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 approval of its Power Supply Cost Recovery Plan for the 12-month period ending December 31, 2021	)	Case No. U-20826

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 March 25, 2022.

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 April 15, 2022, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before April 29, 2022.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

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

Dennis W. Mack

Digitally signed by: Dennis W. Mack
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Date: 2022.03.25 08:09:00 -04'00'

Dennis W. Mack
Administrative Law Judge

March 25, 2022
Lansing, Michigan

STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of **DTE Electric Company** for approval of its Power Supply Cost Recovery Plan for the 12-month period ending December 31, 2021	)))))	Case No. U-20826

PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On September 30, 2020 DTE Electric Company (Company) filed an Application with the Michigan Public Service Commission (Commission) under §6j, *et seq*., of 1982 PA 304 (Act 304). MCL 460.6j. Through that filing the Company seeks approval of a Power Supply Cost Recovery (PSCR) Plan for the calendar year 2021, and review of its 5-year Forecast of projected power supply requirements, along with the sources and costs of supply to meet the same. At the time of filing the Company projected a $79.8 million under-recovery for the Plan Year, and seeks approval of a levelized 2021 maximum PSCR Factor of 3.22 mills per kWh for all class of customers for the period January 1, 2021 through December 31, 2021.

Pursuant to due notice, a pre-hearing conference was conducted on November 12, 2020. The Company and Commission staff appeared at that proceeding, and intervention was granted to the Attorney General, Association of Businesses Advocating Tariff Equity (ABATE), the Michigan Environmental Council (MEC), and

Residential Customer Group (RCG). Consistent with the schedule established during the pre-hearing conference, and subsequently amended at the parties' request, the hearing in this matter was conducted on September 9, 2021.

During the hearing, the Company entered the testimony of its employees, except as noted, as follows:

1. James A. Brunell, Consultant, Regulatory Affairs, DTE Energy Corporate Services, LLC;
2. Christopher A. Bence, Manager, Procurement, Fuel Supply Department;
3. Paul R. Kiel, Principal Technical Expert – Nuclear Engineering;
4. Shayla D. Manning, Supervisor of Long-Term Forecasting, Corporate Energy Forecasting Group;
5. Barry J. Marietta, DTE Energy Corporate Services LLC, Manager, Environmental Management & Resources – Air Quality Services;
6. Adam Gamez, DTE Energy Corporate Services, LLC. Senior Strategist, Federal Regulatory Affairs Department, Regulatory Affairs Organization;
7. Ryan C. Pratt, Manager, Procurement, Fuel Supply Department;
8. Marcus J. Rivard, Principal Market Engineer, Power Supply Systems & Modeling, Generation Optimization Department;
9. Kenneth A. Sosnick, Managing Director in the Power & Utilities practice at FTI Consulting, Inc.[1]

Through these witnesses, the Company entered Exhibits A-1 through A-44, and A-46 through A-52.

[1] Mr. Sosnick adopted the rebuttal testimony and exhibits initially filed by Matthew J. Decourcey. 3 TR 221, 300. Prior to the hearing the MEC filed a Motion to Strike the entirety of Mr. DeCourcey's rebuttal testimony and exhibits, and portions of the rebuttal testimony and exhibits of Mr. Pratt and Mr. Bence. A Ruling entered September 2, 2021, denied the Motion. Dkt. # 080. All the Company's witnesses, except Mr. Sosnick, provided direct testimony, while Mr. Brunell, Mr. Bence, and Mr. Pratt provided direct and rebuttal testimony.

The MEC offered the direct and surrebuttal testimony of James F. Wilson, Wilson Energy Economics, and entered Exhibits MEC-1 through MEC-14, and MEC-16 through MEC-37.[2] The RCG, ABATE, and the Attorney General did not offer any witnesses. Staff offered the testimony of Lisa M. Kindschy, Public Utilities Engineering Specialist, Act 304 and Sales Forecasting Section in the Energy Operations Division, and entered Exhibit S-1.

Prior to the hearing, a Protective Order was entered, under which certain testimony and exhibits were entered on a confidential record.[3] See Dkt. # 032. The Company and MEC filed Initial and Reply Briefs, while Staff filed an Initial Brief.

II.

