

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

* * * * *

In the matter of the application of DTE Electric)
Company for reconciliation of its power supply)
cost recovery plan (Case No. U-21259) for the)
twelve months ended December 31, 2023.)
_____)

Case No. U-21260

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 14, 2025.

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 5, 2025, 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 19, 2025.

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

**Katherine E.
Talbot**

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November 14, 2025
Lansing, Michigan

Katherine E. Talbot
Administrative Law Judge

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On March 27, 2024, DTE Electric filed an application, with supporting testimony and exhibits, requesting authority to reconcile its power supply cost recovery (PSCR) expenses and revenues for the Plan year 2023. The Commission approved a Stipulation and Settlement Agreement on August 30, 2023, of DTE Electric's 2023 PSCR Plan, presented in MPSC Case No. U-21259.¹

Pursuant to due notice, a prehearing conference was held on May 7, 2024, at which the Company and Commission Staff (Staff) appeared. The Michigan Attorney General (Attorney General) filed a notice of intervention, and petitions to intervene were filed by the Association of Businesses Advocating Tariff Equity (ABATE), and the Residential Customer Group (RCG). The ALJ granted the petitions to intervene at the prehearing. On July 10, 2024, the Michigan Environmental Council (MEC) filed a Petition

¹ August 30, 2023, Order in Case No. U-21259, p 2.

to Intervene Out of Time. No party objected to this petition, and on July 18, 2024, the ALJ granted the petition, allowing MEC to intervene. On August 2, 2024, a protective order was entered.

On July 9, 2024, DTE Electric filed testimony for three additional witnesses. Each of these witnesses adopted the testimony and exhibits that were previously filed by other witnesses in the Application. On December 20, 2024, DTE Electric filed Revised Direct testimony of four witnesses and submitted three Revised Exhibits. And on January 21, 2025, the schedule was extended at the request of the parties.

On February 11, 2025, Staff filed the direct testimony and exhibits of two witnesses; the Attorney General filed the testimony and exhibits of one witness;² and the MEC filed the direct testimony with exhibits of one witness. On March 4, 2025, the schedule was again extended at the request of the parties. March 20, 2025, DTE Electric and Staff filed rebuttal testimony with exhibits. An evidentiary hearing was conducted on April 9, 2025, at which time all testimony was bound into the record and exhibits admitted, without the need for witnesses to appear. On March 20, 2025, the Company, Staff, the Attorney General, and MEC filed initial briefs and on June 20, 2025, the same parties filed reply briefs.

The record in this case is comprised of 371 transcript pages and 75 exhibits admitted into evidence. Portions of testimony and certain exhibits are designated confidential under the protective order and are not available in the public record.

² Portions of the testimony were designated confidential.
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II.

OVERVIEW OF THE RECORD

This section provides a brief overview of the topics addressed by each witness. The specific testimony and exhibits relevant to disputed issues are addressed in more detail below.

A. DTE Electric

DTE Electric provided the testimony of seven witnesses.³

Eric R. Bidlingmaier, Supervisor of the Tactical Merchant Analytics Team within DTE Electric's Generation Optimization department,⁴ presented details of DTE Electric's 2023 system operations, including generation, wholesale transactions, MISO market expenses, and emission allowance expenses. He testified that DTE Electric's system was operated in a reliable, reasonable, and prudent manner in 2023.⁵ He also provided rebuttal testimony addressing Attorney General Witness Coppola's recommendations to disallow customer incentive credits for the Smart Savers and Rider 12 programs and MEC witness Glick's testimony asserting that the Company's use of its power plants caused higher ratepayer costs in 2023.

Kenneth M. Gavin, Senior Strategist, Long-Term Generation Strategy for DTE Electric,⁶ described the Company's 2023 costs for transmission services from MISO and ITC and compared them to projected expenses from the 2023 PSCR plan case.

³ David Swiech adopted the direct testimony of Ryan C. Pratt; James P. Spath adopted the direct testimony of Renee M. Dory; Kenneth M. Gavin adopted the direct testimony of Sonjoy D. Roy.

⁴ Mr. Bidlingmaier's Revised Direct testimony is transcribed at 2 Tr 21-31 and his Rebuttal testimony is transcribed at 2 Tr 42-48. He sponsored Exhibits A-11, A-15-Revised, and A-16 through A-22.

⁵ 2 Tr 29.

⁶ Mr. Gavin's Direct testimony is transcribed at 2 Tr 50-60. He sponsored Exhibit A-14.

Kendra E. Hullum-Lawson, Director of DTE Electric's Strategic Business Operation,⁷ summarized key details of the operation of the Fermi 2 Nuclear Power Plant in 2023 and provided support for the Company's actions related to an unidentified leakage in the drywell of the nuclear plant.

Mark A. Kimmel, a Senior Capital Project Manager in the Energy Supply Central Service Group for DTE Electric,⁸ summarized the actual generation, on-line hours, heat rate, planned outage factor (POF), and random outage factor (ROF) of the Company's electric generating plants in 2023 and addressed differences between the actual values and the Company's previous projections. He supported the Company's purchases of urea, limestone, and ammonia for emissions control at the Monroe Power Plant and the Blue Water Energy Center (BWEC). Finally, he discussed the Company's planned outage events during 2023 and rebutted Staff's, the Attorney General's, and MEC's recommended disallowances of replacement power costs for outages at BWEC and Monroe Unit 1.

Barry J. Marietta, Environmental Strategy Manager within DTE Energy Corporate Services,⁹ discussed DTE Electric's use of powdered activated carbon, halogen, and other sorbents, and their costs. He testified that the sorbents are necessary to control mercury and acid gas emissions at the Belle River and Monroe power plants for compliance with EPA's Mercury and Air Toxics Standards (MATS).

⁷ Ms. Hullum-Lawson's Direct testimony is transcribed at 2 Tr 62-69. She sponsored Exhibit A-24.

⁸ Mr. Kimmel's Revised Direct testimony is transcribed at 2 Tr 72-95 and his Rebuttal testimony is transcribed at 2 Tr 96-115. He sponsored Exhibits A-1, A-2, A-4, A-5, A-25, A-29, A-30, and A-33, and he co-sponsored Exhibits A-3, A-23, and A-24.

⁹ Mr. Marietta's Revised Direct testimony is transcribed at 2 Tr 117-124. He sponsored Exhibit A-6-Revised.

James P. Spath, Manager in the Electric Gross Margin Department of DTE Energy's Corporate Service's Controller's Organization,¹⁰ supported DTE Electric's final 2023 PSCR year-end under-recovery balance. He presented the Company's PSCR expenses for 2023, including cost of fuel consumed, NOx and SO2 emission allowances consumed, purchased power cost, network transmission cost, and chemical and other fuel additive costs; and the Company's 2023 PSCR revenues, including wholesale power sales revenue and ancillary service revenue.

David Swiech, Director of DTE Electric's Fuel Supply department,¹¹ reconciled the company's 2023 fossil fuel (coal, natural gas, petcoke, and oil) expenses with the forecasted expenses presented in the 2023 PSCR Plan. He described the gas supply costs for BWEC, including the impact of the Company's Forward Purchase Strategy (FPS) and the use of NEXUS transportation capacity. He also provided rebuttal testimony regarding NEXUS and associated gas supply costs in response to Attorney General witness Coppola and MEC witness Glick.

B. Staff

Staff presented the direct testimony of two witnesses and the rebuttal testimony of one witness.

Lisa M. Kindschy, a Public Utilities Engineering Specialist in the Energy Cost Recovery & Generation Ops section within the Energy Operations Division at the MPSC,¹² presented Staff's assessment of the reasonableness and prudence of DTE Electric's

¹⁰ Mr. Spath's Revised Direct testimony is transcribed at 2 Tr 126-149. He sponsored Exhibits A-8 through A-10, A-12, and A-13-Revised.

¹¹ Mr. Swiech's Direct testimony is transcribed at 2 Tr 151-167 and his Rebuttal testimony is transcribed at 2 Tr 168-180. He sponsored Exhibits A-7 and A-26 through A-28.

¹² Ms. Kindschy's Direct testimony is transcribed at 2 Tr 182-191. She sponsored Exhibits S-1 and S-2.

2023 PSCR costs and testified that the actual total and per megawatt-hour (MWh) costs were lower than forecasted. She discussed Staff's review of DTE Electric's 2023 outage incidents and recommended the disallowance of \$294,314 for the replacement power costs of an outage at Monroe Unit 1.

Diane M. Martin, an auditing specialist in the Energy Cost Recovery Reconciliations Section within the Regulated Energy Division at the MPSC,¹³ described Staff's review of the accuracy and reasonableness of DTE Electric's 2023 PSCR reconciliation. She supported Staff's recommendation (which assumes approval of Staff's suggested under recovery in Case No. U-21051) for a 2023 PSCR under recovery of \$16,092,935, inclusive of interest.

