

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 reconciliation of its)	Case No. U-20827
Power supply cost recovery plan for the)	
<u>12 months ended December 31, 2021</u>)	

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on November 13, 2023.

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 December 4, 2023, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before December 18, 2023.

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

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

**Sharon L.
Feldman**

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November 13, 2023
Lansing, Michigan

Sharon L. Feldman
Administrative Law Judge

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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<u>12 months ended December 31, 2021</u>)	

PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On March 31, 2022, DTE Electric Company filed its application for the reconciliation of its power supply cost recovery (“PSCR”) plan for the 12 months ending December 31, 2021. DTE Electric’s reconciliation identified an underrecovery at the year’s end of \$143,398,987, which included a 2020 underrecovery balance of \$96,518,035 as well as interest. The application was accompanied by the testimony and exhibits of Eric R. Bidlingmaier, Renee M. Dory, Steven P. Dugan, Barry J. Marietta, Kevin A. Maro, Frank Niscoromni, Kevin L. O’Neill, Ryan C. Pratt, and Peter A. Snyder. At the May 12, 2022, prehearing conference DTE Electric, Staff, the Association of Businesses Advocating Tariff Equity (“ABATE”), the Michigan Environmental Council (MEC), and the Attorney General appeared; the ALJ granted intervention to ABATE, MEC, and the Attorney General and set a consensus schedule.

On October 5, 2022, the ALJ revised the schedule by agreement of the parties. On December 9, 2022, DTE filed the revised testimony and exhibits of witness Pratt. On January 11, 2023, the ALJ issued a protective order. On January 17, 2023, the ALJ revised the schedule again by agreement of the parties, and on March 31, 2023, the ALJ extended the deadline for filing Staff and intervenor testimony by two days at the request of the Attorney General with the agreement of the parties.

Consistent with the schedule, on April 5, 2023, Staff filed the testimony and exhibits of Lisa M. Kindschy and Robert F. Nichols II, ABATE filed the testimony and exhibits of Jessica A. York, and the Attorney General filed the testimony and exhibits of Sebastian M. Coppola. Also consistent with the schedule, on May 12, 2023, DTE filed the rebuttal testimony of witnesses Dugan, Bidlingmaier, Marietta, Pratt and Snyder.

At the evidentiary hearing held on June 5, 2023, the testimony of all witnesses was bound into the record without the need for the witnesses to appear, and all proffered exhibits were admitted into evidence. DTE Electric, Staff, ABATE, and the Attorney General filed briefs on July 14, 2023 and reply briefs on August 18, 2023.

The evidentiary record is contained in 377 pages of public transcript, with an additional 80 pages bound into a separate confidential record, and 85 exhibits. Specific pertinent aspects of the evidentiary record will be discussed in greater detail below.

II.

OVERVIEW OF THE RECORD

A. DTE Electric

As noted above, DTE Electric presented the direct testimony of nine witnesses.

Eric R. Bidlingmaier, Supervisor of the Tactical Merchant Analytics Team within DTE's Generation Optimization department, testified to the reasonableness and prudence of DTE Electric's 2021 power supply system operations, including generation, wholesale power purchases and sales, MISO market expenses and emission allowance expenses.¹ Mr. Bidlingmaier's Exhibit A-16 summarizes system operations, including a comparison to the plan case forecast. He presented details on the company's wholesale power purchases and sales in Exhibits A-17 and A-18, also including comparisons to the plan case forecasts. He presented Exhibit A-12 to show the benefits of the company's fuel blending. He also discussed the company's use of emission allowances, presenting emission allowance expense and inventory balances for compliance with NO_x ozone season and annual limits and SO₂ Cross-State Air Pollution Rule (CASPR) and Acid Rain Program (ARP) limits in Exhibits A-19 through A-22. Mr. Bidlingmaier's Exhibit A-23 summarized energy sales revenue net of fuel and fuel-related generation expense. He also presented rebuttal testimony as discussed below.

Renee M. Dory is the Manager of the Electric Gross Margin department within the controller's organization of DTE Energy Corporate Services, LLC.² Ms. Dory presented the reconciliation of DTE Electric's 2021 PSCR revenues and expenses, with the monthly overrecovery and underrecovery balances in Exhibit A-14, showing a total underrecovery \$143,263,843, not including interest of \$145,144. Her Exhibit A-13 shows the calculation of total 2021 PSCR costs, with additional details on MISO market and other wholesale

¹ Mr. Bidlingmaier's testimony, including his rebuttal, is transcribed at 2 Tr 24-49; his qualifications are presented at 2 Tr 25-27.

² Ms. Dory's testimony is transcribed at 2 Tr 51-75; her qualifications are presented at 2 Tr 52-54.

purchases and sales, transmission expense and revenue, and fuel and sorbent expenses in Exhibit A-9 through A-11.

Steven P. Dugan is a Plant Manager for DTE Electric in its Fossil Generation organization.³ He described planned and unplanned outages completed in 2021 at the steam, hydraulic, peaker and nuclear generating units that lasted more than 90 days, testifying that DTE did not cause or prolong an outage through negligence or imprudent management. Among the planned outages he discussed were a 96-day outage at Greenwood unit 1, a 134-day outage at Monroe unit 4, and extended planned outages at the Enrico Fermi 11-3, Slocum 11-4, and the Delray 12-1 peaker units. Mr. Dugan also discussed the following unplanned outages: a 113-day unplanned outage at St. Clair unit 6; and approximately 20 major unplanned outages at several peaker units. He referred to witness Snyder's testimony for detail regarding the extensive Ludington unit 3 outage. Exhibits A-1 through A-5 contain data on actual planned outages by plant. His Exhibit A-24 shows net generation by plant and A-25 provides statistics on the performance of DTE Electric's baseload generation.

In addition, Mr. Dugan testified to the reasonableness and prudence of the company's use of sorbents at the Monroe power plant, presenting Exhibits A-26 and A-27 in support of his testimony, and cosponsoring Exhibit A-7 addressing DTE Electric's use of Reduced Emissions Fuel (REF) in the plan year. Mr. Dugan also presented rebuttal testimony.

³ Mr. Dugan's testimony, including his rebuttal, is transcribed at 2 Tr 77-122; his qualifications are presented at Tr 78-81.

Barry J. Marietta is the Manager for Environmental Strategy in the Environmental Management and Resources operation of DTE Energy Corporate Services, LLC.⁴ Mr. Marietta provided detail regarding the company's use of sorbents to control emissions, with costs and volumes included in Exhibit A-6, along with a comparison to the plan projections. Mr. Marietta explained that DTE Electric used significantly less trona in 2021 relative to the plan projections, although the company used trona at Belle River to address increased SO₂ emissions at that plant.

Mr. Marietta presented a chart at 2 Tr 133 showing the 16% increase in total sorbent costs per MWh for all plants other than Belle River, attributing the different to expected variation due to varying operational conditions, fuel blends, and market conditions. Mr. Marietta also cosponsored Exhibit A-7, which addresses the company's use of REF at several of its plants, and he presented rebuttal testimony as discussed below.

Kevin A. Maro is the Fuel Resource Specialist, Planning and Procurement, within DTE Electric's Fuel Supply department.⁵ He testified in support of the reasonableness and prudence of the company's fossil fuel expense, excluding natural gas expense, which was addressed by witness Pratt. Mr. Maro presented Exhibit A-8 to show the difference in actual versus projected fossil fuel expense. He attributed the 11% below-forecast coal costs in 2021 to both lower unit costs and decreased net coal-fired generation. He attributed the 49% increase in oil expense relative to the plan forecast to both an increase

⁴ Mr. Marietta's testimony, including his rebuttal, is transcribed at 2 Tr 125-137, with a confidential version in the confidential transcript; his qualifications are presented at 2 Tr 126-129.

⁵ Mr. Maro's testimony is transcribed at 2 Tr 139-153, with a confidential version in the confidential transcript; his qualifications are presented at 2 Tr 140-142.

in the unit cost of oil and increased generation from oil-fired peaking units. Mr. Maro testified that the 2021 Coke Oven Gas (COG) expense was a credit of \$0.3 million, and discussed DTE Electric's revised COG agreement that led to a credit to PSCR customers rather than the projected cost of \$0.5 million. Mr. Maro, a cosponsor of DTE Electric's REF report in Exhibit A-7, testified that actual petcoke expense was lower than forecast due both to decreased unit costs and decreased consumption at Monroe.

Frank Niscoromni, Regulatory Consultant in the Federal Regulatory Affairs division of DTE Energy Corporate Services, LLC, testified to support DTE Electric's 2021 transmission expenses, as summarized in Exhibit A-15.⁶ He explained that this exhibit includes both the plan forecast and actual network transmission expenses, and reviewed the key MISO schedules applicable to these expenses. He noted that 2021 actual expenses were \$6.1 million above the projection, also testifying that the expenses were reasonable and prudent.

Kevin L. O'Neill is a Principal Project Manager with the Regulatory Affairs division of DTE Energy Corporate Service, LLC.⁷ Mr. O'Neill testified to the savings associated with the company's use of REF fuel, presenting a calculation of an \$8.4 million annual reduction in the company's base rates as well as a calculation of \$50 million in cumulative savings. Jointly with Mr. Marietta, Mr. Pratt, and Mr. Dugan, he cosponsored the REF report in Exhibit A-7 that contains these calculations.

⁶ Mr. Niscoromni's testimony is transcribed at 2 Tr 155-164; his qualifications are presented at 2 Tr 156-158.

⁷ Mr. O'Neill's testimony is transcribed at 2 Tr 166-173; he presented his qualifications at Tr 167-171.

Ryan C. Pratt is the Manager for Procurement in DTE Electric's Fuel Supply department.⁸ Mr. Pratt testified in support of the reasonableness and prudence of the company's natural gas costs, shown in Exhibit A-8, including costs attributable to DTE's NEXUS contracts, a subject of debate in multiple prior PSCR cases.

Mr. Pratt explained that total natural gas costs were 164% or \$83 million greater than projected, attributable to a 34% increase in unit costs and a 97% increase in gas-fired generation.

Mr. Pratt also addressed the company's natural gas transportation agreements with the NEXUS pipeline, asserting that the NEXUS costs are reasonable and prudent. He reviewed the history of the company's decisions and Commission orders, including a discussion of DTE Gas's landed cost analysis, the November 2015 report by ICF Resources, LLC (2015 ICF Report), and the subsequent TEAL amendment that added an additional receipt point. Mr. Pratt also cited an analysis performed by FTI Consulting, Inc., presented by Mr. Sosnick in the plan case.

Mr. Pratt presented the NEXUS agreements in Exhibits A-28 through A-33, with the DTE Gas landed cost analysis as Exhibit A-34, the 2015 ICF Report as Exhibit A-35, the company's 2016 and 2021 gas price savings calculations as Exhibits A-36 and A-37, the NEXUS FERC tariff rates as Exhibit A-38, a calculation of the net impact on 2021 natural gas expense in Exhibit A-39, information on the company's Asset Manager in Exhibit A-40, and the FTI Consulting analysis in Exhibit A-41. Mr. Pratt also discussed DTE Electric's efforts to renegotiate the NEXUS transportation agreement, presenting

⁸ Mr. Pratt's direct and rebuttal testimony is transcribed at 2 Tr 175-227; he presented his qualifications at 2 Tr 176-178.

Exhibits A-43 through A-49 to support his testimony. He testified that DTE Electric and NEXUS did reach an agreement to extend the TEAL amendment through October 2024, but declined an offer from NEXUS to slightly reduce the costs under the main transportation agreement in exchange for a significant contract extension. Mr. Pratt also presented rebuttal testimony.

Peter A. Snyder is a registered professional engineer, a Certified Energy Manager, and a Project Management Professional in DTE Electric's Major Projects Group; he has served as the company's onsite representative for the Ludington upgrade project since 2008.⁹ He testified to support the reasonableness and prudence of the costs associated with the extended Ludington unit 3 outage, and to "confirm that DTE Electric did not cause or prolong the outage, or any part of the outage, through the Company's negligence or unreasonable or imprudent management."¹⁰ He described the outage, including factors impacting the length of the outage, DTE's actions throughout the unit overhaul, and a third-party root cause analysis. He was a cosponsor of Exhibits A-2 and A-4 with witness Dugan, and he presented as confidential Exhibit A-42 the unit 3 root cause analysis. Mr. Snyder also presented rebuttal testimony.

B. Staff

Staff presented the direct testimony of two witnesses.

Lisa M. Kindschy is a Public Utilities Engineering Specialist in the Energy Cost Recovery & Generation Operations section within the Energy Operations division of the

⁹ Mr. Snyder's direct and rebuttal testimony is transcribed at 2 Tr 230-245; his qualifications are presented at 2 Tr 231-232.

¹⁰ 2 Tr 233.