STATUTORY REQUIREMENTS

Act 304 allows implementation of a PSCR clause that "permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility, incurred under reasonable and prudent policies and practices." MCL 460.6j(1)(a). Once a PSCR clause is approved the utility must annually file a "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

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[2] Subsequent to the entry of the Ruling on the MEC's Motion to Strike its Motion for Leave to File Surrebuttal was granted. Dkt. #082.

[3] The Company's confidential exhibits are A-49 and A-52, while the MEC's confidential exhibits are MEC-3, 4, 5, 6, 7, 11, 12, 13, 8 17, 18, 30, and 37 and are identified with a "C".

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 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. 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.
> MCL 460.6(j)(3).

Contemporaneous with the PSCR Plan, a utility must file with the Commission:

> [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 such other information as the commission may require.
> MCL 460.6j(4).

Upon the filing of a PSCR Plan and 5-year forecast, the Commission is to:

> [C]onduct a proceeding, to be known as a power supply and cost review, for the purpose of evaluating the reasonableness and prudence of the power supply cost recovery plan filed by a utility pursuant to subsection (3) and establishing the power supply cost recovery factors to implement a power supply cost recovery clause incorporated in the electric rates or rate schedule of the utility.
> MCL 460.6j(5).

For the Forecast, the Commission must:

> [E]valuate the decisions underlying the 5-year forecast filed by a utility pursuant to 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.
> MCL 460.6j(7).

This case entails a determination of the reasonableness and prudence of the decisions underlying the PSCR Plan and the proposed plan itself. MCL 460.6j(3), (5) and (6). In addition, the costs items in the 5-year forecast will be reviewed to determine if, based on "present evidence", recovery of a specified cost in a future proceeding is unlikely, colloquially known as a "Section 7 warning". MCL 460.6j(7).

III.

THE COMPANY'S 2021 PLAN AND 5-YEAR FORECAST

In its Brief the Company advances six (6) proposed findings of fact relating to the PSCR Plan for 2021 (Plan Year) and 5-Year Forecast. Each of these findings must be evaluated and ruled upon. See MCL 24.285.

1. The Company's Load Forecast for the Plan Year is reasonable and prudent.

In support of this finding the Company relies on the detailed testimony of Ms. Manning concerning projected sales by customer class. 3 TR 113-120; Exhibit A-18. Ms. Manning relied on national and regional economic forecasts, along with the effect of technological, regulatory, and demographic factors, to project a 1% reduction in weather-normalized sales from 46,222 GWh in 2019 to 43,412 GWh in 2025 resulting from "increasing customer counts and a recovering economic outlook that is offset by higher energy waste reduction program targets, and increased penetration of customer-owned distributed generation." 3 TR 120-121. Similar annual decrease percentages are forecast for bundled and choice sales. Id., 121; Exhibits A-20 and A-21. Ms. Manning projects a corresponding decrease in system output from 50,116 GWh actual non-weather normalized in 2019 to weather normalized 46,571 GWh in 2025. 3 TR 121-122.

The foregoing evidence is unrefuted, and the Company's proposed finding that its Load Forecast in the Plan and 5-Year Forecast is reasonable and prudent should be accepted.

2. The Company's projections of Generating Expenses including Emission Allowance Expense, Chemical Expense, and Purchased Power Requirements and associated expenses are reasonable and prudent.

The total projected generating expenses in 2021 is $1,313,302,000, which includes costs for emission allowance and chemical expenses, along with purchased power and associated expenses. Exhibits A-3 through A-11. During the 5 Year forecast period those expenses will rise to $1,437,299,000 in 2025. Exhibit A-2. Mr. Rivard testified in detail to the components of the generating expenses for both the Plan Year and 5-year forecast, along with the methodology employed to develop the projections. 3 TR 196-220. For example, the projections for generation in 2021-2025 by each of the Company's plants entail production costs, such as fuel and emission controls, along with the allowances for those controls, net demonstrated capacity for each plant, energy market costs, and demand requirements. Id. 215-220. Mr. Kiel provided the same for the projected generation expenses for the Company's Fermi 2 nuclear facility. Id., 101-106; Exhibit A-17. The evidence concerning projected generating expenses for 2021 is unrefuted, and thus the Company's proposed finding that those expenses are reasonable and prudent should be adopted.

