLC uses a return-on-investment rate of 10% to discount its projected cash flows for each of the projects. The reason for the 10% rate is not entirely clear, but it seems that the Company is trying to link this rate to the language in Rule 460.10108(4). These return rates are excessive for projects where the Company has signed a 20-year fixed rate contract with a nearly guaranteed revenue stream and an almost assured return, akin to a long-term bond return over a 20-year period. Fourth, the Company has overestimated the O&M expense for the converted Wet Header. Fifth, in the financial models to calculate the demand charges, the Company has included a 10% premium on top of the O&M expenses and pipeline integrity costs. It is not entirely clear why the Company has included this cost premium because the Company has not provided any specific explanation.[41]

Mr. Coppola testified that there are two reasons why the Company has misapplied Rule 460.10108(4). First, he testified that it was his understanding that the 10% premium is applied after the Company has calculated the fully embedded cost of its services. Therefore, if the Company had performed a traditional cost of service calculation and

[41] Tr. Vol. III, pgs. 217-221

determined what the demand charge should have been under that approach, it would have established the embedded cost on which to add the 10% premium. The Company did not take that approach. Therefore, its calculations are faulty and inappropriate.

Second, the Rule states that "If an affiliate or other entity within the corporate structure provides services or products to a utility, and the cost of the service or product is not governed by section 10ee(8) of 2016 PA 341, MCL 460.10ee(8), compensation is at the lower of market price or 10% over fully allocated embedded cost." The important part of this rule is that billed costs to the utility must be at the lower of market price or 10% over fully allocated embedded cost. The Company has not established what the market price is. Therefore, he argues the test is incomplete and the Rule unusable.[42]

Mr. Coppola testified that in effect, DMLC is no more than a shell company that allows DTE Energy to enhance its corporate profit. The demand charges proposed by the Company in this case are a clear illustration of that motive. The Commission should not allow the Company to implement its proposed inflated transportation rates, which DTE Gas will ultimately pass on to its retail customers. Using the traditional cost of service model that I have applied in this case will avoid that problem and will provide a neutral outcome irrespective of which DTE corporate entity owns the pipeline assets.[43]

Mr. Coppola testified the Company calculated rates and proposed demand charges that are excessive, based on still unknown and contingent capital investments with highly inflated costs using a methodology that does not conform to traditional

[42] Tr. Vol. III, pg. 222
[43] Tr. Vol. III, pg. 224

ratemaking. The resulting proposed demand charges are neither fair nor reasonable to include in a transportation service agreement between the Company and DTE Gas.

Mr. Coppola recommends that the Commission reject the Company's proposed rates and demand charges and instead adopt the demand charges he calculated under a traditional and generally accepted cost of service model. Specifically, he recommends that the Commission accept the levelized rates and demand charges that he calculated and presented in Revised Exhibits AG-9 through AG-11. Furthermore, he recommends that the Commission reject the 50/50 sharing of revenues from additional future shippers on the three pipeline segments and instead adopt an 80/20 sharing of those incremental revenues, with 80% credited to DTE Gas. Additionally, he contends that the Commission should instruct the Company to file an application for a rate redetermination for any extension of the transportation service agreement before the end of the initial term and any subsequent renewal terms.[44]

Mr. Coppola sponsored Exhibit A-1 through AG-14. Cross-examination of Mr. Coppola was waived.

D. North Bay Energy, LLC Testimony

Thad Shumway, a natural gas marketer, testified concerning the effects the conversion of the Wet Header pipeline system would have on existing oil and gas producers and markets if approved.

[44] Tr. Vol. III, pgs. 234-235

Mr. Shumway testified that if DMLC's Application is granted and it decommissions and/or converts the portions of the Wet Header System referenced in its Application, there is no alternative path to the Kalkaska plant for producers.[45]

Mr. Shumway testified that he recommends that the Commission should order that any conversion of the Wet Header System is contingent on replacement service being approved by the Commission, and that conversion must be coordinated with bringing the replacement service online in order to minimize the interruption of service on the Wet Header System and the impact on producers and consumers. DMLC and Lambda have both indicated that an MPSC filing by Lambda is imminent, and perhaps the best course of action is to consolidate the CMLC and Lambda requests for a coordinated decision by the Commission.[46]

Mr. Shumway sponsored exhibits NBE-1, NBE-2 and NBE-3. Cross-examination of Mr. Shumway was waived.

E. Riverside Energy Michigan, LLC Testimony

Riverside Energy presented the testimony of Jim Schramski.

Mr. Schramski testified that Riverside will be directly and materially impacted by the transition of portions of the Wet Header gathering system to a dry distribution system. He stated that Riverside will be directly affected by the relief DMLC has requested in its Application because Riverside utilizes the Wet Header System to carry gas produced from the wells it owns and operates. DMLC's Application contemplates the complete

[45] Tr. Vol. III, pg. 244
[46] Tr. Vol. III, pg. 248

dismantling and conversion of the Wet Header System so that Riverside, and others who utilize the Wet Header System, will have no way to transport gas from its wells.

Without the ability to transport and treat its gas, Riverside will have no choice but to suspend production from its wells and units. This will result in shut down wells, the waste of natural gas, and a loss of considerable revenue not only to Riverside but to other interest owners in the wells and unit (including the State of Michigan). In 2020, a year in which historically low prices for natural gas and other commodities were endured due to the global pandemic, gas revenue realized by Riverside from the production of the wells was $611,600. This does not include revenue paid to other interest and royalty owners, including the State of Michigan.[47]

Mr. Schramski sponsored one exhibit and cross-examination was waived.