Cody S. Matthews, the manager of the Interconnection and Distributed Energy Resources Section of the Energy Operations Division at the MPSC,¹⁴ provided rebuttal testimony in response to the Attorney General's recommendation to disallow customer incentive credits for the Smart Savers and Rider 12 programs.

C. Attorney General

The Attorney General presented the direct testimony of one witness, Sebastian Coppola, an independent business consultant in the fields of energy and utility regulation.¹⁵ Mr. Coppola made several assertions and recommendations. First, he asserted that NEXUS transportation costs from the Kensington and Clarington gas supply areas, totaling \$14 million, were imprudently incurred and should be disallowed. He also

¹³ Ms. Martin's Direct testimony is transcribed at 2 Tr 193-201. She sponsored Exhibit S-3.

¹⁴ Mr. Matthew's Revised Rebuttal testimony is transcribed at 2 Tr 203-210.

¹⁵ Mr. Coppola's testimony includes confidential testimony and exhibits. His public Direct testimony and background and experience are transcribed at 2 Tr 214-273. He sponsored Exhibits AG-1 through Exhibit AG-22, of which, Exhibits AG-3, AG-5, AG-7, AG-8, AG-19, and AG-22, are confidential.

recommended that the Commission direct the Company to avoid sole supplier gas purchase arrangements and conduct a transparent and competitive gas procurement process. Second, he asserted that two outages at BWEC and one outage at Monroe Unit 1 were caused by contractor errors and he recommended the disallowance of replacement power costs totaling approximately \$17.5 million. Next, he argued that payments to customers participating in the Smart Savers and the Rider 12 Capacity Release programs were not prudently incurred and he recommended disallowances of \$2.6 million and \$2.1 million, respectively. He proposed adjustments to DTE Electric's 2023 PSCR cost under-recovery balance based on his recommended disallowances and based on the final order in Case No. U-21051. He also reaffirmed his prior recommendations regarding the removal of the replacement power costs for outages caused by the defective Toshiba work at the Ludington Powerplant.

D. Michigan Environmental Council

MEC presented the direct testimony of a single witness, Devi Glick, a Senior Principal at Synapse Energy Economics, Inc. (Synapse).¹⁶ She evaluated DTE Electric's 2023 PSCR under recovery, focusing on the reasonableness of the Company's fuel charges and operational practices, made conclusions, and offered various recommendations. She asserted that the Company's use of its power plants, particularly its use of peakers, caused higher customer rates. She determined that two outages at BWEC were unjustified and recommended disallowing \$6.4 million. Finally, she asserted

¹⁶ Ms. Glick's testimony includes confidential testimony. Her public Direct testimony is transcribed at 2 Tr 276-315. She sponsored Exhibits MEC-1 through MEC-17.

that the Company's costs for NEXUS capacity was \$5.97 million higher than the value or benefit to ratepayers and she recommended that this amount be disallowed.

III.

LEGAL REQUIREMENTS

Act 304 provides for a PSCR process that allows a utility "to charge customers for the anticipated costs associated with the supply of electric power, such as the cost of coal or other fuel burned by generating plants." Attorney General v Michigan Public Service Commission, 237 Mich App 27, 30; 602 NW2d 207 (1999). Under that process, a utility is obligated to annually file a PSCR plan and five-year forecast of its power supply requirements. MCL 460.6j(3)-(5). After a contested case, the Commission approves, disapproves, or modifies the plan for the upcoming year, and evaluates the forecast. MCL 460.6j(6)-(7). At the conclusion of the plan year, the actual costs incurred are reviewed through the reconciliation process:

Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a utility's power supply cost recovery plan, the commission shall commence a proceeding, to be known as a power supply cost reconciliation, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the power supply cost reconciliation the commission shall reconcile the revenues recorded pursuant to the power supply cost recovery factors and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of power supply by the utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review. MCL 460.6j(12).

Under this provision, projected PSCR costs in an approved PSCR plan are reviewed to determine whether recovery is warranted because they were incurred based on reasonable and prudent actions or were beyond the utility's ability control by those actions. MCL 460.6j(15). In addition, MCL 460.6j(13)(c)-(j) provide for a number of disallowances, some of which may be overcome by clear evidence that the utility was not negligent or imprudent. Finally, the mechanisms for refunding overrecovered costs or collecting underrecovered costs, along with the method for calculating interest on either, are set forth under MCL 460.6j(14), (15), and (16).

IV.

DISCUSSION

A. Uncontested Issues

The parties originally projected a beginning balance based on proposals and assumptions made in the underlying PSCR Plan case, MPSC Case No. U-21051. The Commission had not ruled on the 2023 Plan at the time the parties presented their original testimony. On February 27, 2025, the Commission ruled in Case No. U-21051, that "DTE Electric Company's net underrecovery of \$386,841,510 inclusive of interest, shall be reflected as the company's 2023 power supply cost recovery reconciliation beginning balance."¹⁷ There is no dispute that the beginning balance should be revised, consistent with the Commission's Order in Case No. U-21051, and no party contested this revision.

Based on this beginning balance and recalculated interest, the Company supports a 2023 PSCR under-recovery of \$18,642,739."¹⁸ Staff's recalculated underrecovery

¹⁷ February 27, 2025, Order in Case No. U-21051, p 31.

¹⁸ DTE Electric brief, 6; See Table 1.

balance is \$18,340,700, including interest.¹⁹ The Attorney General recommends several disallowances and requests the Commission determine that the adjusted PSCR balance is an over-recovery balance of \$28,224,684, before interest.²⁰ MEC recommended alternative disallowances for some costs, but did not dispute that the beginning balance should be based on the Commission's Order from Case No. U-21051.

The parties did not take issue with Consumers' calculations of PSCR sales revenues or costs, including fuel costs; net purchase, transfer cost; transmission; or chemical costs.

B. Contested Issues

While the majority of the Company's case was not contested, the following cost components are in dispute and require resolution in this proceeding: (1) the Outage at Monroe Unit 1, (2) Outages at BVEC, (3) NEXUS costs, (4) Demand Response Credits for the Smart Saver and Rider 12 programs, (5) the Method used to Calculate Replacement Power Costs, (6) Avoidance of Sole Supplier Arrangements, and (7) Inefficient Operation of Generation Fleet.

1. Outage at Monroe Unit 1

Monroe Unit 1 was taken offline by DTE Electric on July 13, 2023 due to a suspected boiler tube leak. The outage lasted through July 25, 2023. Staff and the Attorney General recommended disallowances for replacement power costs resulting from this forced outage. Staff recommended a disallowance of \$ 294,314 in replacement

¹⁹ Staff brief, 3.

²⁰ Attorney General brief, 2.

power costs,²¹ while the Attorney General recommended a disallowance of the total replacement power costs for the outage equal to \$520,753.²²

During the shutdown two separate leaks were detected; “one in the economizer area and one in the lower slope (waterwall/furnace) area.”²³ Mr. Kimmel provided the details for both and testified the two leaks were not related.²⁴

Ms. Kindschy testified that Staff reviewed all generating outages lasting more than 90 days and found “no instances of imprudence in the information reviewed”²⁵ However, after reviewing outages of shorter duration, Staff recommended disallowance of replacement power costs for the forced outage of Monroe Unit 1, in the amount of \$294,314.²⁶ Staff argue that DTE Electric “failed to demonstrate that the forced outage at Monroe Unit 1 in July 2023 was neither caused nor prolonged by its own negligence or unreasonable and imprudent management.”²⁷ Staff recommended a disallowance for four shifts of rework (over two days) due to welds not passing inspection.²⁸ Using Exhibit S-2, an event report provided by the Company, Ms. Kindschy testified that the rework was necessary due to inclusions in the original welds.²⁹ She testified:

Staff’s own research on inclusions in welds is that the term inclusion refers to any solid material within a weld that is a different composition and structure from the main weld metal, essentially impurities that can affect the strength of the weld. Staff learned that inclusions may be a relatively common occurrence, but further research revealed that inclusions are weld

²¹ 2 Tr 191.

²² Attorney General Brief, 19-20. 2 Tr 242. See Exhibit AG- 13. The PFD notes that Exhibit AG-13, p 2-3 and Exhibit S-2, p 1-2 are copies of the same event report regarding the Monroe Unit-1 outage.

²³ 2 Tr 108.

²⁴ 2 Tr 108-109.

²⁵ 2 Tr 189.

²⁶ 2 Tr 191.

²⁷ Staff Brief, 7-8.

²⁸ 2 Tr 190. Staff Brief, 8.