3. The Company's Transmission and MISO Expenses for the Plan Year are reasonable and prudent.

The Company incurs PSCR expenses as a network transmission customer of ITC Transmission and a Market Participant of MISO. For 2021 those expenses are $374,994,000, which Mr. Gamez testified are required to provide service to the

Company's full-service customer load requirements. Id., 140, 147. Mr. Gamez also provided the projected MISO/transmission expenses for the 5-year forecast. Id., 141, Exhibit A-16. A detailed explanation of those expenses, along with the methodology used to develop the projections were provided by Mr. Gamez. 3 TR 141-148. The evidence concerning projected MISO/transmission expenses for 2021 is unrefuted, and thus the Company's proposed finding that those expenses are reasonable and prudent should be adopted.

4. The Company's Fuel Supply Plan for the Plan Year is reasonable and prudent.

For 2021 the Company projects this expense at $688,123,000 for its fossil fueled plants and Fermi 2. Exhibit A-14. Mr. Bence testified to the coal, oil, coke oven gas (COG), and petroleum coke components of the expense for both the Plan Year and 5-year forecast. Underlying those projected expenses are supply requirements, and purchasing strategies intended to reliably meet those requirements and minimize price risks. Id., 76-78. Mr. Kiel testified to the projected net generation and nuclear fuel expense at Fermi 2, which for 2021 is projected at 9,052 GWHr and $53,770,000, respectively. Id., 101-106, Exhibit A-17. Mr. Pratt testified to the requirements and purchasing strategies underlying the projected natural gas expense in 2021, $50,410,000, and the natural gas expenses in the 5-year forecast, which reflects a significant increase due to the expected start of operation of the Company's Blue Water Energy Center as a baseload plant in 2022. 3 TR 156-161; Exhibit A-14. The MEC takes issue with costs associated with COG used at the River Rouge facility that was retired on May 31, 2021, and transportation costs incurred under the Company's agreement with the NEXUS Gas Transmission (NEXUS) natural gas pipeline. Except for those costs, which are addressed below, the Company's proposed finding that the Fuel Supply Plan for 2021 is reasonable and prudent should be adopted.

5. The Company's Mercury, Particulate Matter, and Acid Gas Emission-Related Expense is reasonable and prudent.

These expenses are attributed to ensuring compliance with the Mercury and Air Toxic Standards (MATS) promulgated by the Environmental Protection Agency in 2012 and covering the Company's generation facilities as of 2016. 3 TR 128. The Company employs several measures to comply with MATS, all of which have been reviewed and approved by the Commission is previous cases. Id., 130. The evidence concerning these costs is unrefuted and the Company's proposed finding that they are reasonable and prudent should be adopted.

6. The Company's Proposed 2021 PSCR Billing Factors are reasonable and prudent.

The Company's Application set forth a 2021 levelized monthly PSCR billing factor of 3.22 mill/kilowatt hour, along with a monthly billing factor under the 5-year forecast. Exhibits A-1 and A-2. Mr. Brunell testified to the methodology used to develop these factors:

> The calculations are based on the change in the average unit cost of power supply above or below a base of 31.26 mills per kWh. The average unit cost is determined on a net system requirement basis, exclusive of the MWhs and dollars associated with R-10, R-3, and D8 in buy-out mode. This methodology is consistent with prior years' calculations, prior Commission orders including the January 13, 2009 Order in MPSC Case No. U-15244 where the current PSCR base unit cost was established and Section C8.1 of the DTE Electric Company Rate Book for Electric Service.
> 3 TR 59-60

Mr. Brunell also testified to the Company's request for approval of two new PSCR cost items in this case:

> The first is Rider 18, which is the Company's Distributed Generation Program tariff. Rider 18 was approved by the Commission in its Order dated May 2, 2019 in the Company's general rate case, Case No. U-20162. Customers who elect to take service under Rider 18 will be compensated for their energy-outflow at the applicable rates in the Commission approved tariff. Actual expenses incurred for the energy-outflow will be reflected as purchase power expense in the Company's PSCR Reconciliations. However, because Rider 18 loads are intended to be sized to serve the onsite load, for simplicity, the Company has not included any forecasted Rider 18 expenses in the 2021 Plan year in this proceeding.
>
> The second new cost item is for Demand Response (DR) customer capacity expenses. This expense represents the incentives provided to customers who subscribe to an interruptible program and is supported by Company Witness Mr. Rivard [3 TR 207; Exhibit A-6]. [4]
> 3 TR 60.