MPSC.¹¹ Ms. Kindschy explained Staff's review of the DTE's 2021 PSCR costs, including its fuel purchasing strategy, transportation contracts, power plant performance, chemical costs and operational decisions. She presented a comparison of DTE Electric's 2021 PSCR costs to its plan projections. Focusing on the generating plant outages over 90 days, Ms. Kindschy explained Staff's conclusions that no disallowance is warranted for outages at the following units: Greenwood unit 1, Monroe unit 4, and St. Clair unit 6, and indicated that Staff reviewed reports related to all outages more than 90 days. She explained that Staff does recommend a disallowance of \$1.7 million associated with the Ludington unit 3 outage and disallowances totaling \$1.2 million for outages at Trenton Channel unit 9. Ms. Kindschy also addressed DTE Electric's NEXUS-related costs, citing the Commission's decision in the plan case, Case No. U-20826, and stating that Staff has concluded that DTE justified the reasonableness and prudence of its NEXUS costs, including the TEAL amendment. Ms. Kindschy presented Exhibits S-2 through S-4 in support of her testimony.

Robert F. Nichols II is the Manager of the Revenue Requirements section of the Commission's Regulated Energy Division.¹² He presented Staff's revisions to the company's reconciliation in Exhibit S-1, including an updated beginning balance of an underrecovery \$95,362,679 to reflect the Commission's October 27, 2022 order in Case No. U-20528, as well as the disallowances explained by Ms. Kindschy. As shown in Exhibit S-1, Staff calculated a total PSCR underrecovery of \$139,496,000, including interest.

¹¹ Ms. Kindschy's testimony is transcribed at 2 Tr 349-365, her qualifications are presented at 2 Tr 350-352.

¹² Mr. Nichols' testimony is transcribed at 2 Tr 367-375; his qualifications are presented at 2 Tr 368-371.

C. Attorney General

The Attorney General presented the direct testimony of one witness.

Sebastian Coppola is an independent business consultant in the fields of energy and utility regulation.¹³ Mr. Coppola recommended a \$1.7 million disallowance related to the Ludington unit 3 outage, a \$969,762 disallowance of 2021 trona expenses, and a \$3.5 million disallowance of NEXUS-related natural gas and transportation costs. He explained the bases for his conclusions, and he presented DTE Electric's discovery responses regarding the Ludington outage in Exhibits AG-1 and AG-2, information in regarding the trona costs in Exhibits AG-3 and AG-4, and information regarding the NEXUS-related costs in Exhibits ABG-5 through AG-1. Mr. Coppola calculated a revised cumulative PSCR underrecovery through 2021 of \$136,032,291, not including interest.

D. ABATE

ABATE presented the direct testimony of one witness.

Jessica A. York is a consultant in the field of public utility regulation with the consulting firm of Brubaker & Associates, Inc.¹⁴ She addressed the Ludington unit 3 outage, explaining her conclusion that DTE Electric rather than ratepayers should bear the costs associated with the outage, and recommending a disallowance of \$7.4 million, including the replacement power costs identified by DTE Electric as well as additional capacity costs she considered attributable to the outage. Ms. York presented Exhibits AB-1 through AB-5 in support of her testimony.

¹³ Mr. Coppola's testimony is transcribed at 2 Tr 248-300, with the confidential version of his testimony in the confidential record; his qualifications are presented at 2 Tr 249-252 and 301-320.

¹⁴ Ms. York's testimony is transcribed at 2 Tr 323-344; her qualifications are presented at 2 Tr 325-326 and 2 Tr 345-347.

E. Rebuttal

DTE Electric was the only party to present rebuttal testimony. As noted above, DTE Electric presented the rebuttal testimony of witnesses Bidlingmaier, Dugan, Marietta, Pratt, and Snyder.

Mr. Bidlingmaier's rebuttal testimony addressed Ms. York's calculation of the replacement power costs associated with the Ludington unit 3 outage, objecting to the inclusion of capacity costs in her recommended disallowance. He reviewed the MISO 2021/22 and 2020/21 PRA, and the Commission's order in Case No. U-20528.¹⁵

In his rebuttal testimony, Mr. Dugan addressed Staff's recommended disallowances attributable to the Trenton Channel unit 9 outages, explaining his conclusion that the outages were not attributable to fault on DTE Electric's part, but due to long-term boiler cycling wear and tear. He presented Exhibits A-50 through A-52 to support the root cause of the tube leaks.

Mr. Marietta addressed Mr. Coppola's recommendation regarding trona expense in his rebuttal testimony. He disputed Mr. Coppola's conclusions that DTE Electric did not adequately support the cost variance in trona expense relative to the plan case, and disputing that the company's cost was excessive.¹⁶

Mr. Pratt's rebuttal testimony addressed Mr. Coppola's recommended NEXUS-related disallowances. He characterized much of Mr. Coppola's testimony as a repetition of arguments from prior cases, providing citations to the company's testimony in prior cases and asserting that the company made a reasonable and prudent evaluation at the

¹⁵ 2 Tr 46-49.

¹⁶ 2 Tr 135-137.

time it made the decision to contract with NEXUS. He also addressed certain elements of the FTI analysis in response to their critiques, and discussed the TEAL amendment, the company's Asset Management Agreement for NEXUS capacity, and the company's efforts to renegotiate the agreements.

Mr. Snyder's rebuttal testimony addressed the Attorney General and ABATE witnesses' recommended disallowances for the extended outage at Ludington unit 3. He explained his view that the disallowances hold DTE Electric to too strict a standard, characterizing their recommendations as equivalent to requiring omniscience on the company's part, and disputing that DTE Electric was unreasonable or imprudent.

III.

DISCUSSION

This reconciliation is governed by the provisions of MCL 460.6j(12)-(16). As addressed in section A, the beginning balance should be revised as Staff explained. The remaining items that require resolution in this proceeding relate to the following cost elements: NEXUS-related natural gas costs, addressed in section B; replacement power costs associated with extended outages at Ludington unit 3, addressed in section C; shorter-duration outages at Trenton Channel unit 9, addressed in section D; and trona costs, addressed in section E.

A. Beginning Balance

There is no dispute that the beginning balance should be revised to be consistent with the Commission's October 27, 2022 order in Case No. U-20528, as explained by Mr. Nichols.

B. NEXUS-related gas costs

The Attorney General recommends a disallowance associated with the company's transportation agreements with the NEXUS pipeline. DTE Electric contends that its NEXUS-related decisions have been reasonable and prudent and that all NEXUS costs should be fully recovered. After an overview of the Commission's prior cases addressing DTE Electric's contracts with NEXUS, a review of the record evidence, and a review of the parties' arguments in this case, this PFD addresses the key disputed issues among the parties, including the company's compliance with the Commission's plan case order, the critiques and significance of the FTI analysis, the company's reliance on Asset Management Agreements, and the TEAL amendment.

1. Prior Commission decisions

DTE Electric's agreements with NEXUS have been discussed extensively in prior PSCR plan and reconciliation cases. DTE Electric executed its first agreement with NEXUS in July 2014. Because the pipeline was not operational until 2018, DTE Electric's 2018 PSCR plan, Case No. U-18403, was the first plan case in which DTE Electric projected actual transportation costs under the NEXUS agreements. In its February 7, 2019 order in that case, the Commission explained its conclusion that DTE Electric's decisions to enter the NEXUS agreements to date were reasonable and prudent, citing in part its earlier decision in DTE Electric's 2016 plan case, Case No. U-17920.

The Commission finds compelling DTE Electric's evidence that it executed the July 2014 precedent agreement based on DTE Gas Company's [Landed Cost Analysis] showing that contracting for transportation capacity on the NEXUS pipeline would result in the lowest landed costs between competing alternatives.¹⁷

¹⁷ February 7, 2019 order, page 42.
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The Commission acknowledged that losses were projected for the five-year forecast period,¹⁸ but clarified that long-term benefits projected to be \$338 million over 20 years of the NEXUS agreement could be considered in a PSCR proceeding:

[T]he Commission agrees with DTE Electric's observation that the NEXUS precedent agreement is not a five-year contract, but a 20-year contract with long-term savings projected in the ICF 2015 Report admitted as Exhibit A-27. The Commission further agrees with DTE Electric that the words "other relevant factors" in MCL 460.6j(6) permit the Commission to consider the long-term benefits of the 20-year contract that the utility presented. These benefits include a projected long-term savings of \$67.4 million from 2018 through 2038 and the \$271 million savings for its customers due to NEXUS driving projected MichCon Citygate prices lower during the 20-year term of the NEXUS agreement.¹⁹

The Commission disagreed that the benefits were speculative or conjectural and concluded it was satisfied that DTE Electric had taken all steps to minimize the cost of fuel by entering into the agreement.²⁰ The Commission expressly rejected the claim that DTE Electric should have walked away from the agreement or declined to waive certain protections of the agreement.²¹

In its May 8, 2020 order in Case No. U-20221, DTE Electric's 2019 PSCR plan, the Commission had its first chance to address the TEAL amendment executed in 2018. The Commission addressed four issues related to NEXUS. First, it rejected challenges to DTE Electric's decision to enter the NEXUS agreements addressed in previous cases. Second, the Commission addressed the TEAL amendment for the first time, agreeing with the PFD in that case regarding the deficiencies in the record and the need to warn

¹⁸ February 7, 2019 order, pages 42-43.

¹⁹ February 7, 2019 order, pages 43-44.

²⁰ February 7, 2019 order, page 44.

²¹ February 7, 2019 order, pages 45-46.

DTE Electric it may not recover the full costs of the TEAL amendment. Third, the Commission addressed the concern raised by MEC that DTE Electric was not planning to use the full contract capacity to provide gas to its generating plants. The Commission recognized that DTE Electric may recover reasonable and prudent transportation costs, but also recognize that its efforts to manage its purchases would be reviewed in the reconciliation:

Specifically, the Commission will want to see additional evidence that the transportation capacity costs incurred were reasonably and prudently tied to power supply costs. While asset management agreements with natural gas marketers to use excess capacity are not inherently inappropriate, the Commission shares MEC's concerns over costs being included in the PSCR that are ultimately for fuel not used for power generation. As such, DTE Electric will need to show that the level of contracted transportation capacity is in the best interests of its electric customers.²²

Fourth, the Commission addressed the Code of Conduct,²³ concluding that DTE Electric has an ongoing obligation to demonstrate compliance with the Code of Conduct in the reconciliation:

The Commission agrees that while DTE Electric is not required to relitigate the original NEXUS agreement decided in the February 7 order [in Case No. U-18403], the company does have an ongoing obligation to demonstrate compliance with the pricing provisions of the Code of Conduct in the reconciliation, which in turn will provide the Commission with the required information to determine the amount of affiliate transaction costs DTE Electric may recover. Further, DTE Electric must demonstrate compliance with the Code of Conduct when new evidence or a showing of changed circumstances applies to a question of fact.²⁴

On December 9, 2020, the Commission issued an order in Case No. U-20203, the reconciliation of DTE Electric's 2018 PSCR plan case, Case No. U-18403 discussed

²² See May 8, 2020 order, pages 13-14.

²³ R 460.10101 *et seq.*

²⁴ May 8, 2020 order, page 16.

above. In that order, the Commission limited the transportation rate DTE Electric could recover to \$0.695 per Dth/day, for both NEXUS and TEAL. Reviewing its earlier decisions in Case No. U-18403 and U-20221, the Commission concluded that the reasonableness of the costs for the underlying contract and the TEAL amendment were at issue in Case No. U-20203:

In 2019, the Commission confirmed the reasonableness and prudence of the NEXUS long-term firm gas transportation contract in Case No. U-18403, DTE Electric's corresponding PSCR plan case. February 7 order, pp. 42-45. In so doing, however, the Commission set aside its reasonableness determination of the contract's negotiated rate for non-fuel charges, instead treating the rate as a projected cost in that case and requiring DTE Electric to provide a more substantive discussion of the reasonableness of this rate in the instant case in order to receive full recovery of its NEXUS transportation costs. *Id.*, pp. 45-46. Thereafter, on October 26, 2018, DTE Electric executed an amendment to the NEXUS contract, known as the TEAL amendment, by adding an additional receipt point at Clarington. The reasonableness of the costs for the underlying contract and the TEAL amendment are thus at issue in this case. Moreover, in the most recent PSCR plan case approved by the Commission, the Commission cautioned DTE Electric, pursuant to MCL 460.6j(7), that it may not recover the costs of fuel purchased under the amendment absent additional justification in the corresponding reconciliation proceeding. May 8 order, p. 10.²⁵

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

Even with the third-party marketer, sales from the Kensington location were far less than expected. The Commission nevertheless recognizes that having firm transportation capacity still provides reliability and resilience benefits and Act 304 acknowledges value in fuel diversity and firm contracts. MCL 460.6j(3). Moreover, the Commission has previously accepted DTE Electric's arguments that the construction of NEXUS—by bringing in an additional source of supply—will also produce savings for

²⁵ December 9, 2020 order, page 23.

DTE Electric ratepayers by lowering MichCon hub prices. While the record shows that actual 2018 MichCon hub prices were lower than the 2018 projections when the contract was approved, which is favorable and could conceivably help mitigate the higher-than-expected prices upstream, DTE Electric presented no new data or explanation to support whether and how NEXUS actually contributed to this price depression or how such pricing benefits its ratepayers. DTE Electric merely referenced the original study by ICF and indicated that, “[a]lthough MichCon CityGate prices have been reduced by the infusion of affordable Utica/Marcellus shale gas from the construction and operation of NEXUS, the exact magnitude by which prices have been reduced cannot be measured.”