²⁹ 2 Tr 190. Exhibit S-2, p 1-2.

defects and are a result of the welding technique from the person doing the welding.³⁰

While the Company contends inclusions are common in the industry,³¹ Staff determined that DTE Electric did not minimize the duration and costs of the outage.³² Noting that DTE Electric is responsible to supervise the welders and the quality of their work, Staff assert the additional work would not have been necessary if the welds had been performed properly the first time.³³ Ms. Kindschy “it is within the Company’s control to ensure that welders are using proper welding techniques and are trained for the work they are performing.”³⁴

The Attorney General argues that replacement power costs for the entire July outage at Monroe Unit 1 should be disallowed. Using the outage report, describing the cause of the outage provide by DTE Electric, Mr. Coppola concluded that “[t]he power outage is a clear case of defective work by a contractor hired by the Company to perform work at the power plant.”³⁵ He asserted the report demonstrated that the outage at Monroe Unit 1 was the result of defective welding of boiler tubing.³⁶ Based on Mr. Coppola’s testimony, the Attorney General argues the replacement power costs for the July outage “are the result of defective work by a contractor, working on behalf of the Company.”³⁷ The Attorney General argues that customers should not be forced to pay for errors made by a contractor that was hired and supervised by the Company.

³⁰ 2 Tr 190. See Exhibit S-2.

³¹ Exhibit S-2, p 3. Staff, brief, 8.

³² 2 Tr 190.

³³ Staff Brief, 8.

³⁴ 2 Tr 190-191.

³⁵ 2 Tr 242. See Exhibit AG-13, p 5.

³⁶ 2 Tr 241-242. See Exhibit AG-13.

³⁷ Attorney General Brief, 20. 2 Tr 242.

DTE Electric disputes the disallowances proposed by Staff and the Attorney General for the July outage at Monroe Unit 1. DTE Electric asserts, based on Mr. Kimmel's testimony, that its supervision of welders was reasonable and prudent and argues "the proposed disallowances essentially suggest a strict-liability standard that is contrary to the applicable reasonable and prudent standard."³⁸ The Company also argues that "[t]he proposed disallowances are also disconnected from the Company's actions, as well as the extreme conditions and other realities of operating an aging power plant."³⁹

In rebuttal Mr. Kimmel provided details about the two leaks, asserting that the Company's supervision of the welders was reasonable. He testified:

In the case of the tube leak in the lower slope (waterwall/furnace) area, the leak occurred at a crack in the tube found during the July forced outage. The crack likely occurred due to elevated stress induced on the tube at the attachment to the membrane of the boiler. The tube attachment to the membrane of the boiler was previously modified during the spring 2023 periodic outage. No tube cracks were identified at the time of the modification. In fact, the tube passed the boiler pressure test at the end of the spring periodic outage.

In the case of the tube leak in the economizer, the leak occurred at a tube weld installed during the spring 2023 periodic outage. This weld was one of hundreds of welds performed in the economizer area of the boiler during the outage and passed the boiler pressure test before the unit returned to service.⁴⁰

The Company argues there is no basis for Staff's contention that the welders were not adequately trained and/or did not use proper techniques.⁴¹ Mr. Kimmel testified that the Company hires "highly-skilled union boilermakers who complete multi-year apprenticeships" and stated that "the Company performs visual inspections, boiler

³⁸ DTE Electric Brief, 15.

³⁹ DTE Electric Brief, 15.

⁴⁰ 2 Tr 108-109.

⁴¹ DTE Electric Brief, 15-16.

pressurization tests, and radiographic testing (RT) after welding boiler tubes” and utilized its welding quality assurance program to review the welds.⁴² Mr. Kimmel testified that it is unreasonable to expect 100 percent perfection by welders and asserted the procedure is particularly onerous inside a power plant boiler environment.⁴³ And he testified:

The Commission should find that the Company was reasonable and prudent in utilizing its quality assurance program to review and verify weld quality before accepting welds as complete. The fact that RT testing and pressurization testing were successfully conducted and an extended run time was experienced prior to failure demonstrates that the Company was reasonable and prudent in remediating the referenced tube leaks.⁴⁴

Citing this testimony, DTE Electric requests the Commission reject the proposed disallowances.⁴⁵

In its reply brief, DTE Electric repeats most of the arguments made in its initial brief. The Company repeats that the proposed disallowances impose a standard of strict liability and that neither Staff nor the Attorney General established unreasonable or imprudent actions resulted in the outage.⁴⁶ The Company also repeats that it used skilled labor and its quality assurance program to review the work, asserting it is not reasonable to expect 100 percent perfection.⁴⁷

In its reply brief Staff criticize DTE Electric’s assertion that the proposed disallowances impose a strict standard of liability, requiring perfection.⁴⁸ Staff argue that Exhibit S-2 and Ms. Kindschy’s testimony demonstrate that the outage resulted from

⁴² 2 Tr 110.

⁴³ 2 Tr 112.

⁴⁴ 2 Tr 113.

⁴⁵ DTE Electric brief, 16.

⁴⁶ DTE Electric reply, 15.

⁴⁷ DTE Electric reply, 6-7.

⁴⁸ Staff reply, 5-6.

improper technique causing slag inclusions in the welds.⁴⁹ Staff also contend the Company acknowledges there are challenges to performing defect free welds in a boiler environment, but did not provide “proactive steps [taken] to avoid these foreseeable defects.”⁵⁰

In her brief, the Attorney General notes that Mr. Kimmel’s assertion that the outage was due to normal use is contradicted by the Company’s own analysis report.⁵¹ And, also notes that Mr. Kimmel testified he did not disagree with the Company’s report.⁵² The Attorney General also argues that the contractor performed the required repairs to Monroe Unit 1 under warranty, accepting responsibility for the defective welds.⁵³ The Attorney General argues the fact that it took time to discover that the welding was defective does not establish the Company acted reasonable and prudent. The Attorney General argues “[s]omething need not fail immediately in order to be defective contractor work that customer should not pay for.”⁵⁴ The Attorney General stated DTE Electric’s argument ignores its oversight role on behalf of its customers.⁵⁵

In her reply brief, the Attorney General derides the assertion that the proposed disallowances impose “strict liability” indicating it distracts from the Company’s burden to prove its costs are reasonable and prudent.⁵⁶ The Attorney General states the record is clear that defective welds were the cause of the outage at Monroe Unit 1 and argues that

⁴⁹ Staff reply, 6. Exhibit S-2, p 5-9.

⁵⁰ Staff reply, 6. 2 Tr 110-11.

⁵¹ Attorney General brief, 20. Exhibit AG-13.

⁵² Attorney General brief, 20. Exhibit AG-20.

⁵³ Attorney General brief, 20.

⁵⁴ Attorney General brief, 20.

⁵⁵ Attorney General brief, 20.

⁵⁶ Attorney General reply, 9.

DTE Electric failed to establish that its oversight and inspections were sufficient to identify the welding defects.⁵⁷

The Event Report provides the following description of the events leading to the forced shutdown:

U1's forced outage total duration was 11 days 4 hours. The unit was taken offline on June 13th at 2157 due to a tube leak identified on the lower slopes of the furnace. Explosive cleaning duration was only 5hrs and signed off Friday night, on the 14th. A shutdown hydro sonic inspection was performed and 2 leaks were identified. 1 leak located in lower slope and another found in the economizer section. Furnace scaffolding was installed and boiler tube assessments completed on Sunday, the 16th at 0800hrs. The primary failure for the economizer leak was determined to be due to welding defects on a dutchman that was performed during the periodic outage. This economizer work was able to be covered under warranty. As for the furnace leak, the primary failure was determined to be weld defects mostly in the form of porosity. 11 dutchman were required for the furnace repair which became critical path for the outage. Tube repair was completed in 7 days / 14 shifts. This included roughly 4 shifts of rework that had to be done on repairing welds that failed during the initial RT inspection. A successful startup hydro sonic inspection was completed, no leaks were identified. Furnace scaffolding was dismantled and airside protection signed off on Sunday, the 23rd at 1730 in order for operations to begin startup activities. ~12hrs of delays were experienced due to troubleshooting that was being performed on the EHC system. Operations work through and make adjustments on the pumps on the skid and was able to successfully synchronize on Tuesday the 25th at 0202.⁵⁸

The PFD finds the arguments of Staff and the Attorney General to be more persuasive. However, the prosed disallowances are premised on different contentions. Staff's disallowance is based on the fact that during repair of the outage, defective welds were performed requiring the outage be extended by four shifts of rework. And the Attorney General argues that the outage resulted from defective workmanship, which was

⁵⁷ Attorney General reply, 9.

⁵⁸ Exhibit S-2, p 1-2.

repaired under warranty, and therefore replacement power costs for the entire outage should be disallowed.

Addressing Staff's proposed disallowance, the above event report clearly states that the four shifts of rework were necessary because welding repairs failed. The rework was not necessary to repair the leaks which caused the original outage, but a failure in the attempt to fix it. This PFD finds Staff established that the repair work was defective and the unit could not operate until the problem was corrected. The Company's management of the repairs was not reasonable and prudent and the replacement power costs for the four shifts of rework should be disallowed.