Finally, Mr. Brunell testified to two voluntary green programs contained in the PSCR Plan that were previously approved by the Commission. Id., 61. A renewable energy program called MIGreenPower started in 2017 and updated in 2019, and the Large Customer Voluntary Green Pricing program that was approved as a pilot in 2019. Id.

The evidence concerning the PSCR Plan factors is unrefuted and the Company's proposed finding that they are reasonable and prudent should be adopted.

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[4] These costs were first identified in the 2020 PSCR Plan and were approved by the Commission after Mr. Brunell testified. See Case No. U-20527, April 8, 2021 Order.

IV.

CHALLENGES TO THE PSCR PLAN AND 5-YEAR FORECAST

A. Michigan Environmental Council

1. NEXUS

The MEC takes issue with a portion of the costs the Company projects in both its Plan and 5 year forecast under transportation agreements with NEXUS Gas Transmission, LLC (NEXUS) pipeline, and a 2018 amendment involving the Texas Eastern Appalachian Lease (TEAL) pipeline leased to NEXUS. 3 TR 161-171, See Exhibits A-26 through A-37, A-42 through A-44. NEXUS is a joint venture of the Company's affiliate, DTE Gas Storage & Pipelines, and Enbridge, Inc. 3 TR 161. As both parties succinctly detail, the NEXUS Agreements and TEAL Amendment have been reviewed by the Commission in various PSCR Plan and Reconciliation cases since NEXUS went into operation in 2018. MEC Initial Brief, pgs. 6-13, DTE Electric's Initial Brief, pgs. 9-11, 27-38.

As it pertains to the issues in this case, Mr. Pratt testified:

> As shown in Exhibit A-25, the NEXUS agreement is expected to increase fuel expense by approximately $7.4 million in the 2021 Plan year. Transportation costs are expected to increase by $8.4 million and the reduction in supply costs is expected to be $1.0 million. For the five year forecast period from 2021 through 2025, the NEXUS agreement is expected to increase fuel expense by $65 million. Transportation costs are expected to increase by $81 million and the reduction in supply costs is expected to be $16 million.
> 3 TR 167

However, as it has throughout the review of NEXUS in the PSCR process the Company maintains the Agreement will, over the course of its term, offset the early cost increases by resulting in a $79 million reduction in gas costs through lower delivered costs and an additional $271 million reduction in gas costs by driving lower supply costs in the State. 3 TR 167.

In its challenge to the NEXUS costs in the Plan and 5-year forecast at issue here, the MEC contends the Company has failed to meet the following obligations it contends were required of it in previous Commission Orders.

a. Provide information on current market conditions, particularly for the Kensington and MichCon hubs, and the effect of NEXUS on prices at the MichCon hub.

Mr. Wilson testified that between 2012-2017 natural gas production in the Utica/Marcellus region, the receipt point for NEXUS, grew rapidly, but since then growth has been slower and been outpaced by production in other regions, particularly those in proximity to Texas. 3 TR 263-264. As a result, the Michigan natural gas market has become more competitive as supply from various regions become available, which Mr. Wilson contends diminishes the Company's assertion that NEXUS provides access to low-cost supply from the Utica/Marcellus region.

> Current forward prices reflect expectations that the basis out of the Marcellus/Utica region will be near $.60/Dth over the next few years, higher than expectations over 2017-2020, shown in Exhibit MEC-4C. Unfortunately, however, DTE Electric's long-term service originates at Kensington. Prices expectations at Kensington are substantially higher than at Dominion South, and, accordingly, the basis to MichCon Citygate is lower. In essence, Kensington, which is the receipt point for the NEXUS Market Zone, is no longer considered to access low-cost Marcellus/Utica production; it is essentially a point just outside of the supply region.
> 3 TR 266-267.[5]

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[5] Mr. Wilson also analyzed the costs incurred under NEXUS since it went into operation in November 2018, i.e., the supply shipped and burned at the Company's facilities. 3 TR 269-271. However, as it pertains to this case, the MEC contends that under the Commission's Orders in previous cases whether NEXUS capacity was sufficiently used to provide supply to those facilities is an issue for the PSCR reconciliation process. Initial Brief, pg. 16, 28-29.