F. Rebuttal Testimony

In rebuttal, the Company presented additional testimony for Mr. Lyle and Mr. Richman.

Mr. Lyle testified to rebut the testimony of Mr. Spence, Mr. Coppola, Mr. Shumway and Mr. Schramski. In response to Mr. Spence's testimony, Mr. Lyle testified that unanticipated changes in the costs of commodities like steel are also intended to be covered by the contingency costs. There is potential for a significant change in that or other material costs prior to construction of the assets. In the time since the contract was negotiated, and at least partially due to impacts of the COVID-19 pandemic, we have seen cost increases and shortages in many materials, equipment, and personnel availability, and do not expect these trends to cease or reverse prior to the end of planned

[47] Tr. Vol. III, pg. 258

construction. He states that the combination of increased commodities cost, additional costs due to increased depth, and the potential for construction clearly shows that DMLC will probably spend all contingency dollars, and costs may exceed the amount included for contingency.[48]

Rebutting Mr. Spence's testimony concerning agricultural areas, Mr. Lyle testified the minimum required depth of cover per the existing standards is three feet in agricultural areas normally, assuming a design for a Class II or higher location. It is not known in particular why Mr. Spence is recommending the line be 60% deeper in these areas as most agricultural activity will not impact depths at three feet.[49]

Mr. Lyle testified that DMLC no longer owns the assets to maintain wet header service, so it can only continue to operate the wet header if Lambda agrees to continue to pay DMLC to do so and cover all costs. If that occurs, and DMLC can begin conversion of its existing assets no later than May 1, 2022, this would be acceptable to DMLC. This schedule appears to be an achievable one based on information the parties have to date. It may require working with DTEG to allow for potential in-service after that August 2022 date however, as the current schedule would have full in service in early September 2022.[50]

Mr. Lyle testified DMLC has no control over Lambda's construction schedule, or the outcome of the Act 9 and the conversion case Lambda is expected to file later this month. If Lambda's construction goes beyond May 1, 2022, DMLC should not be required to continue to wait to begin conversion of its line. Not only will this cause DMLC to be in

[48] Tr. Vol. III, pg. 101
[49] Tr. Vol. III, pg. 104
[50] Tr. Vol. III, pg. 106

violation of its contract with DTE Gas, but this will also cause DMLC to remain in a situation that does not allow it to earn a fair return on its investments. DMLC has operated the wet header system at a significant loss to retain producer service. DMLC should not be forced to continue to provide service on the wet header indefinitely while a customer willing to execute a long-term agreement waits and can terminate the potential service agreements. All of the contracts that DMLC had with its shippers included the provision that DMLC could terminate the contract on 30 days' notice, and those provisions remain in the agreements transferred to Lambda. Staff suggests that the Commission should force DMLC to continue to operate the line without adequate compensation, indefinitely. DMLC should not be required to wait forever.[51]

To rebut Mr. Coppola's testimony, Mr. Lyle states that just because a company uses another party to operate its assets does not make it a shell company. It also does not mean that using the utility personnel who are trained and able to provide services in the area creates a shell company when the utility is being reimbursed for their services. It actually benefits both parties with the ability to have a portion of DTEG personnel charges paid by DMLC for its operations in the area. Otherwise, given the staff needed to cover the large geographic region, DTEG would not be able to use all of its staff's overall capacity, which could result in higher overall charges to DTEG's rate payers. He argues Mr. Coppola is grasping to find a basis to use for the O&M charges for the converted section using methods that ignore basic facts.[52]

[51] Tr. Vol. III, pg. 107
[52] Tr. Vol. III, pg. 103

In response to the concerns raised by Mr. Shumway and Mr. Schramski, Mr. Lyle testified that based upon conversations with and information received from Lambda, that the oil pipeline it plans to convert (to be addressed in Lambda's case yet to be filed) runs parallel or in close proximity to the existing wet header pipelines to be converted and several locations already have taps on the oil pipeline from original connections when it was initially used as part of the wet header. This will limit the number of new taps to be installed and make the process quicker to complete. There may be a couple of locations where an extension is needed, but we expect that would involve minimal pipeline installation. He contends that the Intervenors' speculations regarding extensive connection costs appear not to be realistic.[53]

Mr. Richman provided rebuttal testimony and Exhibit A-14, Exhibit A-15 and Exhibit A-16. To address the contingency costs, Mr. Richman testified that the negotiated rate and contract between DMLC and DTE Gas is based on DMLC taking on all of the construction and other risk to complete the project in a timely manner without the ability to return for a requested increase in the rate due to changes in the scope or material and contract labor cost increases in the project. The modest contingency included in the contract rate represents a quantification of the value the parties place on the risk the agreement assigns to DMLC. The contract rate, as calculated, also contemplates an in-service in early 2022, with fixed material and contractor costs that were determined in 2020. Contingencies are needed to account for all of the many circumstances that cannot be accurately forecasted months ahead of time, that would negatively impact the prior cost estimates of the project builds and conversion.