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

based on actual fuel procurement to serve DTE Electric's power plants during the reconciliation period. DTE also failed to respond to intervenor testimony questioning the impact of NEXUS on MichCon hub prices.²⁶

In that 2018 plan year reconciliation order, the Commission also addressed arguments regarding the Code of Conduct. Recognizing that previously approved long-term affiliate contracts do not need to be examined repeatedly for compliance, the Commission also found that DTE Electric had not established compliance with the Code of Conduct in light of the TEAL amendment:

[T]he Commission does not find that a previously approved long-term affiliate contract would repeatedly need to be examined under Code rules. Notwithstanding, the Commission finds that the TEAL amendment would trigger the market pricing test for an affiliate transaction pursuant to Rule 8(4). The record has information on gas futures prices and various pipeline arrangements supplied by intervenors but these are not suitable comparisons for determining market prices for the underlying contract of this type or the amendment. This lack of a market price comparison—despite these being long-standing provisions with the Commission—also supports the determination to disallow the incremental \$0.15/Dth for the TEAL amendment.²⁷

In the 2020 plan case, Case No. U-20527, the Commission explained its expectations for DTE Electric to establish the reasonableness of its NEXUS agreements in this reconciliation, citing its December 9, 2020 order in Case No. U-20203, the reconciliation of DTE Electric's 2018 PSCR plan year:

Given the similarities of the instant case to Case No. U-20203 and the Commission's findings and conclusions in the December 9 order, which the ALJ correctly detailed and reasonably relied upon in her PFD, the Commission finds it appropriate to again accept the total NEXUS transportation rates here as projected costs, with the onus on the company to justify the reasonableness and prudence of these rates in its corresponding reconciliation case (Case No. U-20528). The Commission also finds it appropriate to caution DTE Electric, based on present evidence

²⁶ December 9, 2020 order, Case No. U-20203, pages 28-29, citations omitted.

²⁷ December 9, 2020 order, page 29, citations omitted.

similar to that in Case No. U-20203, that the company may not recover the full combined transportation rate of \$0.845/Dth under MCL 460.6j(7). As stated in the December 9 order:

While MCL 460.6j(3) encourages long-term contracts in PSCR matters, this does not absolve a utility from monitoring and responding to market conditions and system needs and making good faith efforts to manage existing contracts. Such efforts may entail meaningful attempts to renegotiate contract provisions to ensure continued value for ratepayers as market conditions change.

The Commission reiterates the mitigation and value that long-term contracts can have on reliability and pricing risks, but with that comes, in PSCR cases, the burden on the utility to ensure, in addition to reliability, reasonably priced gas fuel supply to minimize fuel costs on an annual basis. In this case, there is also heightened scrutiny that applies to this affiliate transaction pursuant to the Code. Thus, in addition to the above, the Commission finds that DTE Electric will also need to demonstrate compliance with the pricing provisions under Mich Admin Code, R 460.10108(4) (Rule 8(4)), considering the TEAL amendment and the Commission's findings and conclusions in the December 9 order. In particular, the Commission expects to see evidence that the company has taken steps to renegotiate contracts in order to minimize the cost of gas, and will look to comparisons with other long-term supply options as informative as to whether this particular contract adheres to the requirements of the Code. This could also include a final landed cost for a set of alternatives to the current NEXUS agreements—including the TEAL amendment—as well as a comparison between those alternatives and the total cost, including commodity costs, of the gas transported on the NEXUS line. In addition, although the TEAL amendment may help to mitigate the higher-than-expected prices at Kensington in the short term, the vast majority of the NEXUS contract is tied to gas supply at the Kensington receipt point. As such, additional information regarding the market outlook at Kensington would be helpful in informing the Commission's review of the ongoing reasonableness over the full life of the NEXUS contract and its amendments.²⁸

After the Commission issued its order in that plan case, it issued an order in DTE Electric's 2019 PSCR reconciliation. In that reconciliation order, the Commission concluded that DTE Electric's NEXUS costs were recoverable, noting that the company

²⁸ April 8, 2021 order, Case No. U-20527, pages 21-23, citations omitted.
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had little time in that case to address the Commission's section 7 warning that had been issued in the plan case. The Commission stated its expectation that the company would provide a "more robust" record to justify the NEXUS costs or produce evidence of an attempt to renegotiate the agreements in future cases:

In order to provide DTE Electric adequate time to comply with the Commission's Section 7 warnings issued in Case Nos. U-20221 and U-20527 and the directives set forth in the December 9 order, the Commission finds that it is reasonable to approve the combined transportation rate of \$0.845/Dth/day in this case. DTE Electric asserted that its natural gas power plants consumed approximately 3.5 million Dth of NEXUS gas in 2019 and that the Asset Manager was able to flow approximately 6.5 million Dth of natural gas on the NEXUS pipeline to third parties, thus reducing the company's 2019 PSCR expense by approximately \$1.1 million. In addition, DTE Electric averred that, once BWEC is operational in 2022, the company expects to utilize all of its NEXUS capacity to supply its gas-fired power plants. However, **the Commission emphasizes that in the company's pending and future PSCR cases, DTE Electric must provide a more robust record to justify the reasonableness of the combined transportation rate of \$0.845/Dth/day or evidence of the steps the company took to renegotiate the transportation agreement. These costs will be examined in each reconciliation and the absence of such evidence shall be an indication that the combined transportation rate is unreasonable and should be disallowed.**²⁹

Subsequently, in its order reconciling DTE Electric's 2020 PSCR plan in Case No. U-20528, the Commission affirmed its earlier conclusion that the initial NEXUS agreements were reasonable and prudent,³⁰ and further reviewed the TEAL amendment. Citing its earlier conclusion that the TEAL amendment provided measurable benefits to customers, the Commission concluded that the company had justified the reasonableness and prudence its projected TEAL costs.³¹

²⁹ September 24, 2021 order, page 69 (emphasis added).

³⁰ October 27, 2022 order, pages 23-24.

³¹ October 27, 2022 order, page 27.

And in its order in the plan case underlying this reconciliation, Case No. U-20826, the Commission declined to issue a section 7 warning regarding recovery of NEXUS and TEAL costs, stating its conclusion that its prior decisions relating to DTE Electric's decision to enter into the NEXUS agreements should be given preclusive effect, and noting that the Commission had approved the \$0.695/Dth rate in multiple reconciliation cases.³² Regarding the TEAL amendment costs, the Commission concluded that DTE Electric had justified the customer benefits associated with the amendment.³³ The Commission noted in had in prior orders encouraged DTE Electric "to take steps to reduce fuel costs to its customers, including efforts to renegotiate the NEXUS agreement in response to changing market conditions following the 2014 agreement."³⁴ The Commission quoted several of these prior orders, and again indicated that it "will continue to review DTE Electric's actions—including extensions to the TEAL amendment."³⁵

2. Record evidence

As described above, Mr. Pratt provided direct and rebuttal testimony in support of the NEXUS agreements. In his direct testimony, Mr. Pratt described NEXUS Gas Transmission, LLC as a joint venture between DT Midstream and Enbridge Inc., and he described the NEXUS pipeline as a 225-mile pipeline delivering gas from the Utica and Marcellus shale regions to the Midwest and Ontario.³⁶ He extensively chronicled the history of the company's arrangements with NEXUS, including the company's initial contract with NEXUS in July 2014, which provides for the transportation of gas from the

³² October 5, 2022 order, page 20.

³³ October 5, 2022 order, page 21.

³⁴ October 5, 2022 order, page 22.

³⁵ October 5, 2022 order, page 23.

³⁶ 2 Tr 183.

Kensington receipt point to the MichCon Citygate, and the 2018 amendment (the TEAL amendment) that provided DTE Electric access to gas at an additional receipt point, the Clarington receipt point, located on the Texas Eastern Appalachian Lease (TEAL) pipeline.

Mr. Pratt reviewed the contract volumes and costs associated with the NEXUS agreements. Under the initial NEXUS agreements, DTE Electric has 30,000 Dth/day of firm transportation on NEXUS, from Kensington to Ypsilanti, which will increase to 75,000 Dth/day when the gas-fired Blue Water Energy Center (BWEC) opens in 2022; the contract term for the first 30,000 Dth/day runs from 2018 through 2038; the additional 45,000 Dth/day runs for 15 years from its inception.³⁷ The contract price for the firm transportation from Kensington to MichCon is \$0.695/Dth, plus a fuel rate of 1.02%. Mr. Pratt explained that the October 2018 TEAL amendment added the Clarington receipt point for half of the 30,000 Dth/day capacity, for a period of four years, at an additional cost of \$0.15/Dth.

Mr. Pratt presented the NEXUS agreements, including the TEAL amendment, in Exhibits A-28 through A-33. He presented the July 2014 landed cost analysis DTE Gas performed prior to entering its own contract with NEXUS in Exhibit A-34. He also presented two additional analyses of the NEXUS agreements, a November 2015 report by ICF Resources, LLC (2015 ICF Report), which DTE Electric considers as independent confirmation of the landed cost analysis, and a 2021 analysis by FTI Consulting (2021 FTI Report) intended to quantify the impacts of the NEXUS pipeline on natural gas costs

in and near Michigan. He presented these reports as Exhibits A-35 and A-41, as well as DTE Electric's calculations of savings based on these reports in Exhibits A-36 and A-37. Regarding the TEAL amendment, he testified that DTE Electric estimated a savings of \$2.4 million over the four-year term of the amendment due to the availability of lower cost gas at Clarington.

During the plan year, the Bue Water Energy Center (BWEC) was not yet operational. Mr. Pratt testified that once the BWEC begins operations, DTE expects to use the NEXUS capacity to serve the new plant, and in the meantime, has entered into an Asset Management Agreement (AMA) to allow a marketer to market capacity that DTE is not using, with revenues under the AMA included in the reconciliation in offset to the NEXUS capacity costs.

Mr. Coppola provided extensive testimony addressing NEXUS. He also reviewed the history of DTE Electric's agreements with NEXUS and discussed cases in which the Commission reviewed these agreements. He cited DTE Electric's 2023 plan case filing in Case No. U-21259 to show that the NEXUS transportation costs "far exceed any forecasted cost savings through the year 2027."³⁸ He quoted the Commission's April 8, 2021 order in Case No. U-20527, DTE Electric's 2020 plan case, which cautioned DTE Electric regarding future recovery of NEXUS costs as also quoted above.

Mr. Coppola cited discovery responses provided by the company in Exhibit AG-5 to show that the delivered cost of non-NEXUS gas purchases was \$4.14 per Dth while the comparable NEXUS gas purchases were \$4.80 per Dth, characterizing this as "not a

³⁸ 2 Tr 265.
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minor difference that should be dismissed as a small cost to bring a new source of gas supply to Michigan.”³⁹ Citing a confidential material in Exhibit AG-5, Mr. Coppola testified that the \$0.66/Dth cost difference equates to a \$3.5 million cost that he recommends be disallowed. He explained that his calculation follows the same method used in the DTE Gas Company Landed Cost Analysis (LCA) in Exhibit A-34.⁴⁰ He further explained his conclusions:

It is now apparent that the LCA included faulty rates for transportation services from competing pipelines to NEXUS. Unfortunately, the analysis provided misleading information to the Commission when it decided to approve the NEXUS contract. For example, as shown in Exhibit A-34, the Company and its affiliate DTE Gas, used maximum posted rates for ANR ML-7, GLGT, ANR-SW and ANR-SE, and other competing pipelines. Those pipelines actual billed rates were and have been significantly lower than the posted maximum rates. Therefore, the LCA did not give an accurate portrayal of the true incremental cost of NEXUS’ landed cost at the MichCon citygate versus competing pipelines.⁴¹

He noted that DTE Electric had not issues a request for proposal prior to entering the NEXUS agreements, and testified that the LCA “was not a serious evaluation of capacity cost options meant to minimize the cost of gas,” and recommended that the Commission “not continue to rely on this faulty and misleading information.”⁴²

Mr. Coppola also presented Exhibit AG-6 to show what he considers “the total cumulative incremental costs of the NEXUS capacity contract from November 2018 through December 31, 2021” of \$14.4 million, relative to the cost of gas delivered to Michigan by third-party marketers.⁴³ While acknowledging that the Commission has

³⁹ 2 Tr 268.

⁴⁰ 2 Tr 268.

⁴¹ 2 Tr 269.

⁴² 2 Tr 269.