The MEC contends the Company did not offer any substantive evidence concerning the projected NEXUS costs in the Plan and 5-year forecast relative to market conditions. Rather, it relied on the 2015 ICF Report utilized when the Company first entered into the NEXUS agreement, which relied on assumptions that have not come to pass and thus is unreliable, and an updated report (FTI Report) that merely project the cost savings it contends will result throughout the life of the agreement. Exhibits A-41 and A-47. [6]

b. Demonstrate meaningful attempts to renegotiate the Agreements/Amendment to minimize costs and provide value to ratepayers in light of market conditions.

Mr. Wilson testified that in the coming years the Company's supply requirements will significantly increase when the BWEC comes online, the NEXUS capacity requirements increase, and the TEAL Amendment lapses in 2022. These eventualities, coupled with what Mr. Wilson termed the uneconomic value of supply obtained under the NEXUS agreement, require the Company take steps to reduce costumer costs. 3 TR 280. Mr. Wilson indicated these steps could include terminating the NEXUS agreement or renegotiating its terms for price and volume. Id. The MEC contends the Company failed to establish in its Application it undertook any meaningful steps in this regard, and in rebuttal disclosed that in late 2020 the Company sent out requests for proposals for transportation capacity, and NEXUS responded with a proposal that was not accepted. Id., 183. However, the MEC contends the Company refused to provide any information regarding its renegotiation efforts. Exhibit MEC-29. Given its failure to

[6] The MEC's Motion to Strike the FTI Report as improper rebuttal was denied, but it was allowed to file surrebuttal. 2 TR 12, Dkt. #0082.

provide the information concerning the request for proposal for transportation capacity through discovery, the MEC argues the Company has not met "the Commission's directive to negotiate with NEXUS" and a Section 7 warning on "a portion of NEXUS expenses – the 15 cent TEAL adder or otherwise…" is warranted. Initial Brief, pgs. 26-27.

c. Establish the reasonableness of the combined NEXUS/TEAL transportation rate of $0.845/Dth. [7]

The MEC argues the Company failed to provide "a more robust record to justify the reasonableness of the combined transportation rate for TEAL that the Commission criticized in [Case No. U-20203, December 9, 2020 Order, pgs. 28-29; Case No. U-20527, April 8, 2021 Order, pgs. 21-22; Case No. U-20222, September 24, 2021 Order, pgs. 64-65, 69-70]." Id.pg. 27. In fact, the MEC contends the Company focused solely on the $0.15 per Dth adder under the TEAL Amendment while ignoring the entire $0.845 per Dth cost of the capacity. See 3 TR 187. Mr. Wilson testified the TEAL Amendment has been uneconomic since November 2018 and that will continue for the Plan Year. 3 TR 359; Exhibit MEC-7C. Accordingly, the MEC seeks the issuance of a Section 7 warning the entire cost of the capacity may be disallowed in the future. Initial Brief, pg. 28.

[7] Mr. Wilson summarized the Company's obligations under the Agreements/Amendment as "30,000 Dth/d of firm natural gas transportation service for twenty years, which may increase by an additional 45,000 Dth/d for fifteen years when DTE Electric places new gas-fired electric generation facilities in service. The reservation rate is $0.695 per Dth per Day and the shrinkage adjustment (fuel charge) was 1.32%. In addition, DTE Electric committed to an additional $0.15 per Dth per Day reservation rate and 1.92% total fuel charge for half of the capacity (15,000 Dth/d) from November 1, 2018 through October 31, 2022 to add the Clarington receipt point for this portion of the capacity [under the TEAL Amendment]." 3 TR 258.

2. Coke Oven Gas

The Company projects a $538,746 cost for purchasing waste COG from EES Coke Battery, LLC (EES Coke) as fuel for its River Rouge facility that was retired on May 31, 2021. The purchase was made under a 2009 agreement and 2020 amendment that set the price at $0.40/MMBtu. EES Coke is an unregulated affiliate of the Company's parent, DTE Energy Services, and thus the transaction is governed by the Code of Conduct. See Case No. U-20222, September 24, 2021 Order, pg. 25. Under the Code of Conduct the cost of a service or product provided by an affiliate is capped at "the lower of market price or 10% over fully allocated embedded cost." R 460.10108(4). The MEC contends the projected cost in the PSCR violates the affiliate transaction provision of the Code of Conduct.