[53] Tr. Vol. III, pg. 107

Mr. Richman stated that the approximate 15% contingency is fair and reasonable when considering the challenges of converting an older pipe to meet transmission regulation requirements. He states that as Mr. Spence concludes in his testimony, these contingent costs may not be incurred by DMLC but there is also risk that any change in the projects may increase costs above the reasonable overall contingency. Overall, from a project view, $5.7 million is a small risk mitigator for a project of this scope and size. Alternative projects to replicate this new system would require a much larger contingency component to complete, particularly when considering the multiple unknown risk factors. Various items not included in the original scope are considered to be contingencies as they are not known at the time of estimation. Unanticipated cost overages and delays in project completion such as construction-related issues driven by weather and unforeseen challenges out of DMLC's control and changes in the costs of materials/commodities like steel are intended to be covered by the contingency costs.[54]

Mr. Richman testified that the contract between DMLC and DTE Gas excludes this possibility by its terms. This is a fixed, long-term contract without the ability to re-file for a rate increase due to any cost overruns not currently contemplated in DMLC's project estimates. DMLC's cost estimates are reflective of a normal conversion for these assets and normal construction for the new connector lines. Mr. Spence's assertions would be appropriate if DMLC were a utility filing for rate recovery of its project costs with an ability to refile in the future. DMLC is not a utility company and is not afforded similar rate recovery mechanisms to those a utility has.[55]

[54] Tr. Vol. III, pgs. 141-142
[55] Tr. Vol. III, pg. 142

Mr. Richman stated that this case is different from the situation Mr. Coppola describes, as DMLC is not a "utility" and this is not a utility rate case setting a base rate. He testified that unlike a utility, DMLC has no ability to request any future rate relief. The only future rate adjustment is via the surcharge mechanism applicable in a narrow set of circumstances that may arise after the in-service date, and rate adjustment associated with the term extensions that DTE Gas holds upon expiration of the initial 20-year term.[56]

Mr. Richman contends that contrary to Mr. Coppola's testimony, this asset absolutely has value in the market. If the asset cannot be used to fulfill DTE Gas's needs as proposed in this case, DMLC would look to alternative uses such as enhanced oil recovery projects, carbon sensitive projects, or storage development of the many prospects in the region, or would hold the retained assets for future development.[57]

III.

DISCUSSION

A. Position of the Parties

DMLC requests that the Commission issue an order finding that the Wet Header Conversion project serves the public convenience and necessity and is safe for operation; finding that the Firm Transportation Contract between DTE Michigan Lateral Company and DTE Gas Company is reasonable and prudent and satisfies the requirements of the Code of Conduct; granting DTE Michigan Lateral Company's certificate of public convenience and necessity authorizing construction of approximately four miles of twelve-inch diameter natural gas line as well as two miles of ten-inch diameter natural gas

[56] Tr. Vol. III, pg. 144
[57] Tr. Vol. III, pg. 153

pipeline, and conversion of the wet header mainline segments identified for transmission service; and approving the Firm Transportation Contract between DTE Michigan Lateral Company and DTE Gas Company. The levelized 20-year charge in the contract is a daily demand charge of $0.2427 for Firm Transportation of 111,000 MMcf/d on DMLC with a maximum daily quantity (MDQ) of 65,000 MMcf per day from Kalkaska, Michigan to the DTE Gas system near Traverse City and Manistee, Michigan, and a MDQ of 46,000 MMcf per day from North Chester, Michigan to Rogers City. The daily demand charge equates to a levelized Monthly Demand Charge for this service of $819,977 and levelized annual Demand Charge of $9,839,725. The contract recovers the fully embedded estimated costs of the new pipeline additions and conversions of the Wet Header System, plus 10%.[58]

DMLC contends that the project improves gas supply reliability by providing a secondary source of gas to areas that currently have only a single source, including Traverse City, Manistee, and Alpena.

Staff recommends that DMLC's proposed wet header conversion project and the construction of the NMC and RCC lines be approved. Although, Staff argues that the approve require that the minimum depth of cover in agricultural fields be five feet. Any deviations to the prosed routes of the NMC and RCC lines be kept to no more than 150 feet from the centerline of the proposed routes and not cross the property of any landowner who did not receive notice of this case. GPS coordinates of all girth weld locations for the NMC and RCC lines will be acquired no later than one year after the in-service date an in-line inspection will be made, and any dents or anomalies be

[58] DMLC Initial Brief, pgs. 23-24

remediated. No later than three months after the in-service date an above ground electrical survey be made and any defects in pipeline coating be remediated to prevent corrosion. That conversion from the wet header system to dry gas transmission occur after Lambda Energy has constructed its line or May 1, 2022, whichever is the earlier date.[59]

Additionally, Staff argues that contingency expenses be disallowed and that DMLC recalculate its rates minus the contingency expenses.

The Attorney General contends that the Company has calculated rates and proposed demand charges that are excessive, based on still unknown and contingent capital investments with highly inflated costs, using a methodology that does not conform to traditional ratemaking. The resulting proposed demand charges are neither fair nor reasonable to include in a transportation service agreement between the Company and DTE Gas.

The AG recommends that the Commission reject the Company's proposed rates and demand charges and instead adopt the demand charges the AG calculated under a traditional and generally accepted cost of service model. Specifically, the AG recommends that the Commission accept the levelized rates and demand charges that the AG calculated and presented in Revised Exhibits AG-9 through AG-11.