However, this PFD recommends that the Commission accept the Attorney General's proposed disallowance. The above report states that the primary failure for both the economizer leak and furnace leak was determined to be welding defects. While DTE Electric argues it is not reasonable to expect 100 percent perfection from welders, this PFD does not find this argument to be persuasive. The Company touts the training of welders and its quality assurance oversight. But it is important to note that the contractor made the repairs under warranty, acknowledging poor performance.

In MPSC Case No. U-15001-R the Commission held that negligence of an agent, such as a contractor, is dispositive. "The Commission has consistently found that replacement power costs incurred as a result of the negligence of the utility or the employee or agent of the utility acting within the scope of its employment or agency are not recoverable."⁵⁹ In Case No. U-20526, the Commission held that contractor error were

⁵⁹ March 2, 2010, Order in Case No, U-15001-R, p 8.
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the root cause of the outage extension and disallowed the resulting replacement power costs.⁶⁰ And recently the Michigan Court of Appeals upheld the Commission's disallowance. The court held:

[T]he claim that the PSC applied a strict-liability standard is without merit. The PSC performed a straightforward application of the statutory-reconciliation provisions to the facts at hand, and it disallowed recovery of certain costs because those costs were associated with unreasonable and imprudent actions of a contractor under the direct and immediate supervision of Consumers Energy. This is consistent with the standard set in statute by our Legislature, not one developed in the common law by judges. . . . Moreover, there is nothing "strict liability" about the standard in MCL 460.6j; rather, there is a form of "fault" built into the statute, in the form of the utility having to act in a reasonable and prudent manner to qualify for recoupment of expenses.⁶¹

The court also held that the contractor "was the agent of the utility when it engaged in actions that caused a longer outage and higher costs, and the utility had responsibility for the supervision of its contractor."⁶² In this case the outage at Monroe Unit 1 resulted from defective welds. This PFD asserts that defective welds are unreasonable and the Company's failure to detect them is not excused by working conditions or the total number of welds performed. And when the work is performed under warranty the contractor acknowledges poor performance. Therefore, ratepayers should not bear the costs for the unreasonable behavior of the Company's contractors. Accordingly, this PFD recommends that the Commission accept the disallowance proposed by the Attorney General, or in the alternative, Staff's proposed disallowance should be accepted.

⁶⁰ August 11, 2022, Order in Case No. U-20526, p 13.

⁶¹ *In re Application of Consumers Energy Co for Reconciliation*, No. 362931, 2024 WL 387090, February 1, 2024, p. 5.

⁶² *In re Application of Consumers Energy Co for Reconciliation*, No. 362931, 2024 WL 387090, February 1, 2024, p. 6.

2. Outages at the Blue Water Energy Center (BWEC)

The BWEC is a 3-unit, 1,150 MW baseload, combined-cycle gas turbine, gas plant which began operation in June 2022.⁶³ Both the Attorney General and MEC recommended some disallowance of replacement power costs incurred during spring and fall outages in 2023 at the BWEC. Based on Mr. Coppola's testimony, the Attorney General recommends the Commission disallow replacement power costs of \$9,581,066 for the spring outage and \$7,435,914 for the fall outage; for a total disallowance of \$17,016,980 for these outages.⁶⁴ This represents the costs for the duration of both outages. Based on Ms. Glick's testimony, MEC recommended the Commission disallow a portion of the replacement power costs incurred during both outages equal to \$ 6.4 million.⁶⁵ This amount represents replacement power costs resulting from the outage extensions to complete warranty repairs.⁶⁶

Mr. Kimmel testified:

DTE Electric's actual and projected maintenance and repair activities in 2023 were reasonable and prudent. The Company diligently worked to minimize plant outage durations and maximize plant availability and reliability. Neither the outage itself, nor any extension of any outage was the result of any negligence or unreasonable and/or imprudent management on the part of DTE Electric.⁶⁷

He stated that the spring and fall outages were scheduled to perform routine inspection and maintenance, and noted these outages were planned and examined at the time of

⁶³ 2 Tr 289. See also October 3, 2024, PFD in Case No. U-21051 PFD, p 21; citing testimony from DTE Electric witness Mr. Pratt in that case.

⁶⁴ Attorney General brief, 19.

⁶⁵ Attorney General brief, 1.

⁶⁶ 2 Tr 302.

⁶⁷ 2 Tr 81.

the Company's filing in the underlying PSCR Plan case.⁶⁸ Both outages were extended beyond what was scheduled in the PSCR Plan. The spring outage was extended 11 days, from a planned duration of 12 days to an actual total of 23 days, and the fall outage was extended 5 days from a planned duration of 12 days to an actual total of 17 days.⁶⁹

Explaining the spring outage, Mr. Kimmel testified:

Major work scope for the outage included borescope inspections of both combustion turbines (CTs), replacement of the low pressure crossover bellows, and repairs to the heat recovery steam generator (HRSG) penthouse floors. This work scope was included in the planned outage schedule underlying the Company's 2023 PSCR Plan case. Prior to the outage, but after the 2023 PSCR Plan Case U-21259 was filed in September 2022, the Company determined that four unibody combustion can seals required replacement on CT11. After the plant came offline, further inspections revealed the need to replace the combustion can seals on both CT11 and CT12 prior to bringing the plant back online.⁷⁰

He testified the combustion can seal replacement on both CT11 and CT12 extended the outage by five days, attributing the remaining extension to compressor washing (two days) start up trouble shooting (two days) and the start-up and shutdown sequence (two days).⁷¹ Concerning the fall outage Mr. Kimmel testified:

Major work scope for the fall 2023 BWEC planned maintenance outage included borescope inspections of both CTs, installation of new steam drum demisters in both HRSG high pressure (HP) steam drums, replacement of CT exhaust fabric joints on CT11 and CT12, and the installation of a new SCR catalyst row on HRSG 11 and HRSG 12.⁷²

⁶⁸ 2 Tr 99.

⁶⁹ 2 Tr 101-106.

⁷⁰ 2 Tr 102.

⁷¹ 2 Tr 103.

⁷² 2 Tr 105.

And he explained that “[t]he additional 5 days of outage time was required to replace the HP steam drum demisters (four (4) days of outage extension) and troubleshoot unit start-up issues (one (1) day of outage extension).”⁷³

Based on the testimony of Mr. Coppola, the Attorney General recommended the Commission disallow a total of \$17,016,980 in replacement power costs for the BWEC spring and fall power outages.⁷⁴ Mr. Coppola testified that inspections performed by the Company during the planned spring outage show that problems in the initial construction and installation of equipment caused the extension. He noted that deficiencies in the plant construction were identified during the initial testing phase, prior to start of commercial operation, and the contractor agreed to make repairs under warranty.⁷⁵ He testified that the spring and fall outages addressed repairs not completed in the initial 2022 warranty repairs.⁷⁶ He testified the spring outage report supplied by DTE Electric identified the following deficiencies:

a sagging floor on the penthouses of both HSRGs 11 and 12. Other warranty work completed on the HSRGs included completion of the gas flue baffle installation, replacement of broken U-Bolts, replacement of the drain line expansion joint for the Train HPSH2, and installation of insulation blankets on multiple view ports. Flacking of the cement board in the cooling tower was also addressed and repaired⁷⁷

Asserting that the warranty repairs addressed problems which occurred during initial construction, Mr. Coppola opined that the entire spring outage was attributable to poor contractor work, which was repaired under warranty. He testified: “Customers should not

⁷³ 2 Tr 106.

⁷⁴ Attorney General brief, 19.

⁷⁵ 2 Tr 234. Mr. Coppola noted he identified several items to be repaired under warranty and recommended the replacement power costs be disallowed. Id.

⁷⁶ 2 Tr 234-35.

⁷⁷ 2 Tr 235. See Exhibit AG-10.

pay for replacement power costs during power outages to resolve poor contractor work or faulty equipment.”⁷⁸

Referencing Mr. Coppola’s assertions, the Attorney General contends that the entire spring outage “results from faulty equipment, poor equipment installations, and deficient construction work performed by contractors and vendors hired by the Company.”⁷⁹ The Attorney General argues that customers should not be responsible for the replacement power costs for an outage, whether planned or extended, that is caused by contractor errors or warranty repairs.⁸⁰

The Attorney General criticized DTE Electric’s assertion that routine maintenance work was reason for the outages and argues that the Company was aware of several problems that manifested before and after BWEC began commercial operations.⁸¹

Based on Ms. Glick’s testimony, MEC recommends a disallowance of \$6.4 million for replacement power costs for both the spring and fall outages.⁸² In the alternative, MEC supports the Attorney General’s recommended disallowance of approximately \$17 million for both outages.⁸³

Ms. Glick testified the outage extensions of 10 days in the spring and 5 days in the fall were needed to complete repairs covered under warranty from the contractor.⁸⁴

And, Ms. Glick testified that DTE Electric provided the replacement power costs for the warranty extension in the spring as \$ 4,681,010 and the warranty extension in the

⁷⁸ 2 Tr 235.