⁴³ 2 Tr 270.

previously approved NEXUS-related costs, he stated his view that this approval “should not foreclose disallowance of excessive gas supply costs presented in this case.”⁴⁴

Mr. Coppola also focused on the Asset Management Agreement DTE Electric has with a marketer. He noted that the agreement was most recently amended October 11, 2021. He reviewed the confidential agreement and amendments in Exhibit AG-8, and testified that the agreement “does not provide sufficient price transparency from independent sources and raises concerns whether the Company is receiving the full spread value owed to it.”⁴⁵

Mr. Coppola also questioned whether DTE Electric needs the NEXUS contract when it relies on the Asset Manager for gas supply “and in effect is buying gas supply at the MichCon citygate.”⁴⁶ He further explained:

With capacity contracted with NEXUS, it would be expected that the Company would solicit multiple price quotes from suppliers able to deliver natural gas at Kensington and Clarington. This is the practice typically followed by gas buyers, including the Company’s affiliate, DTE Gas Company. Under this approach there is price competition among gas suppliers, clear price transparency, and assurance that the Company is paying the lowest cost for gas supply. The arrangement with the Asset Manager does not achieve those important objectives and relies entirely on the information provided by one party, the Asset Manager. This obscure arrangement should be of great concern to the Commission.⁴⁷

Mr. Coppola quoted the Commission’s September 24, 2021 order in Case No. U-20222, which directed DTE Electric to “provide a detailed review of its supply acquisition process in its next PSCR plan case,” and testified that DTE Electric did not present such a review

⁴⁴ 2 Tr 271.

⁴⁵ 2 Tr 272-273.

⁴⁶ 2 Tr 273.

⁴⁷ 2 Tr 273.

in its 2022 plan case.⁴⁸ He considered this another reason for the Commission to adopt his recommended disallowance.⁴⁹

Mr. Coppola linked his concern with the Asset Management Agreement to the company's limited utilization of the NEXUS capacity it holds. Citing Exhibit AG-10, he testified:

As stated earlier, the Company has contracted for 30,000 Dth/day of capacity with NEXUS. This translates into 10,9580,000 Dth of capacity for the year 2021. In response to discovery request AGDE-1.42c Confidential, the Company reported information showing that it only used 3,154,989 Dth of capacity to transport gas supply for its power plants during 2021. That capacity usage represents only 29% utilization of the total contracted capacity for its own use. In fact, the Company paid \$8,431,500 for the total capacity and only realized a benefit of \$2,445,135 for the capacity it used to supply its own power plants. The remaining amount of \$5,986,365 for the unused capacity was wasted, with only a portion of this amount recovered from the Asset Manager from released capacity fees and spread value revenue.⁵⁰

Again citing Case No. U-20221, he objected to what he considered DTE Electric's failure to show that the level of capacity it contracted for is in the best interests of customers, noting a net \$5,277,313 in costs DTE paid for the unused NEXUS capacity.⁵¹

Mr. Coppola disputed Mr. Pratt's testimony that the TEAL amendment resulted in a net benefit to customers. While noting that the Asset Manager did not transport any gas from Kensington but used the Clarington receipt point exclusively, he focused on the total delivered cost difference between NEXUS and non-NEXUS supply as discussed above.⁵²

⁴⁸ 2 Tr 273-274.

⁴⁹ 2 Tr 274.

⁵⁰ 2 Tr 274-275.

⁵¹ 2 Tr 275.

⁵² 2 Tr 176.

Mr. Coppola also disputed DTE Electric's contention that the NEXUS agreements provide value as a reliable baseload gas supply for the BWECC. He testified that DTE Electric did not show that "there was insufficient interstate transportation capacity available to supply the [BWECC] or any of its other power plants."⁵³ He discussed pipelines bringing gas to Michigan, and noted that DTE Gas Company "turned back 75,000 Dth/d of transportation capacity to ANR Pipeline, PEPL, and Vector" to sign up for NEXUS capacity.⁵⁴ He characterized Mr. Pratt as "engaging in revisionist history in an attempt now to justify contracting for NEXUS capacity." Mr. Coppola further disputed that DTE Electric's decisions to contract with NEXUS were justified by the development of a greenfield pipeline, characterizing it as an inappropriate goal and contending that DTE Electric should "search for the lowest cost and still reliable supply of natural gas."⁵⁵

And Mr. Coppola took issue with the subsequent analyses undertaken by DTE Electric and DTE Gas, the ICF and FTI analyses Mr. Pratt discussed as noted above, as well as Mr. Pratt's savings estimates based on those analyses. Mr. Coppola also cited the PFD in Case No. U-20528, which concluded that the FTI report did not provide a reliable estimate of cost savings attributable to the construction of the NEXUS pipeline.

Mr. Pratt provided rebuttal testimony in response to Mr. Coppola's recommendation and analysis. He opined that Mr. Coppola had repeated arguments that he presented in prior cases; Mr. Pratt listed those cases and cited testimony that DTE Electric witnesses had given in those cases in support of the reasonableness and

⁵³ 2 Tr 277.

⁵⁴ 2 Tr 277.

⁵⁵ 2 Tr 278.

prudence of the NEXUS agreements.⁵⁶ He cited the Commission's October 5, 2022 order in Case No. U-20826 and October 27, 2022 order in Case No. U-20528, testifying:

Despite the Commission conclusions set forth above and repeated litigation on the topic, Witness Coppola continues to repeat the same arguments that were presented in many previous PSCR cases, effectively disregarding the preclusive effect of the Commission's reasonableness determination concerning NEXUS and relitigating previously addressed NEXUS matters.⁵⁷

Mr. Pratt further responded to Mr. Coppola's contentions, first disputing that DTE Electric's 2013-2014 decisions were not reasonable because DTE Electric did not issue an RFP for pipeline capacity.⁵⁸ He disputed that savings from the development of a greenfield pipeline have been a mirage, citing Exhibits A-35 through A-37 and Exhibit A-41,⁵⁹ and he rejected Mr. Coppola's view that funding a greenfield pipeline is inappropriate for DTE Electric, again citing Exhibits A-35 and A-41 to show that Michigan consumers have benefitted.⁶⁰

Mr. Pratt disputed that DTE Electric had misled in the Commission in prior cases, explaining that DTE Electric had responded to the Commission's request for additional analysis by retaining FTI to update the ICF analysis:

There is no credible support for the assertion that the Company 16 somehow misled the Commission and other parties with this new report and the parties are well aware that the Commission itself encouraged the Company to present additional analysis. Furthermore, had the original report in 2015 by ICF shown \$91 million in savings, the Company would have made the same decision to contract with NEXUS to build a new pipeline connecting the Michigan natural gas markets to the Utica Marcellus region in light of the considerable benefits for DTE Electric's customers.⁶¹

⁵⁶ 2 Tr 209-211.

⁵⁷ 2 Tr 212.

⁵⁸ 2 Tr 212-213.

⁵⁹ 2 Tr 213-214.

⁶⁰ 2 Tr 216-217.

⁶¹ 2 Tr 214.

Mr. Pratt disputed that DTE is paying a “premium rate” for the new capacity, asserting that DTE Electric has demonstrated the benefits of contracting for NEXUS capacity, and further addressing Mr. Coppola’s contention that no other major utilities in Michigan have contracted for the NEXUS capacity as follows:

He has not provided any evidence or analysis to support the reasons underlying the decisions made by the other major utilities in Michigan. In addition, Witness Coppola seems to have disregarded several facts that support DTE Electric being uniquely situated to benefit from the NEXUS pipeline as compared to other Michigan utilities. First, NEXUS delivers gas directly to southeast Michigan, which is effectively DTE Electric’s service territory. NEXUS delivers gas into the DTE Gas and Vector systems, which are major gas pipelines within DTE Electric’s service territory and are systems that a majority of DTE Electric’s gas-fired plants are interconnected with, including BWEC, Renaissance, Dean, Delray, and the Dearborn Energy Center. Further, DTE Electric is the only major Michigan utility that I am aware of that recently commissioned a new, large CCGT plant such as BWEC.⁶²

Mr. Pratt also referenced his direct testimony discussing DTE Electric’s efforts to negotiate more favorable terms with NEXUS. He then characterized the TEAL amendment as a “successful renegotiation” and disputed Mr. Coppola’s conclusion that the amendment did not provide net benefits to ratepayers.⁶³

Finally, Mr. Pratt noted Mr. Coppola’s concern regarding DTE Electric’s AMA, but testified that the AMA was the product of a competitive solicitation, and further contended that Mr. Coppola had not provided evidence to establish a basis for concern regarding that agreement.⁶⁴ He noted DTE Electric’s upcoming greater need for gas deliveries with the opening of the BWEC.

⁶² 2 Tr 215-216.

⁶³ 2 Tr 219-220, 213-224.

⁶⁴ 2 Tr 221-223, 224-225.

3. Arguments of the parties

In its brief, DTE Electric relies on Mr. Pratt's testimony and argues that Mr. Coppola's recommendation "simply disregards the Commission's many prior NEXUS-related determinations."⁶⁵ Citing *Pennwalt v Public Service Commission*,⁶⁶ the company argues that the Commission should give its prior decisions preclusive effect and find that the questions of the reasonableness and prudence of the company's past decision-making have been resolved.⁶⁷

In her brief, the Attorney General argues that the Commission's prior decision in Case No. U-20528 "does not foreclose full examination and disallowance of excessive power supply costs presented in this case."⁶⁸ The Attorney General relies on the annual nature of PSCR plan review and reconciliation cases, and further argues that "evidence of high and growing power supply costs delivered through the NEXUS transportation capacity contract is alarming and warrants careful consideration by the Commission, notwithstanding prior approvals."⁶⁹ The Attorney General focuses on the Commission's April 8, 2021 order in Case No. U-20527 in arguing that the Commission "has been clear that DTE has an ongoing obligation to support cost recovery."⁷⁰

The Attorney General views Mr. Pratt's testimony and DTE Electric's discovery responses as establishing the \$0.66/Dth cost differential that Mr. Coppola focused on in

⁶⁵ DTE Electric brief, 15-16.

⁶⁶ *Pennwalt v Public Service Commission*, 166 Mich App 1, 9-10 (1988).

⁶⁷ DTE Electric brief, 16.

⁶⁸ Attorney General brief, 13-14.

⁶⁹ Attorney General brief, 14.

⁷⁰ Attorney General brief, 14-15, also citing Commission orders in Case Nos. U-20210, U-20235, U-20221, and U-20222.

calculating the \$3.5 million disallowance in Exhibit AG-5.⁷¹ She also argues that DTE Electric did not provide anything new in Mr. Pratt's rebuttal testimony.⁷²

In her reply brief, the Attorney General further addresses her contention that annual PSCR proceedings provide a right to raise continuing concerns with the NEXUS agreements:

The AG has continued to raise NEXUS cost issues in recent PSCR proceedings because, each year that the AG has examined DTE's decisions related to the pipeline, NEXUS has proven to be uneconomic for customers and DTE's projected savings have failed to materialize. While the AG recognizes DTE's desire to foreclose examination of any and all NEXUS-related costs for the life of the pipeline, the AG argues that to do so would work a grave injustice to DTE's customers and effectively prohibit them from having a seat at the table, which is ratepayers' only opportunity to examine the commodity costs they are billed for.⁷³

The Attorney General further notes, however, that she "intends to continue to take further stock of the NEXUS landscape in light of recent rulings," but "maintains her right to raise any and all future arguments related to the NEXUS pipeline, as appropriate."⁷⁴ While continuing to recommend the \$3.5 million disallowance, the Attorney General concludes:

If the Commission is unwilling to order such a disallowance in this case, the AG respectfully requests that the Commission remain cognizant of the history of NEXUS, specifically DTE's ardent arguments that low gas costs at other receptacles accessed by NEXUS would be so low as to offset the additional millions of dollars contemplated by the arrangement, an offset that has failed to materialize. The AG requests that the Commission remain cognizant of this, the very real economic burden this puts on DTE's customers, and continue to monitor NEXUS costs and ways to make the situation more tenable for customers.⁷⁵

⁷¹ Attorney General brief, 15-16.

⁷² Attorney General brief, 16.

⁷³ Attorney General reply, 5.

⁷⁴ Attorney General reply, 5.

⁷⁵ Attorney General reply, 6.

4. Conclusion

Consistent with the Commission's decisions in Case Nos. U-20528 and U-20826, discussed in subsection 1 above, this PFD finds that DTE Electric's NEXUS-related costs should be included in the plan-year PSCR cost reconciliation, without the disallowance recommended by the Attorney General. As the Commission has explained, it has reviewed DTE Electric's decision-making underlying its agreements with NEXUS, including the TEAL amendment, in multiple prior cases. Although DTE Electric does have an obligation during each plan year to pursue opportunities to reduce its PSCR costs, there is no evidence on this record that DTE Electric failed to pursue such opportunities during the plan year. This PFD concludes that the Commission's decision in the plan case which affirmed the reasonableness and prudence of DTE Electric's decision-making for the original NEXUS agreements as well as the TEAL amendment, is entitled to preclusive effect in this reconciliation.

C. Ludington unit 3 outage

The Ludington plant is owned jointly by Consumers Energy and DTE Electric. The plant has been undergoing a series of upgrades in recent years. In Case No. U-20528, the reconciliation of DTE Electric's 2020 PSCR plan, the Commission addressed DTE's responsibility for the replacement power costs associated with the extended outage at Ludington unit 3 during 2020. In its October 27, 2022 order, the Commission found DTE Electric, rather than ratepayers, should bear the cost of the replacement power associated with the extended outage, but rejected a calculation of that replacement power that included capacity costs. Similarly, the Commission held Consumers Energy

responsible in Case No. U-20526 for replacement power costs associated with the extended outage.