Furthermore, the AG recommends that the Commission reject the 50/50 sharing of revenues from additional future shippers on the three pipeline segments and instead adopt an 80/20 sharing of those incremental revenues, with 80% credited to DTE Gas. The AG also asks that the Commission should instruct the Company to file an application

[59] Staff Initial Brief, pgs. 18-19

for a rate redetermination for any extension of the transportation service agreement before the end of the initial term and any subsequent renewal terms.[60]

North Bay asks that the Commission deny DMLC's application as presented. North Bay requests that the Commission order that DMLC may not convert any portion of the existing Wet Header System and commence dry gas transmission service on the existing System until Lambda has a system in place and in operation allowing the producers utilizing the existing Wet Header System to continue unobstructed operations.[61]

Riverside Energy Michigan, LLC argues that the Commission should approve DMLC's application for the Wet Header System Conversion Project but that the approval of the conversion from gas gathering to dry gas transmission not take place until Lambda is granted approval to or has completed construction of its proposed Act 9 natural gas pipeline project to assure the continued operation of the Wet Header System so that the producers who currently utilized the system are not left without an alternative means to transport their natural gas.[62]

In its reply, DMLC contends that requiring the conversion to wait until Lambda has completed construction of its pipeline project is inconsistent with the Commission's historic treatment of similar circumstances of declining industries. DMLC argues, *In re application of Consumers Power Company*, order of the Public Service Commission, entered February 20, 1969 (Case No. U-3217), the Commission approved Consumers Power Company's application to discontinue steam service after concluding that: (1)

[60] Attorney General Initial Brief
[61] North Bay Energy Initial Brief, pg. 16
[62] Riverside Energy Initial Brief, pg. 14

Consumers had been operating its Battle Creek steam heating system at a "substantial loss for a number of years"; (2) the number of customers being serviced by the stream heating system had steadily decreased, with no sign of improvement; (3) and Consumers Power Company had given its few remaining customers enough notice of its intention to abandon service in that area.[63]

DMLC argues citing Mr. Lyle's testimony that construction delays may result in higher contingency costs, particularly if winter construction becomes necessary due to the delay. The longer the delay, the less certain construction costs become, therefore, more flexibility may be needed with regard to contingency costs. Because DMLC's transition services agreement with Lambda terminates at the end of 2021, it can only continue to operate the wet header if Lambda agrees to continue to pay DMLC to do so.[64]

DMLC argues that a reasonable approach in this case is to authorize conversion of the Wet Header Pipeline and construction of the necessary extensions, with direction to use DMLC's best efforts to obtain contract amendments with Lambda and DTE Gas to the extent necessary for DMLC to continue operating the Wet Header Pipeline until May 1, 2022. Furthermore, the Commission could order that, if DMLC is able to obtain those contract amendments, DMLC is authorized to begin constructing the new assets immediately and is authorized to undertake the full conversion at the earlier of Lambda completing the alternative pipeline and May 1, 2022.[65]

Concerning the argument about rates, DMLC contends that case involves initial negotiated rates which Act 9 requires DMLC to file with the Commission, but are not

[63] DMLC Reply Brief, pg. 3
[64] DMLC Reply Brief, pg. 4
[65] DMLC Reply Brief, pg. 5

subject to Commission review of reasonableness and prudence. MCL 483.110. If DMLC subsequently attempts to "alter or amend" those initial rates, the Commission would then scrutinize those rates in a proceeding related to that modification request in a manner similar to an electric transmission provider.[66] DMLC argues that rates are relevant and submitted only to the extent DMLC is required to comply with the Commission's Code of Conduct, which requires DMLC to charge either: (1) market price; or (2) its fully embedded costs, plus 10%. The Attorney General bizarrely flips that provision on its head and characterizes it as a "premium," rather than acknowledging that DMLC's proposal clearly complies with the Code of Conduct's parameters.[67]

DMLC contends its application and supporting testimony demonstrate that the Firm Transportation Contract between DMLC and DTE is at 10% over fully allocated embedded costs and, therefore, complies with the Code of Conduct. Arguing the Attorney General instead suggests that the Commission disregard the Code of Conduct entirely and uses DMLC's inclusion of rates as a hook to discuss irrelevant issues like cost of service, capital costs, return-on-investment, O&M expenses, contingency costs, and demand charges, DMLC asks that the Commission should disregard the Attorney General's attempt to include those issues in this case and instead agree with all of the parties that the contract complies with the Code of Conduct.[68]

DMLC argues that the Attorney General's contention that the relationship between DMLC and DTE Gas will hurt customers is belied by the record in this case, which shows an historic benefit to DTE Gas's customers because costs would be higher if DTE Gas

[66] DMLC Reply Brief, pgs. 5-6
[67] DMLC Reply Brief, pg. 6
[68] DMLC Reply Brief, pg. 9

had to retain a work force to cover its geographic area without also providing the additional work assessed to the assets owned by DMLC and other companies.[69]

Citing Witness Richman's testimony, DMLC argues that DMLC is not a utility and the primary term of the service agreement between DMLC and DTE Gas is for a period of 20 years. Furthermore, extension of the agreement is solely at the determination and request of DTE Gas at the then-recalculated cost to provide service for any extension term, as requested by DTE Gas, and that will provide DMLC an unlevered rate of return of 10%. This methodology is consistent with converting and building the assets specifically to serve DTE Gas that otherwise may result in writing-off the then-current book value of the asset as DMLC does not have the ability to collect the depreciation costs over a proposed useful life through ratepayers as otherwise suggested by the Attorney General.[70]

DMLC contends that it has demonstrated that the Commission should approve DMLC's application to convert existing pipelines in its Wet Header System from gas gathering to dry gas transmission service, and to construct, operate, and maintain connector pipelines from the existing system to interconnect into existing DTE Gas transmission facilities. The project improves gas supply reliability by providing a secondary source of gas to areas that currently have only a single source, including Traverse City, Manistee, and Alpena.[71]

In her reply, the Attorney General notes that she supports this project where it adds redundancy and resiliency to a system that is susceptible to outages due to a single

[69] DMLC Reply Brief, pg. 10
[70] DMLC Reply Brief, pgs. 12-13
[71] DMLC Reply Brief, pg. 14

source of supply. She is not opposed to the conversion of this existing system and addition of minimally intrusive new pipelines[72]. She argues that her concern is with the rates proposed by DMLC and the amount it seeks to recover pursuant to the contract with its affiliate, DTE Gas.