In support of its argument the MEC relies on the testimony of Mr. Wilson, who notes the Company is the only consumer of the COG and when it does not utilize the product EES Coke either flares it or releases it into the atmosphere at no cost. 3 TR 297. As such, Mr. Wilson contends the market price of the COG is zero and the entire projected expense of $538,746 is above market price. Id.

3. Staff

Based on its review of the Application and material provided through discovery, Staff indicated it found the expenses listed in the PSCR Plan reasonable and prudent. Ms. Kindschy testified that review consisted of a comparative analysis of the Company's 2020 PSCR Plan (Case No. U-20257) and the Plan at issue in this case. 3 TR 320. While the PSCR factor for 2021 is higher than the 2020 PSCR factor, the increase is attributable to a projected $79,782,000 under-recovery, which is much higher than the

$927,000 under-recovery in the 2020 Plan. Id., 321. When that under-recovery is removed, the average power cost for 2021, $32.30 per MWh, is slightly below the $32.78 per MWh in 2020, which Ms. Kindschy attributes to a 2,200 GWh decrease in sales and corresponding decrease in costs. Id. [8] In fact, the projected decrease in average power cost will occur even though the output of Company's generation fleet will increase, which Ms. Kindschy testified is due to more generation from lower-cost fuels. Id., 322. Ms. Kindschy testified the stated basis for the decrease in sales, the effects of the pandemic, is reasonable. Id., 323.

Ms. Kindschy also reviewed the natural gas transportation costs associated with NEXUS and the TEAL amendment. Ms. Kindschy provided a background of the Commission's review of NEXUS over the years, including capping the cost at $0.695/Dth in the 2018 PSCR reconciliation, and in the 2020 PSCR Plan case holding the Company may not be allowed full recovery of the $0.845/Dt transportation rate under MCL 460.6(7), or what is termed a Section 7 warning. Id., 324, citing Case No. U-20527, April 8, 2021 Order, pgs. 21-22. Based on these holdings, Ms. Kindschy recommended in this case:

> The Commission ruled in Case No. U-18403 that NEXUS costs should be treated as a projection, meaning that the costs for NEXUS were not pre-approved for recovery in the reconciliation case. Staff takes the position in this case that DTE Electric's NEXUS and TEAL amendment costs should continue to be treated as projected costs, i.e. non pre-approved costs, that will be subject to a showing of reasonableness and prudence in DTE Electric's 2021 PSCR reconciliation case. Staff makes note of the Commission's decision in DTE Electric's 2018 reconciliation case where TEAL related costs were not allowed for recovery as well as the Commission's recent order in Case No. U-20527 in which the Commission required additional evidence on the NEXUS pipeline costs, TEAL

[8] Ms. Kindschy notes the under-recovery is projected and will ultimately be reviewed in the 2020 PSCR reconciliation case.

> amendment costs, and their compliance with the Code of Conduct. Staff recommends that DTE Electric provide this additional support in its 2021 reconciliation and take particular note of the information required in the Commission's order in Case No. U-20527. Staff's position is that DTE Electric should be demonstrating that its NEXUS contract, and in particular the TEAL amendment, continue to be reasonable and prudent for its customers under current market conditions.
> 3 TR 326-327

Along the same lines, Ms. Kindschy recommends the transportation, storage and supply costs associated with the BWEC plant that is scheduled to go online in 2022, including those associated with NEXUS, be treated as projected costs, and addressed through the reconciliation process once the Company seeks recovery from its PSCR customers. Id., 327.

Based on the foregoing, Staff recommends the PSCR factor proposed by the Company be approved, and the NEXUS costs be reviewed under the reconciliation process. Id.

V.