MCL 460.6j(13)(c) directs the Commission to disallow net increased costs attributable to a generating plant outage lasting more than 90 days “unless the utility demonstrates by clear and satisfactory evidence that the outage, or any part of the outage, was not caused or prolonged by the utility's negligence or by unreasonable or imprudent management.” Staff, the Attorney General, and ABATE argue that the Commission should disallow the replacement costs of power associated with the 2021 outage days, although they disagree on the appropriate amount of the disallowance. DTE Electric argues that it has established by clear and satisfactory evidence that its decisions were reasonable and prudent and that no disallowance is warranted.

Mr. Snyder provided direct testimony addressing the outage. Mr. Snyder was the DTE Electric employee assigned to monitor the upgrade project, describing his responsibilities as follows:

I have been DTE Electric's site representative for the major upgrade projects at Ludington. It is important for the Company to have a site representative for this major project as Ludington is over 250 miles away from Detroit, where DTE Electric's headquarters are located. As the site engineering representative, I followed all the phases of site work from the very beginning of the six major overhauls at Ludington. My job responsibilities took me overseas to witness the turbine model testing and to China and Japan for face-to-face design and technical issue resolution meetings with Toshiba engineers and their subcontractors. My site work responsibilities include engaging in routine schedule reviews, performance testing reviews, and dispute resolution.⁷⁶

He reviewed the events surrounding the planned replacement of the unit 3 discharge ring extension (DRE) that led to the 2019 failed replacement, including the decision by DTE Electric and Consumers Energy to reject the DRE, and subsequent events that resulted in Ludington unit 3 remaining in outage status throughout 2021.

To support the reasonableness and prudence of DTE Electric's actions, Mr. Snyder presented the following description of the events leading to the utilities' determination that the manufacturer needed to redesign, manufacture and transport a second DRE at no cost to the utilities:

- 1) Prior to the project, the Company and Consumers Energy performed a rigorous evaluation process that resulted in the selection of Toshiba to design, manufacture, transport, and install the systems required as part of the overhaul upgrade program.
- 2) Once Toshiba was selected, the Company and Consumers Energy structured the contract to ensure Toshiba would be held accountable for fabricating and installing components that met the design standards for fit, finish, and function and to complete the work scope within the outage timeline defined in the contract.
- 3) During the Consumers Energy-led project, the Company dedicated a support team to monitor project activity, including quality assurance and quality control procedures and adherence, as well as drawing/engineering reviews, model testing/reviews, technical report reviews, weekly outage meetings, and interactions with 3rd parties.
- 4) Ludington Unit 3 DRE inspections were performed at the factory by Toshiba in the fall of 2017, including dye penetrant testing (PT), ultrasonic testing (UT), and visual methods (VT). Furthermore, no unresolved nonconformances were reported by the third party hired by Consumers Energy and the Company to review the results of the DRE inspections.
- 5) After arrival at Ludington, the DRE was installed by Toshiba during the fall of 2019. During installation welding of the DRE by Toshiba, cracking occurred.
- 6) Multiple attempts were made by Toshiba to repair the cracking in order to minimize the duration of the outage, but repairs were unsuccessful.

7) The Company and Consumers Energy hired a third party to perform an independent comprehensive evaluation during the winter of 2020 to identify the causes of the DRE cracking. The third-party report identified improper welding and post-weld heat treatment during manufacturing at the factory overseas by Toshiba and employing a welding sequence during installation by Toshiba that imparted stresses into the DRE.

8) The DRE failed inspection and, as also recommended by the third-party engineering firm, was formally rejected.

9) The Company and Consumers Energy held Toshiba accountable for the defective DRE. The Company and Consumers Energy required Toshiba to design, manufacture, transport, and install a second new DRE at no cost, including labor and materials, to DTE Electric and Consumers Energy. Furthermore, liquidated damages for schedule delays required to complete the work were booked by the Company as provided for in the contract with Toshiba which the Company is passing through to customers as a reduction in capital project costs.⁷⁷

Mr. Snyder presented the root cause analysis conducted by MPR Associates, Exhibit A-42, further explaining that the report attributed the DRE cracking at installation to “improper welding and post-weld heat treatment at the factory by Toshiba and employing a welding sequence during installation by Toshiba that imparted stresses into the DRE.”⁷⁸

Mr. Snyder further discussed DTE Electric’s and Consumers Energy’s efforts to hold Toshiba accountable for the material, parts, labor, and outage extension costs related to the defective DRE, emphasizing as stated in step 9 above that DTE Electric booked the liquidated damages as a reduction in capital costs, testifying that this reduction will benefit customers.⁷⁹

Mr. Snyder also explained why the outage was extended beyond the July 2021 date projected in DTE’s plan case filing:

⁷⁷ 2 Tr 234-236.

⁷⁸ 2 Tr 236.

⁷⁹ 2 Tr 237.

The overhaul outage was extended due to multiple factors, including COVID-related labor resource constraints and the extent of work required to finalize the unit overhaul, which included the removal of the first and installation of a second new DRE.⁸⁰

He further described the labor constraints, which he attributed in part to the pandemic and in part to increased construction demand within Michigan. He also testified that the July 2021 date was set “prior to knowing the full extent of repairs required to remove the first new DRE and install the second.”⁸¹ He provided his opinion that “the schedule delays were not due to the Company’s unreasonable or imprudent management of the Ludington Unit 3 major overhaul project.”⁸²

Ms. Kindschy recommended a disallowance of \$1,719,525 in replacement costs of power for the Ludington unit 3 outage in 2021, with the proviso that the disallowance can be offset with any remaining damages DTE Electric has previously received or receives in the future from the contractor.⁸³ She testified that the approximately \$1.7 million replacement power cost was calculated by DTE Electric and takes into account DTE’s 49% ownership share, also citing Exhibit S-4, page 2, for the monthly breakdown. Ms. Kindschy testified that Staff’s recommendation is consistent with the Commission’s past rulings.⁸⁴

As noted above, Mr. Coppola also recommended a disallowance of \$1.7 million in replacement power costs for 2021. He explained:

From the Company’s own analysis and root cause analysis performed by its partner, Consumers Energy, it is clear that the contractor, who built and installed the discharge ring made several errors that resulted in removal,

⁸⁰ 2 Tr 238-239.

⁸¹ 2 Tr 239.

⁸² 2 Tr 240.

⁸³ 2 Tr 360-361.

⁸⁴ 2 Tr 359-361.

repairs, and ultimate replacement of the ring. This, in turn, caused the extended outage over a 2-year period and an increase in power costs of \$1,719,525 in 2021. The contractor is an extension of the Company. Ultimately, the Company is responsible for the contractors it hires to perform services. The Commission cannot hold contractors responsible for cost increases or disallowances. It can only hold the Company accountable.⁸⁵

Mr. Coppola cited a company discovery response in Exhibit AG-1 as support for his calculation of the replacement cost of power. He also cited discovery responses in Exhibit AG-2 as well as material that had been provided in Case No. U-20528. He testified that that the contractor paid liquidated damages of “at least \$4.6 million” and replaced the discharge ring extension at no cost to DTE Electric and Consumers Energy.⁸⁶ He considered that it would “unjust and unreasonable for customers to pay the cost of the replacement power if the Company is made whole for errors caused by a contractor working on behalf of the Company.”⁸⁷

Mr. Coppola also addressed Mr. Snyder’s reference to labor shortages, testifying that DTE Electric clarified in discovery that those labor shortages Mr. Snyder was referring to occurred in 2020 rather than 2021. He also cited the Commission’s October 27, 2022 order in Case No. U-20528, concluding that liquidated damages received by DTE Electric should offset the replacement costs of power. Mr. Coppola recommended that the Commission “clarify” its order to determine that “[t]he primary use of the liquidated damages should be to offset any incremental plant-related costs incurred by DTEE to identify, repair, reinstall the DRE, manage the extended outage, and return Ludington 3 to service.”⁸⁸

⁸⁵ 2 Tr 258.

⁸⁶ 2 Tr 259.

⁸⁷ 2 Tr 259.

⁸⁸ 2 Tr 260, 261.

Ms. York recommended that the Commission disallow not only the cost of replacement energy reflected in the \$1.7 million disallowance discussed above, but also the cost of replacement capacity, which she calculated as \$5.67 million. In her testimony, Ms. York reviewed the planned Ludington unit 3 overhaul and the extended outage resulting from the discovery of material defects in the DRE. She testified that her review of the root cause analysis and additional information provided by DTE Electric revealed additional details. She agreed that the extension of the outage beyond May 20, 2020 was attributable to the contractor's failure to properly design, fabricate, and install the Ludington unit 3 DRE, and further testified that the failure "could have been avoided based on information known, or knowable, to the contractor at the time it designed, fabricated and installed the Ludington Unit 3 DRE."⁸⁹

Ms. York explained why she believed DTE Electric should be responsible for the cost of the extended outage:

It is the responsibility of DTE, not its ratepayers, to ensure that contractors on the Ludington Unit 3 overhaul and upgrade perform their work correctly. This determination is consistent with regulatory principles. DTE was clearly involved in the implementation of the overhaul and upgrade of Ludington Unit 3, from the selection of the contractor to the supervision of the contractor's work. By contrast, ratepayers played no role in and had no control over either selecting the contractor for the Ludington Unit 3 overhaul and upgrade or in overseeing the contractor's fabrication and installation of the Ludington Unit 3 DRE. Therefore, it was DTE (and Consumers), not ratepayers, that were in a position to ensure the Ludington Unit 3 overhaul and upgrade was properly implemented including the proper design, fabrication and installation of the Ludington Unit 3 DRE.⁹⁰

⁸⁹ 2 Tr 334.

⁹⁰ 2 Tr 335.

Ms. York also explained that DTE Electric and Consumers Energy are the only ones in a position to seek damages for the contractor errors, and that assigning cost responsibility instead to ratepayers would diminish the company's incentive to aggressively pursue its contractor for reimbursement of costs resulting from their actions, and to ensure proper performance of contractor actions.⁹¹

Ms. York then explained her determination of the net power supply costs attributable to the DRE-related outage extension, beginning with the premise that "DTE's share of Ludington Unit 3 was unavailable in calendar year 2021 to store and release energy." She testified that this affected DTE Electric's purchases and sales from and to the MISO day-ahead and real-time markets, and in addition, the outage resulted in the disqualification of unit 3 from receiving Zonal Resource Credits (ZRCs) for the MISO 2020/2021 and 2021/2022 planning years.⁹² Ms. York acknowledged that DTE Electric calculated a replacement power cost of \$1.7 million, but testified that the capacity component should also be considered.

Ms. York considered three elements in evaluating the capacity cost component: capacity purchases of ZRCs through the MISO Planning Resource Action (PRA), and the Zonal Delivery Benefit (ZDB) credits and Zonal Delivery Charge (ZDC) costs based on the auction results.

Ms. York testified that DTE Electric was a net purchaser of 204.9 MW of capacity in Miso Zone 7 for the first five months of 2021 at the capacity price of \$257.53 per MW-day, which she equated to a total cost of \$7,968,390.⁹³ She testified that but for the

⁹¹ 2 Tr 336.

⁹² 2 Tr 336-337.

⁹³ 2 Tr 338.

outage, DTE would have paid \$29,924 for capacity, 39.6 MW at a price of \$5.00 per MW-day, with the difference approximately equal to \$7,938,000. She also noted that during the same time period, DTE Electric received offsetting ZDB credits of \$4.08 million that she attributed almost entirely to the extended outage, and incurred ZDC costs of \$1.7 million. Subtracting the ZDBs and adding the ZDCs to the \$7.9 million incremental capacity cost, she calculated total capacity costs attributable to the outage to be \$5.57 million for the first five months of 2021, as summarized in her Exhibit AB-2, page 2.⁹⁴

Using a similar analysis, Ms. York also calculated the capacity costs for the last seven months of 2021, which are the first seven months of the MISO 2021/2022 plan year. She testified that DTE Electric was a net seller of 104.6 MW of capacity in that period, at a price of \$5 per MW-day, but would have been a net seller of an additional 165.3 MW at a price of \$3.99 per MW-day. Turning to the credits, she testified that DTE Electric would have received a credit that was \$41,365 lower but for the Ludington unit 3 extended outage. She estimated a total capacity cost of \$0.078 million attributable to the Ludington extended outage for those seven months.⁹⁵

Putting the capacity cost estimates for each of the MISO planning years together with the estimated capacity costs, she recommended a total disallowance of \$7.36 million.⁹⁶ Her calculations are summarized on Exhibit AB-2, page 1. She also provided an explanation of her derivation of the MISO capacity prices had the extended outage not occurred, including her reliance on the MISO PRA workbook, and adoption of capacity

⁹⁴ 2 Tr 338-339.

⁹⁵ 2 Tr 340.