The AG agrees with Staff's contention that Commission disallow all contingency costs. However, the AG believes that all excessive costs identified in her initial brief also need to be removed. She contends that Staff's failure to address the other inflated costs is error.

As a result of Staff's overview of the State Historic Preservation Office raised in its brief, the AG states that the Commission may want to take an additional look at these environmental and cultural processes surrounding DMLC's plan to ensure compliance with all State regulations and any concerns of the State Historic Preservation Office.[73]

In its Statutory Requirements section, DMLC states that

> …under the Code of Conduct, the Commission may approve as reasonable and prudent the contract for services between a regulated utility and its affiliated company. R460.10108. The contract approval is based on the Code of Conduct and not based upon Commission authority under Act 9.

The AG replies that she agrees that the relevant standard for review of DMLC's contract with DTE Gas and the costs at issue in this case is one of reasonableness and prudence.[74]

The AG argues that it is important to understand that this contract was not negotiated at arms-length. It is an arrangement, arrived at between affiliates, that

[72] AG Reply Brief, pg. 2
[73] AG Reply Brief, pg. 3
[74] AG Reply Brief, pg. 4

attempts to remove the review of certain cost requests from other proceedings where they might be more heavily scrutinized. AG avers that requests for contingency costs have been routinely denied by the Commission and there is no reason to change that approach, simply because this is an Act 9 proceeding. The level of projected O&M expense for the converted wet header is excessive, given the lack of detail provided on the project and unnecessary levels of inflation. She argues that the Commission has routinely disallowed excessive levels of O&M expenditure and it should protect ratepayers by recognizing such levels here. She contends that DMLC's discussion also fails to adequately address Code of Conduct concerns or how its requested rates meet the Code of Conduct requirements based on market price or fully allocated embedded costs.[75]

The AG contends that DMLC is seeking an underlying, after tax return on equity of at least 15%, which is much greater than the 9.9% DTE Gas is currently at and much greater than DTE Energy would receive if it sought recovery of these costs under the DTE Gas umbrella. This is an exorbitant return on a project with fixed and assured payments over 20 years and with minimal to no risk. She argues the record is devoid of any evidence or supporting information from the Company to justify its filed rates and the Commission should not approve demand charges for these pipeline segments, which will ultimately be paid by DTE Gas customers, based on such high returns on equity.[76]

The AG argues that the Company has calculated rates and proposed demand charges that are excessive, based on still unknown and contingent capital investments with highly inflated costs using a methodology that does not conform to traditional

[75] AG Reply Brief, pg. 5
[76] AG Reply Brief, pgs. 5-6

ratemaking. The resulting proposed demand charges are neither fair nor reasonable to include in a transportation service agreement between the Company and DTE Gas. Therefore, the Commission should reject the Company's proposed rates and demand charges, and instead adopt the demand charges Mr. Coppola calculated under a traditional and generally accepted cost of service model. Specifically, the AG recommends that the Commission accept the levelized rates and demand charges that the AG calculated and presented in Revised Exhibits AG-9 through AG-11. The combined demand charge he calculated per Mcf is $0.1836. In comparison, the Company has proposed a combined demand rate of $0.2427 per Mcf. Based on the AG's calculations, the total amount of demand charges for the three pipelines is $5,650,407. This is in contrast to the Company's calculated total demand charge of $9,839,725, which is higher by $4,189,318.

The AG recommends that the Commission reject the 50/50 sharing of revenues from any additional future shippers on the three pipeline segments, and instead adopt an 80/20 sharing of those incremental revenues, with 80% credited to DTE Gas. The Commission should instruct the Company to file an application for a rate redetermination for any extension of the transportation service agreement before the end of the initial term and subsequent renewal periods.[77]

Staff, North Bay Energy, and Riverside all declined to submit a reply brief.

Section A will discuss the Wet Header Conversion Project. Section B will address the Route, Construction and Testing of Conversion. Section C will address Firm Transportation Contract.