⁷⁹ Attorney General brief, 17.

⁸⁰ Attorney General brief, 17.

⁸¹ Attorney General brief, 18. See Exhibits AG-10, AG-11, AG-12, and AG-19.

⁸² MEC brief, 1.

⁸³ MEC brief, 1.

⁸⁴ 2 Tr 297. See Exhibit MEC-7.

fall as \$ 1,754,605, for a total of approximately \$ 6.4 million for both warranty outages.⁸⁵ Noting, that the BWEC has been offline a total of 52 days for warranty work since beginning operations, Ms. Glick asserted the Company has incurred a total of \$11.5 million in replacement power costs for warranty work.⁸⁶ She stated that the Company has not justified why customers should pay the replacement power costs incurred during these warranty outages.⁸⁷ She testified:

Errors and faulty installation by DTE's suppliers should be borne by the Company or the contractor, not the customers. DTE can and should better protect itself from liability with contractor and manufacturer contracts.⁸⁸

In its brief MEC argues that DTE Electric has not presented a compelling reason for passing the costs on to rate payers that should be borne by contractors or manufacturers.⁸⁹

In rebuttal, Mr. Kimmel disagreed with the disallowances proposed by the Attorney General and MEC. He testified that Mr. Coppola's analysis ignores the fact that the spring and fall outages were originally planned for routine inspections and maintenance which was identified in the 2023 PSCR Plan case. He testified that the planned outages were reasonable and prudent, asserting that a plant such as BWEC cannot run continuously and requires routine inspection and maintenance. And, he noted the outage was planned for the spring and fall to avoid periods of peak demand.⁹⁰ Mr. Kimmel testified that Mr. Coppola improperly included the time scheduled for this routine maintenance in his

⁸⁵ 2 Tr 301-302. See Table 7; 2 Tr 302.

⁸⁶ 2 Tr 302.

⁸⁷ 2 Tr 302.

⁸⁸ 2 Tr 298.

⁸⁹ MEC brief, 8.

⁹⁰ 2 Tr 99-100.

proposed disallowance and instead attributed the entire outage periods to faulty work and equipment.⁹¹ Mr. Kimmel stated the disallowance proposed by Ms. Glick was also improper and testified she did not specify the alleged errors made during installation or what equipment was faulty.⁹² Then he asserts that Ms. Glick did not specify how the Company could protect against the costs associated with an unplanned outage for warranty work.⁹³

Mr. Kimmel testified that the outage extensions were reasonably and prudently managed by DTE Electric to maintain the reliability and performance of the plant. And he opined that one or more forced outages would have occurred in the future, potentially increasing PSCR costs.⁹⁴

Relying on Mr. Kimmel's testimony, DTE Electric argues in its brief that the disallowances proposed by the Attorney General and MEC should be rejected by the Commission. The Company notes that the Attorney General and MEC maintained similar arguments concerning warranty work at BVEC in MPSC Case No. U-21051 and relied on the ALJ's findings in that matter. However, the Company also notes that the Commission did not affirm the disallowance at issue in its decision.⁹⁵ The Commission held:

The Commission finds that DTE Electric's approach to addressing the warranty work performed by contractors to repair or correct construction and equipment installation problems at BVEC was reasonable and prudent. The evidence supports DTE Electric's assertions that the company's

⁹¹ 2 Tr 100.

⁹² 2 Tr 101.

⁹³ 2 Tr 102.

⁹⁴ 2 Tr 102.

⁹⁵ DTE Electric brief, 12.

management and supervision of contractors was not unreasonable or imprudent.⁹⁶

In her reply brief, the Attorney General contends that Mr. Coppola did not suggest that a plant such as BWEC should run continuously, without maintenance, but rather he testified that all of the work performed during the outages resulted from poor work by third parties and defective equipment. The Attorney General argues that the contractors and vendors are hired by DTE Electric; the Company signs the contracts and has oversight of these contractors, not customers.⁹⁷ Noting that BWEC came online recently, the Attorney General argues:

The issue here, which DTE glosses over, is that all of this work stemmed directly from faulty equipment, poor equipment installation, and deficient construction work performed by contractors and vendors hired by the Company. BWEC is not an older plant that has been in service for a long time. It came online very recently, and as such much of the work and equipment is still under warranty from contractors and vendors.⁹⁸

The Attorney General argues that customers rely on DTE Electric to protect them from poor workmanship or faulty equipment, as well as the resulting replacement power costs. And when the Company fails to do so, the cost of repairs and replacement power costs should be borne by the Company, not ratepayers.⁹⁹

The Attorney General acknowledged the Commission's order in MPSC Case No. U-21051 but argues that problems caused by contractors and vendors at BWEC continue to result in significant replacement power costs. The Attorney General argues "these problems have persisted" resulting in additional replacement power costs and DTE

⁹⁶ February 27, 2025, Order in Case No. U-21051, p 22.

⁹⁷ Attorney General reply, 7-8.

⁹⁸ Attorney General reply, 7.

⁹⁹ Attorney General reply, 8.

Electric has not “supported that customer should be on the hook for these exorbitant replacement power costs caused by DTE’s contractors.”¹⁰⁰

In its reply brief, MEC notes that DTE Electric’s assertion that Ms. Glick did not articulate how the Company failed to protect itself in vendor contracts improperly shifts the burden of proof and arguing that in fact the Company failed in its burden of proof.¹⁰¹ And, MEC argues the assertion is erroneous, contending that Ms. Glick provided examples in response to discovery, noting such provisions are common in power purchase agreements.¹⁰² MEC argues that the company’s assertion that Ms. Glick did not identify the errors leading to the warranty work is also erroneous and pointed out that the Company provided this information in discovery reviewed by Ms. Glick.¹⁰³

MEC maintains that but for the contractor errors the resulting warranty work would have been unnecessary and DTE Electric would not have incurred replacement power costs for the outage extension.¹⁰⁴ MEC maintains that customers should not be responsible to pay for “design defects or installation errors irrespective of whether DTE negotiated sufficient protection for itself in its vendor contracts.”¹⁰⁵ MEC contends that DTE Electric is in the best position to recover costs, and argues “[i]f DTE does not protect itself by negotiating for its contractors to bear the costs of replacement power during outages caused by design or installation flaws, DTE should bear those costs.”¹⁰⁶

¹⁰⁰ Attorney General reply, 8-9.

¹⁰¹ MEC reply, 4-5.

¹⁰² MEC reply, 5.

¹⁰³ MEC brief, 5.

¹⁰⁴ MEC brief, 5.

¹⁰⁵ MEC reply, 4.

¹⁰⁶ MEC reply, 5.

In reply DTE Electric argues that the Commission should disregard the disallowances proposed by the Attorney General and MEC. The Company states that no outage, or outage extension, resulted from negligence or unreasonable and imprudent on the part of the Company.¹⁰⁷ Repeating the assertion that the Attorney General's proposed disallowance includes outage periods for routine inspection and maintenance, the Company criticizes the notion that a plant like BWEC can run continuously.¹⁰⁸ And DTE Electric argues that Mr. Coppola did not support the proposed disallowance of the entire replacement power costs for both outages.¹⁰⁹

The Company repeats that MEC and Ms. Glick did not provide a method to protect from additional costs resulting from defective work by contractors or vendors. Noting that Ms. Glick referenced provisions common in power purchase agreements, the Company argued this comparison is inappropriate. The Company argues a PPA is a contract to provide power and argues that the situation in this matter is disparate. This matter involves replacement power costs resulting from the poor performance of third party contractors or vendors, while a failure of a PPA contract would involve the replacement power costs resulting from the failure of a party to the contract to provide power to the Company.¹¹⁰ DTE Electric also disputed the applicability of *Consumers Power v Public Service Comm*, 196 Mich App 687; 493 NW2d 424 (1992), asserting the facts of this case

¹⁰⁷ DTE Electric reply, 7.

¹⁰⁸ DTE Electric reply, 7-8.

¹⁰⁹ DTE Electric reply, 9. The Company notes the Attorney General referenced a burden to prove an appropriate "maintenance program," and objected to it stating there was no prior discussion of this issue. DTE Electric appears to be correct, and the issue will not be addressed further.