⁹⁶ 2 Tr 341.

import and export limits and local clearing requirements.⁹⁷ She explained that once she was able to replicate the actual results using the available information on available capacity, she revised the calculations to include the Ludington unit 3 capacity “at an offer price of zero, “because it is very likely either self-scheduled or provided through a [Fixed Resource Adequacy Plan] by Consumers and DTE since there is very likely no significant cost that could avoided by Consumers and DTE by not providing capacity from Ludington Unit 3 to MISO in a single given planning year assuming Ludington Unit3 is available to provide that capacity for that planning year.”⁹⁸ Her price calculations for each planning year are also presented in Exhibit AB-5.

Mr. Snyder provided rebuttal testimony objecting to any disallowance for the Ludington unit 3 outage extension. While mentioning only Mr. Coppola and Ms. York, he contended that the proposed disallowances amount to a “standard of omniscience or perfect performance with respect to the Company’s oversight of its vendors,” while he maintains that no party identified any unreasonable or imprudent action taken by DTE Electric.⁹⁹ He testified that “there were no precursor indications prior to the DRE cracking that could have alerted the Company that the DRE had structural issues,” and further, that “it is unreasonable to expect the Company to duplicate every effort of the contractor to validate there would not be an issue in the multitude of major components on a Ludington unit.”¹⁰⁰ He reiterated his view that DTE Electric’s actions have been

⁹⁷ 2 Tr 342-344.

⁹⁸ 2 Tr 342.

⁹⁹ 2 Tr 243.

¹⁰⁰ 2 Tr 244.

reasonable and prudent throughout the overhaul. He also noted that DTE Electric is holding the contractor accountable for schedule delays and replacing the defective DRE.

Mr. Bidlingmaier addressed Ms. York's capacity cost analysis in his rebuttal testimony. He testified that "[a]ttributing the MISO PRA clearing at CONE to a single resource's absence is an oversimplification of a large and complex market."¹⁰¹ He identified several factors that could impact the Zone 7 capacity resources and local clearing requirement:

The amount of Zone 7 capacity resources could be increased by local suppliers in the state having more resources physically located in zone to meet their [Planning Reserve Margine Requirement]. The [Local Clearing Requirement (LCR)] is determined annually by MISO through their Loss of Load Expectation (LOLE) analysis. The LOLE analysis updates the Capacity Import Limit (CIL) and the Local Reliability Requirement (LRR) which are used together with the Zonal Coincident Peak Forecast (ZCPF) to determine the LCR for a zone. Changes to any of these parameters have significant effects on the outcome of the capacity auction price.¹⁰²

Noting the substantially different impacts Ms. York determined for planning year 2020/2021 compared to 2021/2022, Mr. Bidlingmaier asserted that if the shorting in the 2020/2021 planning year was attributable to the Ludington outage, one would expect to see a similar impact in the following planning year. He also focused on Ms. York's acknowledgement that a decrease in the LCR was a factor that reduced the auction-clearing capacity price between the 2020/2021 and 2021/2022 plan years, contending correspondingly that a higher LCR was a contributing factor to the higher clearing price in the 2020/2021 plan year.¹⁰³ Mr. Bidlingmaier then testified that the 2022/2023 clearing

¹⁰¹ 2 Tr 46.

¹⁰² 2 Tr 47.

¹⁰³ 2 Tr 48.

price, which included Ludington unit 3 as a resource, was back up to \$236.66 per MW-day.

Mr. Bidlingmaier also cited the Commission's order in Case No. U-20528, DTE Electric's 2020 PSCR reconciliation, rejecting ABATE's argument that capacity costs should be included in the replacement power costs associated with the Ludington unit 3 outage. He noted that ABATE had not made the same argument in Consumers Energy's 2020 reconciliation, although the Ludington unit 3 outage was also an issue in that case, Case No. U-20526.¹⁰⁴

In its brief, DTE Electric relies on Mr. Snyder's and Mr. Bidlingmaier's testimony in arguing that it should not be responsible for the replacement power costs associated with the Ludington outage extension, and that the Commission should not consider capacity costs as part of the replacement costs of power associated with the outage.¹⁰⁵ It argues that the Attorney General and ABATE are essentially asserting a strict liability standard that disregards whether the company's actions were reasonable and prudent, arguing that "Company Witness Snyder dispelled any notion that the Ludington Unit No. 3 outage was unreasonable or imprudent," and "confirmed that there were no precursor indications prior to the DRE cracking that could have alerted the Company that the DRE had structural issues."¹⁰⁶

Citing Ms. Kindschy's testimony, Staff argues in its brief that the Commission should disallow \$1.7 million in replacement power costs associated with the outage.¹⁰⁷

¹⁰⁴ 2 Tr 49.

¹⁰⁵ DTE Electric brief, 4-5, 11-13,

¹⁰⁶ DTE Electric brief, 12-13, also citing Exhibit A-42.

¹⁰⁷ Staff brief, 5, 7-8.

Staff cites the Commission's decision in Case No. U-20528, asserting that Staff's recommended disallowance is consistent with that decision. In its reply brief, Staff further argues that DTE Electric has not contended that any of the information or circumstances regarding the outage changed since the Commission issued that decision.¹⁰⁸ Staff notes in both its brief and reply brief that DTE should be allowed to offset the disallowance with any damages received from the contractor.

In her brief, the Attorney General relies heavily on Mr. Coppola's testimony in arguing that the Commission should disallow \$1.7 million in replacement power costs.¹⁰⁹ Citing the Commission's order in Case No. U-20528, as well as the Commission's orders in Case Nos. U-20220 and U-20526 involving Consumers Energy's PSCR costs, the Attorney General argues:

The pertinent point remains that the manufacturer and contractor responsible for the installation of the defective part made errors in design and installation that led to the extended outage and therefore directly increased power costs. As it did in U-20528, DTE is once again attempting to include increased costs related to the extended outage in this reconciliation. The only change from U-20528 to this case is the amount of the costs. Contractors are an extension of the Company, as they are hired by the Company and the Company is responsible for the services they perform.¹¹⁰

The Attorney General addressed Mr. Snyder's rebuttal testimony, disputing his contention that this disallowance imposes a standard of omniscience or perfect performance:

As noted by the AG in U-20528, this is false. The vendor made several errors and caused multiple delays in the installation of the defective ring. The Company is responsible for the vendor's performance, since it was the Company that hired and supervised the installation of the ring. The vendor is an extension of the Company and holding the Company accountable for incremental costs for the poor performance of the vendor is not holding the

¹⁰⁸ Staff reply, 4-5.

¹⁰⁹ Attorney General brief, pages 6-10.

¹¹⁰ Attorney General brief, page 6.

Company to a standard of omniscience or perfect performance. It is simply a matter of holding the Company accountable to its captive customers who do not get to select contractors or oversee their work.¹¹¹

The Attorney General also seeks “clarification” of the Commission’s order in Case No. U-20528 regarding the use of liquidated damages, as explained by Mr. Coppola.¹¹²

ABATE argues in its brief for the larger disallowance recommended by Ms. York that also includes a component for increased capacity costs. ABATE argues that it was DTE Electric’s responsibility, rather than that of its ratepayers “to ensure that the Contractor DTE hired for the overhaul and upgrade of Ludington unit 3 performed its work correctly,” and further, that “it is DTE, not its ratepayers, who is in a position to seek damages for the contractor’s failure to properly design, fabricate, and install the Ludington Unit 3 DRE.”¹¹³ ABATE posits that if ratepayers bear the financial responsibility for contractor imprudence, “DTE would have little incentive to ensure its contractors properly perform,” or to pursue the contractors for reimbursement.¹¹⁴ After reviewing the events surrounding the outage, ABATE references prior Commission orders, including the Commission’s order in Case No. U-20528 as well as older decisions finding utilities responsible for replacement power costs.

ABATE argues that in addition to the \$1.7 million in replacement power costs recommended by Staff and the Attorney General, the Commission should also disallow the capacity costs calculated by Ms. York. ABATE reviews her analysis, specifically discussing additional DTE Electric discovery responses in Exhibit AB-6, pages 1 and 2.

¹¹¹ Attorney General brief, page 8.

¹¹² Attorney General brief, page 7-8.

¹¹³ ABATE brief, 1.

¹¹⁴ ABATE brief, 2.

ABATE argues that DTE has acknowledged that a generation outage may impact a zone's ability to meet its LCR, and that if a zone does meet its LCR, the clearing price for capacity in the MISO auction is set at the cost of new entry (CONE).¹¹⁵

In its reply brief, DTE Electric expounds on its argument that MCL 460.6j(13)(c) does not create a strict liability standard, also addressing prior Commission decisions under this section, including those cited by ABATE.¹¹⁶ DTE Electric also reiterates its reliance on Mr. Snyder's testimony regarding the reasonableness and prudence of the company's actions, and maintains its objection to ABATE's capacity cost disallowance based on Mr. Bidlingmaier's testimony as well as the Commission's order in Case No. U-20528 rejecting ABATE's similar contention.¹¹⁷ Regarding ABATE's capacity cost calculation, DTE Electric further argues that "ABATE persists in debating the virtually unknowable, geographically vast, and dynamic electrical and market operations at MISO," arguing that ABATE's disallowance relies on speculative assumptions and hypothesis.¹¹⁸

First, this PFD concludes that the Commission's prior decision in Case No. U-20528 is controlling. In particular, the Commission found that DTE Electric, rather than its ratepayers, should bear the cost of the replacement power associated with the extension of the Ludington unit 3 outage. DTE Electric did not provide new evidence or evidence of unintended consequences in this case that would call for reconsideration of that determination. Additionally, this PFD concludes that the Commission's prior decision in Case No. U-20528 is also controlling regarding the calculation of replacement power

¹¹⁵ ABATE brief, 14-15.

¹¹⁶ DTE Electric reply, 4-7, 11-12.

¹¹⁷ DTE Electric reply, 12-15.

¹¹⁸ DTE Electric reply,

costs. In particular, the Commission clearly rejected estimation of incremental capacity costs associated with the outage. Nevertheless, for completeness, DTE Electric's claim that it has provided clear and satisfactory evidence of the reasonableness and prudence of its management is discussed further below, as is ABATE's contention that capacity costs should be considered in determining the replacement cost of power.

Regarding DTE Electric's responsibility for replacement power costs, as the parties recognize, subsection 13(c) of MCL 460.6j requires DTE Electric to show by clear and satisfactory evidence that an outage of over 90 days was not caused or prolonged by the utility's negligence or by unreasonable or imprudent management. While DTE Electric contends that its actions were reasonable and prudent, it undeniably permitted the flawed DRE to be installed. While DTE Electric blames the contractor, DTE Electric has not established that the design and manufacturing errors could not have been detected sooner; instead, it has established that DTE Electric and Consumers Energy were involved at least in monitoring the design, manufacturing, and installation processes, that some testing was performed prior to the installation, and that eventually efforts at repair were abandoned and a new DRE manufactured. And while the record contains a root cause analysis in Exhibit A-42 of the manufacturer's errors, missing is a "root cause analysis" of the failure to detect the deficiencies at an earlier point in time. Indeed, a review of this exhibit does not establish the absence of information that could have alerted DTE Electric to a potential problem. Moreover, Mr. Snyder's testimony, while sincere, cannot be considered objective and does not constitute "clear and satisfactory evidence" as called for by MCL 460.6j. Instead, key to DTE Electric's explanation of the reasonableness and prudence of the steps it took is the protection built into the contract

and the company's efforts, along with Consumers Energy, to enforce those provisions. If DTE Electric indeed built in adequate contractual protections, it should not object to holding the ratepayers harmless for replacement power costs, consistent with the Commission's order in Case No. U-20528.

In contending that it is being held to a strict liability standard, DTE Electric relies heavily on the Commission's December 6, 2011 decision in Case No. U-15664-R. In that Wisconsin Electric Power Company (WEPCo) PSCR reconciliation for the 2009 plan year, the Commission reviewed information regarding a 130-day outage at an Oak Creek unit, and found that WEPCo should not be responsible for the replacement cost of power associated with the outage. In that case, there was limited information regarding the cause of the outage; it was in part attributable to a defective valve stem that had been installed in 2007. The defect was a latent defect that could not have been discovered without "destructive testing." The outage was also in part attributable to cracks in the steam chest, where the record showed only that the problems with the steam chest may have been due to improper procedures employed by a subcontractor.