[77] AG Reply Brief, pg. 6

1. Section A: Wet Header Conversion Project

DMLC states that it had identified areas with single sources of supply that would suffer significant market impacts if outages occurred, and those areas were Traverse City, Alpena, Rogers City, and Manistee. DMLC also states that the current wet header system has had a decline in gas flow that has resulted in the line losing profitability with either a shutdown of the line or an alternate use for it contemplated. Based on its application and the testimony of Mr. Lyle, DMLC will use a new interconnect at Kalkaska to bring in supply and convert the Blair Loop 24", Blair Loop 16", and Blair Loop extension 16" from gas gathering to dry gas transmission and construct four miles of new 12" pipe to build redundancy. For Alpena and Rogers City, a new interconnect will be constructed and the North Chester 12", Pigeon River 10", Pigeon River 10" extension, and Presque Isle 10" will be converted from gas gathering to dry gas transmission with two miles of new 10" construction.[78]

Act 9 provides the legal framework used to review the Application. MCL 483.101 provides:

> Every corporation, association or person, now or hereafter exercising or claiming the right to carry or transport natural gas by or through pipe line or lines, for hire, compensation or otherwise, or now or hereafter exercising or claiming the right to engage in the business of piping or transporting natural gas, or any other person or persons, now or hereafter engaging in the business of buying and selling or transporting natural gas within the limits of this state, shall not have or possess the right to conduct or engage in said business or operations, in whole or in part, as above described, or have or possess the right to locate, maintain or operate the necessary pipe lines, fixtures and equipment thereto belonging, or use in connection therewith, concerning the said business of carrying or transporting natural gas as aforesaid, on, over,

[78] DMLC Application pg. 2

> along, across, through, in or under any present or future highway, or part thereof, or elsewhere, within the state, or have or possess the right of eminent domain, or any other right or rights, concerning said business or operation, in whole or in part, except as authorized by and subject to the provisions of this act, except, further, and only such right or rights as may already exist which are valid, vested, and incapable of revocation by any law of this state or of the United States.

MCL 483.109 and 483.110 cover the requirements for DMLC to receive Commission approval for the construction and conversion of gas transmission lines and specific rates or charges charged and received by the Company. To give approval, the Commission must find that the Company's proposal will serve the convenience and necessity of the public.

MCL 483.109 provides:

> Any corporation, association or person within the terms of this act desiring to construct transmission mains for the transportation or conveying of natural gas from its source to the locality or localities where utilized, shall submit to the commission, accompanied by due application, a map or plat of such proposed line or lines which it desires to construct, showing the dimensions and character of such proposed pipe line or lines, its compression stations, control valves, and connections, and shall first receive the approval of the commission of such map, route and type of construction before proceeding with the actual construction of such transmission lines, and it shall be the duty of the commission to examine and inquire into the necessity and practicability of such transmission line or lines and to determine that such line or lines will when constructed and in operation serve the convenience and necessities of the public before approval of such map and proposed transmission line or lines: Provided, That persons, associations or corporations having already acquired the rights of common purchasers and common carriers at the time the provisions of this act became effective shall be required to file the map or plat provided for in this section only.

MCL 483.110 provides:

> A common purchaser or common carrier of natural gas, before receiving the gas for transmission or delivery, shall file with the commission a schedule of the rates and price at which the common purchaser or common carrier will receive gas at delivery stations from a well, field, or source of supply, as well as the rates or charges at which the common purchaser or common carrier will deliver gas to connecting carriers or distributing lines or customers, and, if the common purchaser or common carrier is operating as a carrier for hire, the rates and charges which the common purchaser or common carrier will charge for the service to be performed by it. A common purchaser or common carrier operating as a carrier for hire also shall file a copy of each contract for purchasing, receiving, or supplying gas. The price to be paid and the rates and charges shall be stated and set up in the manner and form required by the commission and outlined in the rules of the commission for filing of rates of artificial gas utilities or pursuant to rules and conditions of service adopted by the commission, which the commission may make for the regulation of common purchasers and common carriers of natural gas. Thereafter, a common purchaser or common carrier of natural gas may alter or amend its price paid, rates, charges, and conditions of service by application to and approval by the commission in the same manner and by the same process and under the same legal limitations and like right as are now provided by statute for the regulation by the commission of the rates for electricity transmitted in this state and process of appeal provided in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

R 460.868 in part, provides:

> "Approval for pipeline project," provides as follows:
>
> Rule 18. (1) Every transmitter shall file with the commission an application (see form 19A, appendix A), setting forth the necessity and practicability of such proposed transmission line or lines; and the commission shall, if its study of the proposed project shows that such line or lines will, when constructed and in operation, serve the convenience and necessities of the public, grant said application; and no construction shall begin prior to the granting of the application and the approval of the map, route and type of 7 construction

> by the said commission; provided that this rule shall not apply to the laying of pipe lines used exclusively for transporting or transmitting gas for drilling purposes.

All of the parties agree that this project is necessary and will benefit the public particularly as it builds redundancy to the system and reduces the number of customers subject to outages. This PFD recommends that the Commission find that the Wet Header Conversion Project serves the public convenience and necessity.

The issue is the timeline for the construction, both Staff and the intervenors are concerned regarding the impact for producers if this project is not coordinated with Lambda's construction. Based on the testimony of Mr. Shumway, conversion of the Wet Header would result in (1) all flowing gas west of Kalkaska being shut in for lack of access to a pipeline; (2) all oil production that has associated natural gas production being shut in for lack of access to a pipeline; and (3) all flowing gas north of Chester 12 being shut in for lack of access to a pipeline. It is possible that the entire natural gas process facility in Kalkaska, Michigan would be shut down for lack of flowing gas in commercial quantities.

DMLC is concerned about any delay in the construction of the line. DMLC argues that it has no control over Lambda's construction schedule and any delay will impact both service and costs. Additionally, it will impact contracts between DMLC and DTE Gas as well as contracts with Lambda.