¹¹⁰ DTE Electric reply, 11-12.

involved disallowance of costs associated with the settlement of litigation. Finally, DTE

Electric argues:

MEC neglects that there would be corresponding costs for customers. As a matter of fundamental business practice, no contracting vendor would undertake the “risk of possible replacement power costs for outages” without being compensated for assuming those risks. That additional vendor compensation would then have to be passed on to ratepayers¹¹¹

DTE Electric also argues that the Commission’s finding of no disallowance resulting from imprudent or unreasonable management or supervision by the Company in MPSC Case No. U-21051 should be followed in this matter. DTE Electric stated there is no dispute that vendor equipment had to be replaced, but the issue to be addressed is whether the resulting replacement power costs should be approved. Mr. Kimmel testified the Company became aware of a problem with carryover in 2022, but no solution was available at that time. He testified:

In November 2022, General Electric implemented several modifications of the existing demisters to address carryover and improve demister performance. In December 2022, six months after the commencement of commercial operations at BWEC, General Electric verbally informed the Company that the existing demisters needed full replacement. In February 2023, GE formally presented a technical recommendation to install larger demisters with a planned replacement timeline of November 2023.¹¹²

DTE Electric argues its actions were reasonable and prudent based on this timing.¹¹³

The PFD finds the arguments from MEC to be the most persuasive. As with the Monroe Unit-1 outage the Attorney General argues that the entirety of the spring and fall outages were the result of poor workmanship and faulty equipment. However, in this case the spring and fall outages at BWEC were not forced but planned for routine

¹¹¹ DTE Electric reply 12-13.

¹¹² 2 Tr 106.

¹¹³ DTE Electric reply, 15.

inspections and maintenance, and was disclosed in the 2023 PSCR plan. And while the Attorney General argues that outages were not planned for routine maintenance, but rather to make repairs not completed previously, the evidence supports the Company's reasons for the original outages. Accordingly, this PFD recommends the Commission reject the Attorney General's proposed disallowance.

It is undisputed however, that both the spring and fall outages were extended to make repairs. In the spring the outage was extended to replace HP steam drum demisters and in the fall the outage was extended to replace combustion can seals. These repairs were necessary because the equipment originally installed was defective and the repairs were performed under warranty. As discussed above, this PFD recommends that the Commission find that contractors of the Company are its agents, as did the court in *In re Application of Consumers Energy Co for Reconciliation*.¹¹⁴

This PFD agrees with MEC's argument that the costs associated with faulty equipment or errant installations should be paid by the Company or recovered from the contractor or manufacturer, not customers. As Ms. Glick noted the Company, not ratepayers are in a position to supervise contractors and protect from unreasonable and imprudent costs. And, as discussed above, when the repairs are covered under warranty the contractor admits responsibility for the problems. DTE Electric argues that Ms. Glick did not provide examples of how the Company could protect itself, but the Company is required to act reasonably and prudently. Other parties can point out imprudent behavior

¹¹⁴ *In re Application of Consumers Energy Co for Reconciliation*, No. 362931, 2024 WL 387090, February 1, 2024, p. 6.

without providing a solution. Accordingly, this PFD recommends that the Commission disallow the replacement power costs proposed by MEC.

3. NEXUS Costs

Mr. Coppola provided a brief history of the NEXUS pipeline contract, noting its recent utilization by the Company. He testified:

As described in prior PSCR cases, DTEE entered into an agreement in July 2014 to purchase 30,000 Dekatherms per day (Dth/day) of capacity on the NEXUS Pipeline (NEXUS). The contracted capacity increased to 75,000 Dth in July 2022 following the start of commercial operations of DTEE's [BWEC]. This increase is an important change from how DTEE had been utilizing NEXUS capacity in past cases. The capacity contract allows transportation of natural gas from the Marcellus/Utica shale gas basins and specifically the Kensington gas receipt point in Ohio to Michigan. The NEXUS-transported natural gas supply supplements and partially displaces gas purchases from other suppliers delivering gas to Michigan. The term of the initial capacity commitment is for 20 years from commencement of service on November 1, 2018. The Company also negotiated an amendment to the initial contract to add a transportation leg from the Clarington gas receipt point to the Kensington location for 15,000 Dth per day of transportation service from November 1, 2018 to October 30, 2022. The amendment is commonly referred as the TEAL Amendment. The Teal Amendment was revised in late 2022 to reduce the transportation service to 8,000 Dth/d for a two-year period from November 1, 2022 to October 30, 2024.¹¹⁵

Company witness Mr. Swiech testified that DTE Electric reasonably and prudently administered the NEXUS agreement to reduce costs.¹¹⁶ He testified the Company continues to minimize costs associated with NEXUS and asserted purchases made to supply the BWEC in 2023 mitigate the impact of volatility and risk, resulting in access to lower costs.¹¹⁷ He testified:

[T]he Company was able to reduce gas supply costs by approximately \$13.7 million in 2023 by purchasing gas at Kensington and Clarington and

¹¹⁵ 2 Tr 222-223.

¹¹⁶ 2 Tr 166-167.

¹¹⁷ 2 Tr 167.

transporting it on NEXUS. DTE Electric's efforts to enter into an agreement for gas supply at Kensington resulted in 92% utilization of the NEXUS pipeline and significant savings for customers in 2023.¹¹⁸

Mr. Swiech also asserted the actual price benefit of gas delivered via NEXUS was greater than forecasted. He testified:

The actual net expense impact of NEXUS was \$6.0 million in 2023, which is approximately 32% better than the forecasted net expense impact of NEXUS of \$8.8 million. Actual NEXUS transportation costs were \$19.7 million in 2023, which matched the forecast. Actual gas supply cost reductions were \$13.7 million in 2023, which is approximately 26% better than the forecasted gas supply cost reductions of \$10.9 million.¹¹⁹

The Attorney General and MEC recommended disallowances associated with the NEXUS pipeline. Based on Mr. Coppola's testimony, the Attorney General recommended disallowance of \$14,087,358 in NEXUS-related costs.¹²⁰ And MEC recommended disallowance of \$5.97 million in NEXUS costs based on Ms. Glick's testimony that DTE Electric incurred \$19.70 million in costs but received supply value of \$13.72 million.¹²¹ In the alternative MEC also recommends the disallowance proposed by the Attorney General.¹²²

Ms. Glick testified that DTE Electric projected that NEXUS transportation costs would equal a net cost of \$8.81 million, but actual costs were approximately 32 percent lower.¹²³ She testified the actual net costs of NEXUS was \$5.97 million.¹²⁴ Ms. Glick opined that DTE Electric did not effectively manage the costs of the NEXUS capacity and

¹¹⁸ 2 Tr 167.

¹¹⁹ 2 Tr 164.

¹²⁰ Attorney General brief, 7-8.

¹²¹ Attorney General brief, 20; referencing 2 Tr 310. See Exhibit A-26.

¹²² MEC brief, 22.

¹²³ 2 Tr 311. See Exhibit A-26.

¹²⁴ 2 Tr 312.

therefore incurred excessive costs.¹²⁵ MEC argued the Commission should disallow this amount.

Mr. Coppola asserted DTE Electric did not establish that it acted reasonably and prudently to manage NEXUS related costs.¹²⁶ Comparing the transportation costs from third party marketers of other gas supply contracts with those of NEXUS, Mr. Coppola testified that NEXUS gas supply costs equal an average cost which is 24 percent higher, resulting in addition costs of \$0.56 per Dth. He calculated his recommended disallowance based on this difference.¹²⁷ He testified the Company's calculation of the net impact of NEXUS costs in Exhibit A-26 is not reliable, asserting that DTE Electric improperly compared prices associated with different receipt points and failed to capture lower costs available on alternative pipelines.¹²⁸ He stated NEXUS costs have burdened ratepayers with a cumulative amount exceeding \$38.6 million and opined that these costs will continue to increase.¹²⁹

MEC adopted the Attorney General's argument regarding disallowance of NEXUS costs.¹³⁰

In rebuttal, Mr. Swiech testified that "the Company's NEXUS agreement and utilization of that pipeline capacity continues to be reasonable and prudent, and the Commission should reject Witness Coppola's and Witness Glick's proposed disallowances."¹³¹ He noted the Commission has repeatedly held that the decision to

¹²⁵ 2 Tr 312.

¹²⁶ 2 Tr 231.

¹²⁷ 2 Tr 225. See Exhibit AG-1.

¹²⁸ 2 Tr 226-228. See Exhibit A-26.

¹²⁹ 2 Tr 231.

¹³⁰ MEC brief, 22.

¹³¹ 2 Tr 172.

enter into the NEXUS agreement and the subsequent TEAL amendments were reasonable and prudent at the time.¹³² He acknowledged that NEXUS gas supply cost reductions did not offset the transportation costs, but asserts that Mr. Coppola and Ms. Glick disregard other benefits such as the benefit of firm gas transportation capacity ensuring firm access to supply.¹³³ And he repeated that DTE Electric utilized approximately 92 percent of the contracted NEXUS capacity, a significant increase.¹³⁴

Mr. Swiech testified that Mr. Coppola's analysis was based on flawed assumptions and failed to consider the facility the purchase was made for or the timing of supply purchases.¹³⁵ He criticized Mr. Coppola's comparison of alternative purchase locations for supply at BWEC and stated the transportation contract for BWEC differs from those for other generation facilities.¹³⁶ He testified Mr. Coppola's analysis did not account for the fact that two-thirds of the NEXUS gas supply for BWEC is based on fix price purchases which mitigates potential market volatility.¹³⁷ And he again repeated the Company utilized 92 percent of the NEXUS capacity.