The Commission described WEPCo's argument in that case in part as follows:

The company maintains that the problem could not have been identified other than during an outage. **WEPCo contends that it was in no position to supervise the original offsite manufacture of the steam chest and the valves by the vendor's subcontractors at various locations around the country. 2 Tr 124-125. WEPCo points out that a generator has millions of parts.** WEPCo says that it should not be held liable for its vendor's subcontractors' offsite manufacturing problems that were outside of the utility's reasonable control.¹¹⁹

¹¹⁹ December 6, 2011 order, Case No. U-15664-R, page 15, emphasis added.
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In finding that WEPCo should not be responsible for the replacement power costs, the Commission explained:

The Mines failed to show that all of the Oak Creek outages lasted longer than 90 days, or that all of the replacement power costs were due to the utility's negligence. The ALJ found that WEPCo was diligent in its pursuit of a solution to the steam chest and valve problems, and brought the unit back online as soon as possible. The weight of the evidence supports WEPCo's claim that it could not have predicted or averted the valve problems through reasonable measures. **On balance, the Commission finds that it is not reasonable to expect a utility to be able to oversee the manufacture of all of the parts of a generator, particularly parts manufactured offsite by a subcontractor, where the utility has reasonable grounds for confidence in its prime contractor and no reason to suspect substandard performance from subcontractors.** In light of the identified source of the problem and the ALJ's findings regarding the company's diligence, the Commission finds in favor of inclusion of the replacement power costs for the extended OC6 outage.¹²⁰

In contrast to the circumstances presented in that case, the circumstances surrounding the Ludington unit 3 outage show that Consumers Energy and DTE Electric understood this was a once-in-a-plant-lifetime overhaul,¹²¹ that they "structured the contract to ensure Toshiba would be held accountable for fabricating and installing components that met the design standards for fit, finish, and function and to complete the work scope within the outage timeline defined in the contract,"¹²² that the utilities' supervisory activities included dedicating "a support team to monitor project activity, including quality assurance and quality control procedures and adherence, as well as drawing/engineering reviews, model testing/reviews, [and] technical report reviews,"¹²³ and additionally hired a "third party . . . to review the results of the DRE inspections."¹²⁴

¹²⁰ December 6, 2011 order, Case No. U-15664-R, page 17, emphasis added.

¹²¹ See DTE Electric brief, page 11.

¹²² Snyder, 2 Tr 234-235.

¹²³ Snyder, 2 Tr 235.

¹²⁴ Snyder, 2 Tr 235.

Thus, in this case, the record is clear that DTE Electric understood the potential risks, believed it had protected itself and derivatively its ratepayers from potential design and manufacturing defects, and had some significant ability to supervise and evaluate the manufacturing process.

Not only did DTE Electric assert that, along with Consumers Energy, it structured the contract to hold Toshiba accountable, DTE Electric further asserted that the companies “held Toshiba accountable for the defective DRE.”¹²⁵ Accountability is a broad term that includes protecting ratepayers from the cost of replacement power. To the extent that actual costs to ratepayers may exceed the stipulated damage amounts, DTE Electric did not establish that it would have been unable to obtain greater protection, or what the cost of additional manufacturer’s liability would have been. Instead, it considers its contract negotiations to be an element of its reasonable and prudent decision-making, featuring in Mr. Snyder’s discussion in both his direct and rebuttal testimony as discussed above. Given the centrality of this claim to the company’s demonstration of its reasonableness and prudence, and the lack of clear and satisfactory evidence that the outage extension could not reasonably have been avoided, this PFD thus finds that DTE Electric has established only that its decisions were reasonable and prudent to the extent that it has protected ratepayers from the adverse consequences of the extended outage.

Turning to the amount of replacement power costs, in its October 27, 2022 order in Case No. U-20528, the Commission explained its rejection of ABATE’s incremental capacity cost argument, referencing its August 11, 2022 order in Case No. U-20526:

¹²⁵ Snyder, 2 Tr 236.
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[T]he Commission continues to find the argument that DTE Electric incurred additional capacity costs as a direct result of the Ludington Unit 3 outage extension unpersuasive. As the Commission stated in its August 11 order in Consumers' 2020 PSCR reconciliation, "it cannot be ascertained from the record evidence that the Unit 3 outage extension was the sole reason for the 2020/2021 clearing pricing being set at CONE, or that even if it was the sole cause, offsetting the disallowance would be appropriate." August 11 order, p. 15. As the ALJ, Attorney General, and DTE Electric noted in the present case, "the MISO auction process involves several generating resources in Michigan's Lower Peninsula and other factors that can have a profound effect on the outcome of the auction price." 2 Tr 575; see also, 2 Tr 573-574; PFD, p. 93; August 11 order, p. 15.¹²⁶

This PFD finds that the same question of the 2020/2021 MISO planning year is raised in this case. As DTE Electric notes, there is a significant difference between Ms. York's estimate of incremental capacity costs for the 2020/2021 planning year and the 2021/2022 planning year. That difference is essentially attributable to the capacity auction clearing price being set at CONE, just as the Commission observed in Case Nos. U-20528 and U-20526. While appreciating that Ms. York was able to reproduce the auction-clearing price given the resources shown in the MISO workbook she relied on, that exercise does not alter the conclusion that "it cannot be ascertained from the record evidence that the Unit 3 outage extension was the sole reason for the 2020/2021 clearing price being set at CONE," or that a reliable determination can be made regarding the capacity costs that DTE Electric would have incurred in the absence of the outage, given the myriad events that could have transpired, had Ludington unit 3 been fully operating.

Finally, turning to the Attorney General's request for clarification of the Commission's October 27, 2022 order in Case No. U-20528, this PFD concludes that no clarifying language is required regarding the Commission's determination that DTE

¹²⁶ October 27, 2022 order, page 38.

Electric may offset its responsibility for the replacement costs of power with proceeds received from the contractor. Mr. Coppola and the Attorney General argue that DTE Electric may have incurred additional capital costs associated with the Ludington outage and that the proceeds should first be used to address such costs. This record does not show what those costs are, nor does a review of the Commission's order in Case No. U-20528 reveal any ambiguity that requires clarifying. This PFD finds that it is reasonable for the Commission to allow DTE Electric to offset the replacement costs of power this PFD recommends be disallowed in this reconciliation with accountability payments by the contractor.

D. Trenton Channel Unit 9

Staff also recommended a disallowance associated with two of the three outages at Trenton Channel unit 9 during the plan year. Ms. Kindschy testified that DTE Electric's after-outage root cause analysis attributed the root cause of the December 23, 2020 to January 5, 2021 outage was attributed to corrosion fatigue, with a conclusion that DTE Electric had not followed its "boiler layup procedure" at times when the unit is placed in economic reserve. She further cited essentially the same cause underlying the unit outage from June 1 to June 8, 2021, and the outage from July 22, 2021 to July 31, 2021.¹²⁷ She cited the information DTE Electric provided as included in Exhibits S-5 and S-6. She explained that Staff recommends a disallowance of replacement power costs for the June and July outages, noting that there were no replacement power costs associated with the January outage:

¹²⁷ 2 Tr 362-363.
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From the information reviewed, Staff concluded that DTE Electric was not following its procedures for boiler layup at Trenton Channel Unit 9 during the three outages identified. Furthermore, the issue was identified in the first outage that occurred in January 2021 and yet it continued into the outages that occurred in both June and July 2021.¹²⁸

As noted above, Mr. Nichols presented the revisions to the reconciliation calculations to reflect Staff's disallowances. In its brief, Staff relies on Ms. Kindschy's testimony in arguing that the Commission should disallow \$314,287 in replacement power costs associated with the outages.¹²⁹

Mr. Dugan provided rebuttal testimony addressing Ms. Kindschy's recommendation. He testified that the June and July 2021 tube lead outages "were caused by long-term boiler cycling wear and tear **and not by improper boiler layup.**"¹³⁰ Mr. Dugan cited his "decades of experience in power plant operations and maintenance" as an engineer. He further asserted that Staff did not consider "persuasive scientific evidence" DTE Electric had provided in discovery, rather than what he characterized as "high-level short form report entries from the Company's outage reports that are contradicted by further scientific analysis."¹³¹ He agreed that the outage reports characterized boiler layup as the cause of the tube leaks, but testified that the metallurgical analyses "confirm[] that failures were caused by corrosion fatigue due to age and boiler cycling."¹³² He presented Exhibits A-50 through A-52 to show these analyses that were provided to Staff.

¹²⁸ 2 Tr 362-363.

¹²⁹ Staff brief, 9-10.

¹³⁰ 2 Tr 113, emphasis added.

¹³¹ 2 Tr 114.

¹³² 2 Tr 114.

Mr. Dugan explained the long-term cycling stress he considers the cause of the corrosion fatigue:

In the bottom ash area of the boiler where the June and July 2021 Trenton Channel Unit 9 boiler tube failures occurred, the boiler tubes are attached to a scallop bar seal membrane that by design prevents air ingress into the boiler. The scallop bars heat up and cool down at different rates than the boiler tubes and this causes thermal stresses to develop in the tubes at the scallop bar attachment areas. Eventually, the accumulated damage that occurs over many thermal cycles results in cracks that initiate on the inside diameter (ID) surface and propagate to the outside of the boiler tube, resulting in a boiler tube leak. This leak will be detected by plant operators and the unit will be removed from service due to the safety hazard associated with hot pressurized water flashing to steam outside of the boiler.¹³³

He included three pictures in his testimony taken from the reports in Exhibit A-51 and A-52 as confirmation that the tube leak failures were caused by corrosion fatigue from thermal cycling,¹³⁴ further explaining what the pictures demonstrate as follows:

[T]he tube leaks occurred near the welded attachment points to the seal scallop bars, which, as explained above, are initiated by differences in thermal growth rates of the boiler tubes and scallop bars during boiler startup and shutdown events.¹³⁵

Mr. Dugan also cited the report in Exhibit A-51 to show that “corrosion fatigue at the boiler tube to scallop bar weld is a known issue at the Trenton Channel Power Plant.”¹³⁶

Mr. Dugan then described the characteristics he would expect to observe for a tube affected by improper layup:

In my four decades as a power plant engineer for the Company, I’ve come to understand that tubes affected by improper layup develop general wall loss and/or pitting on the inside diameter of the tube rather than the observed corrosion fatigue cracking mechanism. Pitting is caused by

¹³³ 2 Tr 115.

¹³⁴ 2 Tr 116-118.

¹³⁵ 2 Tr 115.

¹³⁶ 2 Tr 118.

localized corrosion that leads to random holes on the inside surface of a boiler tube.¹³⁷

He also presented a picture to show the pitting he described, stating that at Trenton Channel, the leaks were caused by cracking not pitting.¹³⁸ He further reviewed the report in Exhibit A-51, focusing on its discussion of the difficulty of identifying corrosion fatigue, to show that DTE Electric could not reasonably have taken further action to prevent the June and July boiler failures.¹³⁹

In its briefs, DTE Electric reiterates Mr. Dugan's testimony, disputing that failure to follow the layup procedures was responsible for the tube leaks. DTE Electric characterizes Staff's position as "based on an apparent misunderstanding of a technical issue associated with the two outages,"¹⁴⁰ arguing that Mr. Dugan's testimony established the reasonableness and prudence of the company's actions. In its reply brief, DTE Electric addressed Ms. Kindschy's testimony in more detail, arguing that the root cause analyses she cited are taken from "event reports" and "represent the initial conclusions regarding the relevant event." It cites Mr. Dugan's testimony in arguing that "subsequent metallurgical testing revealed a different actual root cause" for the tube failures, that was "unrelated to boiler lay-up procedures and was otherwise unavoidable."¹⁴¹ DTE Electric quotes Mr. Dugan's testimony extensively, and discusses the pictures he presented, in arguing that DTE Electric's actions were reasonable and prudent.¹⁴² The company maintains:

¹³⁷ 2 Tr 119.

¹³⁸ 2 Tr 120.

¹³⁹ 2 Tr 121-122.

¹⁴⁰ DTE Electric brief, 4; also see pages 9, 11, 17, and 24.

¹⁴¹ DTE Electric reply, 17.

¹⁴² DTE Electric reply, 16-20.

In a nutshell, improper boiler layup causes pitting and wall loss on the inside diameter of the boiler tube while the metallurgical reports associated with the June and July 2021 boiler tube leak outages show cracking caused by thermal stresses and no general wall loss or pitting damage on the inside diameter of the boiler tube. (2T 118-120; See Figures 4 and 5; See Exhibits A-51 and A-52)¹⁴³

In its reply brief, Staff argues that Mr. Dugan's testimony was not persuasive:

DTE Electric's initial brief glosses over the short-form statements regarding boiler layup procedures, saying that its witness cleared up the actual root cause without any facts to demonstrate that boiler layup procedures not being followed were non-contributory. (DTE Electric's Initial Brief, p. 11.) DTE Electric's rebuttal witness Dugan stated that improper boiler layup procedures result in pitting not cracking, and he does not see pitting on the boiler. Yet, the forms close to the time of the outage, written by those present, indicate a belief that the improper layup procedure did contribute to the outage. Staff submits that it is reasonable to conclude that the outages were caused in part by the admitted improper boiler layup procedures.

This PFD finds that DTE Electric should be held responsible for the replacement costs of power associated with the June and July outages, based on Ms. Kindschy's testimony. As shown in Exhibit S-6, and as quoted by Ms. Kindschy, DTE Electric's Root Cause Analysis (RCA) in the "Event Reports" provided to Staff clearly attribute the tube leaks both to corrosion fatigue and to the failure to follow the boiler layup procedures. For the outage beginning December 23, 2020, under "RCA Summary," DTE's Event Report states: "Boiler layup procedure needs to be followed when boiler is in economic reserve for extended time periods. The tube failure was caused by corrosion fatigue. The tube failure is attributed to the same cause [sic] majority of 2020 failures."¹⁴⁴ For the June outage, the "RCA Summary" on the Event Report states: "Unit 9 boiler is at or near end

¹⁴³ DTE Electric reply, 18-19, emphasis in original.