As a compromise, in its Reply Brief, DMLC proposes that the Commission authorize conversion of the Wet Header Pipeline and construction of the necessary extensions, with direction to use DMLC's best efforts to obtain contract amendments with Lambda and DTE Gas to the extent necessary for DMLC to continue operating the Wet Header Pipeline until May 1, 2022. Furthermore, the Commission could order that, if

DMLC is able to obtain those contract amendments, DMLC is authorized to begin constructing the new assets immediately and is authorized to undertake the full conversion at the earlier of Lambda completing the alternative pipeline and May 1, 2022.

No party addressed this suggestion. It appears to be reasonable and would address the coordination concerns raised by the other parties. This PFD recommends that the Commission accept this proposal of DMLC.

2. Section B: Project Route and Testing

Staff raised regarding the disruption to agricultural operations as well as concerns regarding the depth of cover for the pipeline, that an insufficient depth could result in accidental strikes on the line during farming operations and recommends that the depth of cover be increased to five feet to mitigate this possibility. Staff requested that all girth weld locations for the proposed NMC and RCC lines have their GPS coordinates obtained. Staff asserts that this would facilitate location of these pipe sections should repairs be needed. Further, within a year of the proposed NMC and RCC lines being placed in service an in-line inspection using a tool capable of detecting dents and anomalous conditions be conducted so that dents can be remediated. Staff also recommended that an above ground electrical survey be conducted within three months of the in-service date of the NMC and RCC lines to detect anomalous conditions in the protective coating of the line.

If DMLC needs to deviate from the route Staff recommended that any deviations be minor, less than 150 feet from the centerline of the proposed route, reflecting engineering revisions, actual surface conditions, or similar factors.

With respect to the environmental impact of the proposed NMC and RCC lines, Staff hosted an interagency meeting with the Department of Energy, Great Lakes, and the Environment, Department of Transportation, State Historic Preservation Office, and the representatives of these agencies expressed their belief that DMLC will fulfill the specific agency requirements for this project. Staff agreed that DMLC demonstrated that it can follow the proper environmental mitigation techniques during construction. None of the intervenors addressed any of these issues raised by Staff. DMLC argues that increasing the pipe depth will increase costs. In its reply brief, the Attorney General indicated that the Commission may want to take an additional look at the environmental and cultural processes surrounding DMLC's plan. The Attorney General notes that the Company did provide Staff with its internal procedures for unidentified cultural sources that arise during work, the Attorney General was unclear if this satisfied the State Historic Preservation Office's concerns.

This PFD recommends that the Commission accept the recommendations of Staff concerning the depth of the pipeline and any route deviations. The record does not support requiring additional State Historic Preservation Office review. Staff conducted very through multi-agency meetings to review this project to ensure compliance with all regulations.

3. Section C: Firm Transportation Contract

Based on the testimony of Witnesses Lyle and Richman, DMLC is requesting Commission approve the levelized 20-year charge in the contract of a daily demand charge of $0.2427 for Firm Transportation of 111,000 MMcf/d on DMLC with a maximum daily quantity (MDQ) of 65,000 MMcf per day from Kalkaska, Michigan to the DTE Gas

system near Traverse City and Manistee, Michigan, and a MDQ of 46,000 MMcf per day from North Chester, Michigan to Rogers City. The demand charge consists of three components: (1) $0.1670 for 111,000 MMcf/d transport on the converted Wet Header System assets; (2) $0.0865 for 65,000 MMcf/d on the Norwalk Manistee Connector; and (3) $0.0605 for 46,000 MMCf/d on the Rogers City Connector.

The daily demand charge equates to a levelized Monthly Demand Charge for this service of $819,977 and levelized annual Demand Charge of $9,839,725. The contract recovers the fully embedded estimated costs of the new pipeline additions and conversions of the Wet Header System, plus 10%.[79]

Staff argues that the Contingency expenditures allocated for unexpected or unpredicted expenses should be disallowed as Staff cannot review for reasonableness and prudence because the costs are speculative. Staff recommends that DMLC recalculate the rates without the contingency costs and refile those rates in the docket. In addition, Staff recommends that if contingent expenses arise, DMLC file a rate amendment upon completion of the project.[80]

The Attorney General argues that DMLC has included a total of $5.7 million in contingency costs for the three construction projects. However, as with all contingency costs there is a very real possibility that those amounts will never be spent. Mr. Lyle's view, that the transportation demand charges for the three projects should be set based on contingency costs that may or may not be spent, places an unreasonable and inappropriate risk on ratepayers. Under DMLC's proposal the transportation demand

[79] DMLC Initial Brief, pg. 23
[80] Staff Initial Brief, pg. 18

charges would be set for 20 years, with no change during that 20-year period. So, potentially, DTE Gas's customers would pay for costs not incurred, with no opportunity to correct the demand charges, during that 20-year period. This is unacceptable and should be rejected by the Commission.[81] Based on the testimony of Mr. Coppola, the AG argues that using the traditional cost of service model, levelized rates are $0.0926 for the Wet Header converted pipeline, $0.0533 for the Norwalk-Manistee Connector, and $0.0377 for the Roger City Connector. Based on the capacity volumes contracted on each pipeline segment, the annual demand charge for the pipelines combined is $5,650,407. This is in contrast with the Company's calculated total demand charge of $9,839,725, which is higher by $4,189,318.[82] Using Mr. Coppola's calculations, the AG proposes that the total amount of demand charges for the three pipelines is $5,650,407, which is the sum of line 28, column (c), in Revised Exhibits AG-9 through AG-11. The combined demand charge per Mcf is $0.1836.[83]