ANALYSIS OF THE CHALLENGES

A. NEXUS

For the Plan Year the Company intends to utilize "a significant portion of its NEXUS transportation capacity" to supply its gas-fired peaker power plants that are capable of burring "significant volumes of gas…", and when those plants are not in operation supply can be injected into storage. 3 TR 173-174. If the natural gas is not used for generation or storage the capacity is sold under an Asset Management Agreement to a third-party. Once the BWEC goes into operation in 2022, and then throughout the entire 5-year forecast period, the Company anticipates all the NEXUS capacity will be utilized for generation at that facility. The Company's projected natural gas expenses reflect the increased generation from this fuel source over the next 5 years, going from $50 million during the Plan Year to $212 million in 2023, the BWEC's first full year of operation. Id., 157, 160; Exhibit A-14. In 2021 the Company projects NEXUS will increase its transportation costs by $8.1 million, with a corresponding reduction in supply costs of $1.0 million, and for the period of 2021-2025 transportation costs will increase $81 million and supply costs reduced by $16 million. 3 TR 167; Exhibit A-25. As it has in previous PSCR proceedings regarding NEXUS, the Company projects that over the term of the Agreement it will reduce costs by $79 million through lower delivery costs, and $271 million through reductions in local pricing "driven from the infusion of affordable shall gas that can be accessed via the NEXUS pipeline." 3 TR 167, 174; Exhibits A-24, A-41. As noted, the MEC asserts a Section 7 warning for a portion of the NEXUS should be issued, and the Company directed that in the 2021 reconciliation it must demonstrate the NEXUS capacity is "in the best interests of its customers" and complies "with the Code of Conduct for the first half of the year." Initial Brief, pg. 47.

Mr. Pratt testified to the genesis of the NEXUS Agreement was discussions with DTE Gas in 2013 followed by a series of agreements between 2014-2018, and the TEAL Amendment in effective in November 2018. 3 TR 162-173. The Company contends the Commission's review of the NEXUS rate in numerous PSCR Plan and Reconciliation cases precludes consideration of essentially the same arguments the MEC raises here concerning the Code of Conduct and reasonableness of the contract rate relative to current market rates. Rather, since the terms of the NEXUS Agreement remain unchanged the Company argues the sole issue for consideration is, in the context of a PSCR Plan, whether full cost recovery is warranted for the TEAL Amendment. Initial Brief, pgs. 35-38; Reply Brief, pgs. 10-13, 22-23. This contention is accurate under the Commission's review of the Company's 2019 PSCR Plan case. See Case No. U-20222, September 24, 2021 Order, pgs. 68-70. Therefore, the inquiry will turn to whether a Section 7 warning should be issued for the projected costs under the TEAL Amendment.

The TEAL Amendment went into effect on November 1, 2018, and provided for delivery of 15,000 Dth/d, half of the contracted NEXUS capacity, at the Clarington receipt point at a rate is $0.15/Dth, 85% below the tariff rate and commensurate with the rate by the other known shipper, DTE Gas, with a fuel rate of 0.6%. 3 TR 169-172; Exhibits A-42 and A-43. Under the TEAL Amendment the Company gained access to supply from 11 receipt points in the Appalachian Basin, thereby mitigating price risk and providing supply diversity and reliability. Id., 170. At the time it negotiated the TEAL Amendment in 2018 it projected the lower-cost natural gas at Clarington would reduce its expenses by $2.4 million relative to purchases from the Kensington receipt point under the NEXUS Agreement. Id., 171. For the first two years of the four-year term of the TEAL Amendment the Company reduced its natural gas expenses $1 million. Id., 171.

Based on the foregoing, the Company contends it is entitled to full recovery of the costs associated with the TEAL Amendment. [9] In considering the evidence on this

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[9] Staff agrees with this contention but notes actual NEXUS/TEAL expenses are properly considered in the reconciliation process. 3 TR 326-327; Initial Brief, pg. 11. The Company takes issue with this position as it pertains to NEXUS by arguing expenses incurred under the original contract cannot continue to be relitigated. Initial Brief, pg. 10. While the scope of a future case is properly addressed in that proceeding, the Commission held that in the future reconciliation cases the Company is obligated "to justify the reasonableness of the [NEXUS/TEAL] transportation

record this evidence this contention is accurate. Therefore, the projected costs for the TEAL Amendment for the 2021 Plan Year are reasonable and should be approved. Concomitantly, the projected costs for the TEAL Amendment in the 5-Year forecast should not be subject to a Section 7 warning. MCL 460.6j(7).