In its brief the Company disagrees with the assertion that utilization of the NEXUS pipeline is unreasonable and argues the Commission has repeatedly rejected arguments made by the Attorney General and MEC.¹³⁸ In its brief, DTE aptly summarizes Commission decisions related to the NEXUS pipeline and its costs.¹³⁹ Noting that similar

¹³² 2 Tr 172-173.

¹³³ 2 Tr 173.

¹³⁴ 2 Tr 174.

¹³⁵ 2 Tr 174.

¹³⁶ 2 Tr 174-175.

¹³⁷ 2 Tr 175.

¹³⁸ DTE Electric brief, 16-19.

¹³⁹ DTE Electric brief, 19-21.

arguments have been made in prior cases and the Commission has continually approved the decision to enter into the NEXUS contract and subsequent amendments, DTE Electric argues its actions were reasonable and prudent.¹⁴⁰ The Company states that the Commission has held that its prior decisions should be given “preclusive effect” in MPSC Case No. U-20826.¹⁴¹ The Company also cites the Commission decision in its 2022 PSCR reconciliation case, MPSC Case No. U-21051 where the Commission again held that its prior decisions should be given preclusive effect and specified:

However, issue preclusion does not apply to the reasonableness and prudence of the costs incurred during the relevant PSCR year at issue, even if it is only to show that they are consistent with contracted costs that have been previously approved by the Commission and should be considered to be reasonable and prudent on that basis. *Id.*, p. 9. Towards that end, the Commission agrees with the ALJ that DTE Electric sufficiently explained its NEXUS costs for the 2022 plan year and that a more complete assessment of the continuing reasonableness of the NEXUS arrangements can be made once a full year of BVEC operation is completed.¹⁴²

The Company argues that it demonstrated its management of the NEXUS capacity in 2023 was reasonable and prudent, pointing to Mr. Swiech’s testimony that 92 percent of the capacity was utilized with some gas supply cost reductions as compared to the projections in the plan case.¹⁴³

The Attorney General argues in her brief the DTE Electric has not provided adequate evidence that the NEXUS capacity costs and gas supply costs meet the test of reasonable and prudent.¹⁴⁴ The Attorney General acknowledges the Commission’s prior decisions and states they do not “foreclose a full examination and disallowance of

¹⁴⁰ DTE Electric brief, 22.

¹⁴¹ October 5, 2022, Order in Case No. U-20826, p 20.

¹⁴² February 27, 2025, Order in Case No. U-21051, p 9-10.

¹⁴³ DTE Electric brief, 23-24.

¹⁴⁴ Attorney General brief, 7-8, 14.

excessive power supply costs presented in this case.”¹⁴⁵ Using Mr. Coppola’s analysis, the Attorney General repeats the assertion that the NEXUS gas supply costs are \$0.56 per Dth or 24 percent higher than gas purchases from other third-party marketers resulting in excessive costs of \$14.1 million.¹⁴⁶ The Attorney General argues that the Company’s criticism of Mr. Coppola’s analysis, based on comparisons of NEXUS supply with supply from other locations, is appropriate as it corresponds to the comparison made by DTE Electric in its justification of decision to enter into the NEXUS agreement.¹⁴⁷ In response to the assertion by Mr. Swiech that the comparison of NEXUS to other supply sources is inappropriate because most of these purchases were made in advance at fixed-prices, the Attorney General argues the Company’s decision to purchase more gas at fixed prices should benefit customers. If the decision results in higher prices, the additional costs should be disallowed.¹⁴⁸ The Attorney General argues it is clear that NEXUS gas supply has resulted in higher costs in 2023 and prior years.¹⁴⁹

In its brief, the MEC repeats, “[i]n 2023, DTE incurred \$19.70 million in NEXUS transportation costs and received only \$13.72 million in NEXUS supply value, for a net cost of \$5.97 million.¹⁵⁰ However, the MEC recognizes that NEXUS supply benefits were higher than the Company projected in 2023.¹⁵¹ Based on Ms. Glick’s conclusion that “DTE did not adequately manage the costs of the NEXUS capacity and incurred firm

¹⁴⁵ Attorney General brief, 8

¹⁴⁶ Attorney General brief, 9.

¹⁴⁷ Attorney General brief, 11-12

¹⁴⁸ Attorney General brief, 12.

¹⁴⁹ Attorney General brief, 13.

¹⁵⁰ MEC brief, 20.

¹⁵¹ MEC brief, 20. The Company projected a net cost of \$8.81 million for the supply value, but the actual net cost \$5.97 million. *Id.*

transportation cost far in excess of the contract’s supply benefits”, MEC argues that the Commission should disallow \$5.97 million in costs incurred for use of the NEXUS pipeline.¹⁵² In its brief, MEC “concur[s] with and adopts the Attorney General’s arguments regarding this issue.” And, MEC recommends the disallowance of \$14.1 million proposed by the Attorney General, in the alternative.¹⁵³

In its reply brief, DTE Electric repeats many of the arguments from its initial brief, specifically criticizing Mr. Coppola’s comparison of cost based on alternative supply locations and the timing of supply purchases.¹⁵⁴ The Company again states the Commission should reject the Attorney General’s and MEC’s proposed disallowances, “consistent with the Commission’s decisions in past case decisions, and the present record demonstrating that the Company reasonably and prudently managed its NEXUS capacity in 2023, utilizing 92% of the capacity and delivering significant gas supply cost reductions.”¹⁵⁵

In her reply brief, the Attorney General asserts she is not attempting to “re-litigate” the original decision to enter into the NEXUS contract or subsequent TEAL amendments. The Attorney General argues she is examining the decisions made by the Company in each PSCR case, including the decision to continue to take service on the NEXUS pipeline.¹⁵⁶ The Attorney General states that the gas supply delivered by NEXUS is not reasonable and prudent resulting in \$14.1 million in additional cost to customers. And

¹⁵² MEC brief, 20-21.

¹⁵³ MEC brief, 22.

¹⁵⁴ DTE Electric reply, 20-21.

¹⁵⁵ DTE Electric reply, 22.

¹⁵⁶ Attorney General reply, 11.

she asserts the additional benefits associated with the NEXUS agreement have not materialized. The Attorney General argues:

DTE is still under-utilizing NEXUS, there is no indication that DTE will ever be able to deliver gas supply through NEXUS at a net cost below the (all-in) cost of transportation, and that DTE will continue to make self-serving comparisons that attempt to use any price comparison that will paint NEXUS usage in the best possible light, rather than the proper comparisons as engaged in by Mr. Coppola.¹⁵⁷

The Attorney General repeats the costs associated with transportation on the NEXUS pipeline are excessive and the Company's continued use of this is not reasonable and prudent and requests the Commission disallow the excessive costs.¹⁵⁸

In its reply brief, MEC repeats its assertion that use of the NEXUS pipeline results in excessive costs and recommends a disallowance of \$5.97 million.¹⁵⁹ MEC argues that the Commission specifically held that the preclusive effect of its prior decisions does not extend to a review of the reasonableness and prudence of PSCR costs actually incurred in the 2023 plan year.¹⁶⁰ MEC states that the Company bears the burden to prove the costs incurred in that year were reasonable and prudent.¹⁶¹ And asserting the Company failed in its burden of proof, MEC recommends the Commission disallow the excess costs.¹⁶²

This PFD finds the testimony and arguments presented by DTE Electric to be more persuasive in this matter. The parties' arguments fall into two categories - the reasonableness of NEXUS-related gas costs and the reasonableness of contracted

¹⁵⁷ Attorney General reply, 12.

¹⁵⁸ Attorney General reply, 12.

¹⁵⁹ MEC reply, 1.

¹⁶⁰ MEC reply, 1-2. Citing U-21051 2/27/25 order p 9

¹⁶¹ MEC reply, 2.

¹⁶² MEC reply, 3.

NEXUS transportation capacity. The Commission has considered these costs in many cases, and a detailed history of the Commission’s deliberations were presented in MPSC No. U-21827, DTE Electric’s 2021 reconciliation case.¹⁶³ It is unnecessary to repeat this history herein. As it has previously, the Commission ruled that prior decisions finding the original NEXUS agreement and the TEAL amendments were reasonable and prudent and are entitled to preclusive effect; this included the transportation costs in those agreements.¹⁶⁴ And the Commission reiterated this finding in U-21051, the Company’s 2022 reconciliation case.¹⁶⁵ While the Attorney General asserts she is not attempting to relitigate the decision to enter into the NEXUS agreement, much of Mr. Coppola’s testimony comparing costs effectively does so. The NEXUS agreement includes fixed costs, that the Commission has determined to be reasonable, and the argument that other marketers or pipelines provide lower costs, does not appear to acknowledge the Commission’s holding. And the argument does not account for the fixed costs associated with NEXUS that must be paid regardless of the capacity utilized.