In rebuttal, DMLC argues that at this time, rates are relevant and submitted only to the extent DMLC is required to comply with the Commission's Code of Conduct, which requires DMLC to charge either: (1) market price; or (2) its fully embedded costs, plus 10%. Based on Mr. Richman's testimony, DMLC argues that DMLC could not complete the project and operate the converted pipeline at the rate suggested by Mr. Coppola and that Mr. Coppola's model is severely flawed and grossly inaccurate. Specifically, Witness Richman explained that, using the levelized demand rate Mr. Coppola proposed would grant DMLC an annual net income just above breaking even.[84]

[81] AG Initial Brief, pg. 12
[82] AG Initial Brief, pg. 22
[83] AG Initial Brief, pg. 23
[84] DMLC Reply Brief, pg. 9

DMLC argues that contingency costs are particularly important given unpredictable changes in commodities costs resulting in part from the COVID-19 pandemic. DMLC contends that as Witness Richman testified Witness Spence's recommendation to disallow contingency costs is flawed because DMLC is assuming all of the construction and other risk to complete the project in a timely manner without the ability to return for a requested increase in the demand charge due to changes in the scope or material and contract labor cost increases in the project. DMLC contends that the modest contingency included in the contract rate represents a quantification of the value the parties place on the risk the agreement assigns to DMLC, given that the contracted demand charge, as calculated, also contemplates an in-service in early 2022, with fixed material and contractor costs that were determined in 2020.[85]

DMLC argues that the discounted internal rate of return is reasonable. DMLC contends that the Attorney General calculates a return on equity of 16%, but appears to do so by mistakenly evaluating the project as if DMLC were a utility, including using utility investment debt and equity ratios as well as assuming a cost of debt at utility type rates. Witness Richman explains that DMLC is not a utility and the primary term of the service agreement between DMLC and DTE Gas is for a period of 20 years. Furthermore, extension of the agreement is solely at the determination and request of DTE Gas at the then-recalculated cost to provide service for any extension term, as requested by DTE Gas, and that will provide DMLC an unlevered rate of return of 10%. This methodology is consistent with converting and building the assets specifically to serve DTE Gas that otherwise may result in writing-off the then-current book value of the asset as DMLC does

[85] DMLC Reply Brief, pg. 11

not have the ability to collect the depreciation costs over a proposed useful life through ratepayers as otherwise suggested by the Attorney General.[86]

As to O&M charges, DMLC argues that the Attorney General's straight-line per mile methodology is significantly flawed and does not account for the fact that now that DMLC has sold certain assets, it now lacks synergies relating to operating multiple lines in the same right-of-way that used to exist or the fact that there used to be efficiencies due to being able to use the same personnel to review other pipes while in the field.

Using Mr. Richman's testimony, DMLC contends that the cost to maintain pipe is non-linear because many tasks are more efficient when economies of scale are factored in such that it may cost the same to perform certain tasks for ten miles of pipeline as it does for fifty miles of pipeline. Additionally, many of the fixed costs associated with maintaining a pipeline cannot be measured by the number of feet of the asset, such as reporting, accounting, billing systems, metering, gas control, measurement, as well as codes and standards work.[87]

The AG argues that the proposed demand charges are neither fair nor reasonable to include in a transportation service agreement between the Company and DTE gas because the charges are based on still unknown and contingent capital investments with highly inflated costs using a methodology that does not conform to traditional ratemaking.

The AG also recommends that the Commission reject the 50/50 sharing of revenues from any additional future shippers on the three pipeline segments and adopt

[86] DMLC Reply Brief, pgs. 12-13
[87] DMLC Reply Brief, pg. 14

an 80/20 sharing of those incremental revenues with 80% credited to DTE Gas. This PFD does not accept this proposal. The 50/50 sharing of revenues appears appropriate.

This PFD recommends that the Commission disallow the contingency expenses as testified to by both Mr. Spence and Mr. Coppola. Because of the costs are speculative, it is not possible to determine if the costs are reasonable and prudent at this time.

IV.

CONCLUSION

Based on the foregoing discussion, this PFD recommends that the Commission:

(1) Find that the Wet Header Conversion project serves the public convenience and necessity and is safe for operation;

(2) Authorize the conversion of the Wet Header Pipeline and construction of the necessary extensions, with direction to use DMLC's best efforts to obtain contract amendments with Lambda and DTE Gas to the extent necessary for DMLC to continue operating the Wet Header Pipeline until May 1, 2022;

(3) Require the minimum depth of cover in agricultural fields be five feet. Any deviations to the prosed routes of the NMC and RCC lines be kept to no more than 150 feet from the centerline of the proposed routes and not cross the property of any landowner who did not receive notice of this case. GPS coordinates of all girth weld locations for the NMC and RCC lines will be acquired no later than one year after the in-service date an in-line inspection will be made, and any dents or anomalies be remediated. No later than three months after the in-service date an above ground electrical survey be made and any defects in pipeline coating be remediated to prevent corrosion;

(4) Disallow the contingency expenses and required DMLC to recalculate its rates minus the contingency expenses.

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

Kandra K. Robbins

Digitally signed by: Kandra K. Robbins
DN: CN = Kandra K. Robbins email = robbinsk1@michigan.gov C = US O = MOAHR OU = MOAHR - PSC
Date: 2021.06.30 12:41:08 -04'00'

Kandra K. Robbins
Administrative Law Judge

June 30, 2021
Lansing, Michigan