¹⁴⁴ Exhibit S-6, page 1. Note that the "Date of RCA" is shown only as "Date Approved," and "No Further Investigation Required" is noted.

of life for some boiler tubing. The corrosion fatigue issues that TCPP Unit 9 have been experiencing as of late is due to improper boiler lay-up during economic reserve status.”¹⁴⁵ For the July outage, the Event Report states as the RCA Summary: “Tube leak caused by corrosion fatigue/unit cycling.”¹⁴⁶ This report reiterates the “countermeasures” identified in the prior reports, stating: “Decrease unit cycles as much as possible and implement proper boiler lay-up during long off-cycle time frames.”

In contrast, as Staff argues in its reply brief, the material Mr. Dugan presented in his rebuttal testimony does not establish that failure to follow boiler lay-up procedures did not cause or contribute to the outages. There is little text to the documentation in the “ESO Metallurgy Abbreviated Lab Reports” that are included in Exhibits A-51 and A-52. At page 1 of Exhibit A-51, it does state that: “This leak was a longitudinal crack and could have split open further, it was good that the plant assessed the situation and [brought] the unit down.” The report also notes that a section of the top of the tube was removed at the plant. Exhibit A-51, page 3. On the picture of the tube section after cleaning in Figure 3, it shows an interior longitudinal crack and a significant irregularly shaped hole in the exterior of the tube, with the note that:

1.5” long longitudinal crack was present on the ID just above the seal weld for the scallop bar. The OD damage was eroded and widened from leaking during operation.

Exhibit A-52 has no accompanying text that is similar to the text included in Exhibit A-51, but is labeled “Preliminary Pictures.” A review of these documents shows no statements

¹⁴⁵ Exhibit S-6, page 2. Note that the “Date of RCA” is shown only as “Date Approved,” and “No Further Investigation Required” is noted.

¹⁴⁶ Exhibit S-6, page 3. Note that the “Date of RCA” is shown only as “Date Approved,” and “No Further Investigation Required” is noted.

excluding the failure to follow boiler layup procedures as a contributing cause, and no statements indicating the absence of pitting in the tubes. Indeed, the pictures appear to show pitting on the interior surfaces,¹⁴⁷ and Mr. Dugan did not testify that no pitting was present; rather, he disputed that it was a cause. A review of the material presented by Mr. Dugan does not support his contention that “Staff appears to give no consideration to the persuasive scientific evidence included in the Company’s discovery responses that actually analyze and explain the technical root causes of the tube leaks,” or his contention that the information in Exhibits A-51 and A-52 is “further scientific analysis” that “contradicts” the reports in Exhibit S-6. This PFD notes that Mr. Dugan did not provide the dates of approval of the reports in Exhibit S-5.

In attempting to determine the preponderance of the evidence in the presence of ambiguity, the ALJ notes that none of the individuals who prepared the reports in Exhibit S-6 testified, or appeared in any way to have retracted the conclusions they presented in their reports. Nor does the record establish that the lab reports Mr. Dugan and DTE Electric now rely on were prepared after the undated Event Reports in Exhibit S-6. Finally, DTE Electric made no effort to establish that it complied with boiler layup procedures. Given the known corrosion failure issues with the tubes at Trenton Channel, this PFD finds that the most reasonable interpretation of the language in the Exhibit S-6 “Event Reports” is that the boiler layup procedures are designed to minimize the risk of leaks in the presence of corrosion failure. For these reasons, this PFD finds that a preponderance of the evidence reflects that DTE Electric’s failure to follow its boiler layup procedures

¹⁴⁷ See Exhibit A-51, page 4, Figure 3 and Exhibit A-52, page 3.

contributed to the tube leaking and that DTE Electric should be responsible for the replacement cost of power as Staff argues.

E. Trona Costs

Trona is one of the sorbents DTE Electric uses in coal-fired generating plants to maintain environmental compliance. The Attorney General argues that the Commission should disallow \$969,762 of DTE Electric's reported \$3.81 million in expenditures for Trona in 2021.

Mr. Marietta presented DTE Electric's 2021 sorbent costs and volumes in Exhibit A-6, including a comparison to the plan case projections, including trona, powdered activated carbon (PAC) and calcium bromide (CaBr). This exhibit shows that DTE Electric projected in the plan case that it would spend \$5.23 million for 20,853 tons of trona, but actually spent \$3.81 million for 9,906 tons of trona. In his direct testimony, he specifically discussed the lower volumes, noting that DTE Electric's plan case forecast was based on PROMOD, but in nominating volumes under its supplier contract, DTE Electric had nominated only 9,895 tons, recognizing by that point that its PROMOD forecasts for trona use were historically overstated.¹⁴⁸ Mr. Marietta testified that the 2021 actual costs included payments made in 2021 for trona supplied in 2020, which he characterized as an "overlap . . . consistent with prior years."¹⁴⁹ And he explained components of the cost of trona as including the product cost, which has both a fixed component based on the nominated quantity, as well as terminal charges and freight charges under the company's contract, and he testified that "due to increased demand during peak months and the

¹⁴⁸ 2 Tr 131-132.

¹⁴⁹ 2 Tr 132.

need for trona to be shipped from other terminals, there were additional costs incurred of \$43,478.”¹⁵⁰

Based on the figures in Exhibit A-6, Mr. Coppola calculated that DTE Electric spent \$385 per ton on trona in 2021, while its plan case projected a cost of \$251 per ton. Citing discovery requests and responses in Exhibit AG-3, Mr. Coppola testified:

In discovery, the Company was asked to provide additional cost details to explain why Trona usage declined 10,947 tons, or 53%, from the plan volume, while the expense only declined by \$1,421,366, or 27%. The Company was also asked to provide the calculations and components of both the planned and actual expense for 2021. In response to discovery request AGDE-1.25c and 1.25f, the Company provided the actual prices paid per ton in 2021 for fixed costs, Trona product, terminal and freight costs, and other miscellaneous costs. However, in the response to those discovery requests and also a follow up discovery request AGDE-3.67a, the Company could not provide the cost components and calculations of the Trona expense to permit an in-depth analysis of the volume and expense variances between actual and planned amounts.¹⁵¹

Looking at detail DTE Electric provided regarding fixed cost, product cost, terminal, and freight costs as shown on page 1 of Exhibit AG-3, Mr. Coppola concluded that DTE Electric had accounted for \$2.84 million of the \$3.81 million reported 2021 expenditure, and considered the remainder, approximately \$970,000, to be unsupported. His calculations of the unsupported amount is shown in his Exhibit AG-4.¹⁵²

In rebuttal, Mr. Marietta objected to the recommended disallowance of the approximately \$970,000. He emphasized the need for trona to maintain environmental compliance, the fluctuation in use that DTE Electric described in Exhibit AG-3, and explained variables that impact the supply and transportation of trona as follows:

¹⁵⁰ 2 Tr 132.

¹⁵¹ 2 Tr 262.

¹⁵² 2 Tr 262-263.

There are also variables that impact the supply and transportation of trona. While there are fixed costs associated with the Company's contract with the trona supplier, the contract requires the Company to pay "actual charges related to freight and transportation at time of sale". The Company makes plans for trona use based on expected operation but does not have unlimited storage for trona and cannot predict every variation in the factors that impact trona use. There will always be cases where operational or other variables make it such that the Company needs to procure trona to maintain environmental compliance and those situations can require procurement that increases the overall cost. That increased cost does not lessen the burden of maintaining compliance and risking noncompliance is not an option.¹⁵³

In her brief, the Attorney General argues that the Commission should adopt the disallowance Mr. Coppola recommended. Consistent with Mr. Coppola's testimony, the Attorney General argues that the circumstances presented are similar to the circumstances presented in Case no. U-20222, DTE Electric's 2019 PSCR reconciliation in which the Commission disallowed trona costs as discussed in more detail below.¹⁵⁴

The Attorney General explains:

The pertinent point is that DTE has not provided adequate cost components or calculations of Trona expense, to support the Company's actual 2021 expense. While DTE explained the volume variance between plan and reconciliation cases, it has not explained the variance in plan cost components. The large discrepancy between DTE's forecasted price per ton for Trona usage (\$251/ton) and actual cost per ton for Trona usage (\$385/ton), is unexplained and unaccounted for.¹⁵⁵

The Attorney General characterizes Mr. Marietta's rebuttal testimony as "vague," further arguing, "conspicuously absent is any discussion of why the tremendous discrepancy in cost between projected and actual use, as compared to the discrepancy in volumes used."¹⁵⁶

¹⁵³ 2 Tr 136.

¹⁵⁴ Attorney General brief, 10-11.

¹⁵⁵ Attorney General brief, 10.

¹⁵⁶ Attorney General brief, 11.

In its brief, DTE Electric relies on Mr. Marietta's testimony and rebuttal testimony. DTE Electric also refers to Mr. Dugan's testimony at 2 Tr 82-83 and 106-107 as supporting the reasonableness and prudence of the company's sorbent costs overall.¹⁵⁷ In its reply brief, DTE Electric argues that the Attorney General does not identify any unreasonable or imprudent management underlying its trona expense, but "only complains that more detail is unavailable."¹⁵⁸ It cites Exhibit AG-3 as categorizing the trona costs, and further states that "the overall costs for 2021 include some payments made in 2021 for 2020 use, which is an ordinary variable."¹⁵⁹ It argues that "these types of variable costs cause variances in the cost per ton of trona."¹⁶⁰

After reviewing the information presented in Exhibit AG-3, this PFD finds that no disallowance is warranted. Indeed, the parties seem to be talking or arguing past each other. As requested in discovery, DTE Electric provided certain cost breakdowns for its trona costs as shown on page 1 of Exhibit AG-3. These costs do not tally to the full amount reported on Exhibit A-6. There are two reasons for this approximately \$970,000 discrepancy calculated in Exhibit AG-4: 1) the additional charges that are referenced but not broken out on page 1 of Exhibit AG-3, and 2) the invoices for 2020 trona that DTE Electric has repeatedly stated that it paid in 2021. It may have been helpful if DTE Electric had separately identified those costs, but in fairness, it was not actually asked to do so. Regarding the additional costs for 2021 trona, the Attorney General was clearly looking for a spreadsheet with cost categories for those costs, but DTE Electric stated that it does

¹⁵⁷ DTE Electric brief, pages 20-22.

¹⁵⁸ DTE Electric reply, 27.

¹⁵⁹ DTE Electric reply, 27.

¹⁶⁰ DTE Electric reply, 27.

not have such a spreadsheet and that these costs can only be determined from the invoices. Nowhere in Exhibit AG-3 does it indicate that the Attorney General sought the invoices and was unable to obtain them.

The Attorney General relies on the Commission's October 24, 2021 order addressing DTE Electric's 2019 PSCR reconciliation. In that case, the Commission found that DTE failed to provide information necessary for the Attorney General to validate the costs. The Commission explained:

As set forth above, reasonable discovery is required in this proceeding to assist interested persons in obtaining evidence regarding the reasonableness and prudence of expenses collected pursuant to the PSCR clause, including the trona expense. In this case, the Attorney General made several discovery requests for detailed information about the cost components of the trona expense. However, during discovery, DTE Electric did not provide the requested information and, in exceptions, simply responded that "[t]he trona contract requires the Company to pay actual freight and transportation costs." DTE Electric's exceptions, p. 10. The Commission finds that the information provided by the company regarding the cost components of the trona expense was not sufficient to allow the Attorney General or the Commission to determine that the amount recovered pursuant to the PSCR clause is reasonable and prudent.

The Commission finds that it is undisputed that DTE Electric must pay freight and transportation costs for the trona used at its plants. And it is undisputed that, in 2019, the company used less trona than planned, which resulted in reduced trona expense. However, as noted by the Attorney General and the ALJ, the actual unit cost for trona in 2019 was significantly higher than the projected unit cost. See, 3 Tr 438-439. Without detailed information about the cost components for the trona freight and transportation costs, it is unclear whether other costs, in addition to transportation costs, were included, and the Commission is unable to determine that the trona expense is reasonable and prudent. As a result, the Commission finds that the ALJ's recommended disallowance of \$439,023 should be adopted.¹⁶¹

¹⁶¹ October 24, 2021 order, page 13.

In this case, however, it appears to the ALJ that DTE Electric provided information in response to the Attorney General's discovery requests, including the categorizations identified on Exhibit AG-3, page 1, but did not have additional information in the spreadsheet format the Attorney General sought. DTE Electric clearly indicated on page 1 and page 3 of Exhibit AG-3 that the "additional charges" referenced on those pages could be determined from the invoices, and clearly stated on page 3 that it had no other breakdown of these charges than the invoices themselves. Exhibit AG-3 does not contain a request for the invoices, or a denial by DTE Electric. This PFD further notes that the Attorney General neither asked about the 2020 costs that were paid in 2021 that are reflected in the \$3.81 million 2021 cost nor raises any specific concern regarding the inclusion of such costs in the 2021 reconciliation.

IV.

CONCLUSION

Based on the findings and conclusions set forth above, this PFD recommends that the Commission accept DTE Electric's reconciliation with the revisions recommended by Staff and reflected in Exhibit S-1.

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

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November 13, 2023
Lansing, Michigan

Sharon L. Feldman
Administrative Law Judge