B. Coke Oven Gas

As noted, the Company projects a cost of $538,746 during the Plan Year for COG it will purchase from its affiliate, EES Coke, to burn at its River Rouge facility up to its retirement in May 2021. The COG is an upstream product of EES Coke's steel and coke manufacturing process. The MEC contends the COG has no value, and thus the cost violates the Code of Conduct governing affiliate transactions. R 460.10108(4). Accordingly, the MEC seeks the issuance of a Section 7 warning that based on the record in this case, approval of the recovery of the COG costs in the 2021 PSCR reconciliation is unlikely. Initial Brief, pg. 47.

The Company notes it has purchased and burned COG as a non-primary fuel supply at the River Rouge facility for decades, and the recovery of those costs have been approved in numerous PSCR Plan and reconciliation proceedings. [10] 3 TR 85-86. In March 2020 U.S. Steel discontinued its use of COG in its operations, leaving the Company the only consumer of the product. Up until that point the Company paid less than U.S. Steel, which was treated as the market rate for COG for the purpose of PSCR proceedings. Subsequently, the Company determined the market rate based on the

rate…" or offer "evidence of the steps the company took to renegotiate the transportation agreement…and the absence of such evidence shall be an indication that the [rate] is unreasonable and should be disallowed." Case No. U-20222, September 24, 2021 Order, pg. 69.

[10] In addition to COG, the Company also purchased Blast Furnace Gas for use as alternative fuel at River Rouge. However, the conversion of the facility from coal to natural gas in 2020 precluded its use, and thus no expense was projected for that industrial gas during the Plan Year. 3 TR 89.

costs of an alternative fuel supply: coal through May 31, 2020, and from June 1, 2020 to May 31, 2021, the retirement date of the River Rouge facility, natural gas. Id. 88. [11] The price of COG has consistently been below cost of the applicable primary fuel source, which would have been utilized in place of COG, saving customers an average of $470,000 annually through 2019, and similar amounts thereafter. Id., 90. Further, the Company's COG cost of $1.20/mmbtu under the agreements is well below EES Coke's [redacted] COG production cost. Id., 337 (Confidential).

This issue comes down to whether COG has no value as Mr. Wilson contends, and thus the projected costs under the applicable agreements exceed the affiliate transaction cap in the Code of Conduct, or the $1.20/mmbtu price the Company will pay under those agreements is the market price and consistent with the Code of Conduct. To accept the MEC's contention the COG has no value disregards the fact that it is an alternative fuel source that costs less than the primary fuel source that would have to be used in its place. In other words, if the Company discontinued its long-term use of COG at the River Rouge facility it would have to use more, and higher cost, coal and natural gas. This, in turn, would increase its PSCR costs. To the Company, and by extension its PSCR customers, COG has value as a less expensive fuel source at the River Rouge facility, as evidenced by the $470,000 average annual savings testified to by Mr. Bence. Based on this record, the market price of COG, which is a unique and geographically limited product, is properly determined by the Alternatives in a Bilateral Negotiation method utilized by the Company once it became the only consumer of the

[11] On May 31, 2020 the Company transitioned the primary fuel source at the River Rouge facility from coal to natural gas and amended the agreement for COG supply on June 1, 2020 to reflect the new primary fuel source. 3 TR 89-90.

product after U.S. Steel idled its facility in March of 2020. 3 TR 88. Under that method, COG costs significantly less than both what it cost EES Coke to produce the product and the natural gas that would be used in its place.

Based on the foregoing, the Company was reasonable and prudent in securing COG as a non-primary fuel source for its River Rouge facility, and the $1.20/mmbtu price of the supply under its agreements with EES Coke represents the market price of the fuel, and thus complies with the Code of Conduct. Therefore, the projected COG costs during the Plan Year are reasonable and a Section 7 warning concerning those costs is unwarranted.

VI.

CONCLUSION

Based on the foregoing, the Commission should enter a Final Order that deems the Company's 2021 PSCR Plan, including the costs associated with the NEXUS Agreement, TEAL Amendment, and Coke Oven Gas, reasonable and prudent, and approve the PSCR factor. Further, the 5-year Forecast should be accepted, and no Section 7 warning should be issued for any of the projected costs.

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

Dennis W. Mack

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Dennis W. Mack
Administrative Law Judge

March 25, 2022
Lansing, Michigan