The Commission held in Case No. U-21051 that “issue preclusion does not apply to the reasonableness and prudence of the costs incurred during the relevant PSCR year at issue, even if it is only to show that they are consistent with contracted costs that have been previously approved by the Commission and should be considered to be reasonable and prudent on that basis.”¹⁶⁶

¹⁶³ March 1, 2024, Order in Case No. U-20827, p 29.

¹⁶⁴ March 1, 2024, Order in Case No. U-20827, p 8-9.

¹⁶⁵ February 27, 2025, Order Case No. U-21051, p 9.

¹⁶⁶ February 27, 2025, Order Case No. U-21051, p 9.

In this case DTE Electric has presented sufficient evidence to establish its management of NEXUS related costs was reasonable and prudent. Mr. Swiech established the net expense for NEXUS was approximately 32 percent lower than forecast, and actual gas supply cost reductions were approximately 26 percent lower. And he testified that the Company utilized 92 percent of the NEXUS capacity. While the Company did not establish in this case that lower gas costs resulted from the use of NEXUS capacity, the costs were lower than projected in the plan and with increased volume, the promise of lower gas costs may materialize. Accordingly, this PFD recommends the Commission reject the proposed disallowance by the Attorney General and MEC.

4. Demand Response Credits for the Smart Savers and Rider 12 Programs

Company witness Mr. Spath testified that expenses associated with the Smart Savers and the Capacity Release Rider No. 12 (Rider 12) demand response programs are included in the 2023 PSCR reconciliation. He testified:

The annual [Rider 12] credits are given to customers who agree to curtail their load when requested by the Company. The annual Smart Savers credits are given to customers who agree to automatic thermostat adjustments during peak electric demand events.¹⁶⁷

The total amount of credits included for the Smart Savers program equal \$2,574,650 and the total for the Rider 12 program equal \$2,126,825.¹⁶⁸

Based on Mr. Coppola's testimony, the Attorney General argues the Commission should disallow the total amounts for both the Smart Savers and the Rider 12 programs.¹⁶⁹

¹⁶⁷ 2 Tr 143.

¹⁶⁸ 2 Tr 143.

¹⁶⁹ Attorney General brief, 21 and 25.

Regarding the Smart Savers program, Mr. Coppola asserted that the Company has not identified how much power reduction was achieved with this program. He testified that “[i]f the Company cannot demonstrate that actual benefits are being achieved, then the costs are not being reasonably and prudently incurred and should not be recovered in this reconciliation case.”¹⁷⁰ And regarding the Rider 12 program, Mr. Coppola noted that DTE Electric provided information showing that MISO did not call for the dispatch of Rider 12 customers and therefore none of the enrolled capacity of approximately 85 MW was curtailed during 2023.¹⁷¹ He testified that customers enrolled in the Rider 12 program should be paid only for actual load reductions, but he allowed for a “small fee” to compensate customers for their participation.¹⁷²

In rebuttal Mr. Bidlingmaier disagreed with Mr. Coppola’s assertion that the sole purpose of the Smart Savers and Rider 12 programs is to reduce demand during peak periods. He testified that the capacity credits for these programs are designed to incentivize increased customer participation in demand response. He testified:

Incentivizing higher subscriptions to these interruptible programs allows the Company to claim additional capacity credits, reducing any potential need for capacity purchases in the MISO Planning Resource Auction (PRA) to meet the Company’s Planning Reserve Margin Requirement (PRMR). In other words, the MWs of capacity registered from these demand response programs are converted into capacity credits that are offered into the MISO PRA and receive the associated Auction Clearing Price (ACP) as revenue back to all PSCR customers.¹⁷³

Mr. Bidlingmaier testified that the Company is able to avoid the need to build or secure alternate capacity resources to meet the PRMR in the MISO PRA when demand response

¹⁷⁰ 2 Tr 244-245.

¹⁷¹ 2 Tr 246.

¹⁷² 2 Tr 247.

¹⁷³ 2 Tr 44.

capacity is increased.¹⁷⁴ He stated the incentive cost paid to Rider 12 customers, of \$25,000 per MW per year, is priced far lower than cost of new entry (CONE) which is over \$100,000 per MW per year, and therefore alleviates the need for new generation.¹⁷⁵ He testified that both the Smart Savers and Rider 12 programs are registered as Load Modifying Resources (LMRs) in MISO and the customer is only required to reduce load when an event is called by MISO, and stated that LMRs receive capacity credits whether or not MISO calls for emergency reductions.¹⁷⁶ Mr. Bidlingmaier testified the demand response costs associated with the Smart Savers program and Rider 12 program are reasonable and prudent and stated Mr. Coppola's disallowance should be rejected.

Staff witness Mr. Matthews also testified to rebut the Attorney General's recommendations regarding the Smart Savers and Rider 12 programs, recommending the proposed disallowance be rejected.¹⁷⁷ He testified that "Staff submits that the Smart Savers and Rider 12 programs are reasonable programs, the customer incentives were reasonably incurred, and the amounts should be recovered by the Company based on Staff's review in the demand response reconciliation."¹⁷⁸

Mr. Matthews confirmed that DTE Electric pays each customer enrolled in the Smart Savers program an incentive of \$50 per year.¹⁷⁹ And he corroborated that MISO did not direct the Company to dispatch the Rider 12 program; no events were called.¹⁸⁰ He also stated that Staff compared Smart Savers program incentives and the Rider 12

¹⁷⁴ 2 Tr 44.

¹⁷⁵ 2 Tr 45.

¹⁷⁶ 2 Tr 45.

¹⁷⁷ 2 Tr 209.

¹⁷⁸ 2 Tr 209.

¹⁷⁹ 2 Tr 209. He noted 51,493 customers participate in the program. Id. See Exhibit AG-14.

¹⁸⁰ 2 Tr 209.

program release payments and determined they are “consistent with DTE’s demand response reconciliation, approved by the Commission on February 27, 2025.”¹⁸¹ He averred that the Smart Savers program and Rider 12 programs are enrolled with MISO as LMRs and have value whether events are called or not. He also notes the credit paid under the Rider 12 program is cost effective when compared to CONE.¹⁸²

In her brief the Attorney General states her primary concern with these demand response programs is that “DTE is spending millions of dollars, with no way to objectively determine that it is achieving its intended goal of reducing power demand during peak demand periods.”¹⁸³ The Attorney General argues there is no evidence of claimed demand reductions to justify payment of the demand response credits.¹⁸⁴ And noting that “planned demand reductions” are registered with MISO, the Attorney General questions how customers benefit from “hypothetical demand reductions.”¹⁸⁵ The Attorney General argues “[a]lthough the capacity credits can be traced and seem appropriate, the Company could not provide any evidence that Smart Savers and Rider 12 revenues *equal to* the credits paid to program participants are included in the PSCR reconciliation.”¹⁸⁶ Regarding the Rider 12 program, the Attorney General asserts the program is poorly designed and argues a majority of the demand response credits should only be paid when a demand response event is called and actual load reduction occurs. But the Attorney

¹⁸¹ 2 Tr 209-10. Referencing February 27, 2025, Order in Case No. U-21658. This order approved a settlement agreement.

¹⁸² 2 Tr 210.

¹⁸³ Attorney General brief, 22.

¹⁸⁴ Attorney General brief, 23.

¹⁸⁵ Attorney General brief, 23-24.

¹⁸⁶ Attorney General brief, 24.

General approves of a “nominal fee” to be paid for a customer’s participation.¹⁸⁷ Noting that the costs for the Smart Savers and Rider 12 programs “are socialized and paid by all customers”, the Attorney General contends that that actual cost reductions should be established by the Company.¹⁸⁸

In its brief, DTE Electric argues the demand response payments for the Smart Savers and Rider 12 program are reasonable and prudent.¹⁸⁹ Referencing Mr. Bidlingmaier’s testimony, the Company repeats that the demand response credits are paid to incentivize participation. DTE Electric argues that claiming additional capacity credits can reduce the need to build or procure new capacity resources to meet the PRMR in the MISO PRA.¹⁹⁰ And the Company repeats that LMRs, registered with MISO, receive capacity credits whether or not a curtailment event is called.¹⁹¹

In its brief, Staff argue that the Attorney General “misunderstands the value” that the Smart Savers and Rider 12 programs have. Noting that these programs are LMRs, Staff provide an apt example of value with:

Like a rock climber’s harness, load modifying resources have value regardless of whether the scenarios in which they are made practically useful materialize.¹⁹²

Noting that the Attorney General’s criticism of these programs focuses, at least in part, on whether events were called and actual load was curtailed, Staff contend this is not a proper basis for evaluation of the program’s cost effectiveness.¹⁹³ And Staff affirm that

¹⁸⁷ Attorney General brief, 25 & 27.

¹⁸⁸ Attorney General brief, 25.

¹⁸⁹ DTE Electric brief, 28.

¹⁹⁰ DTE Electric brief, 28-29.

¹⁹¹ DTE Electric brief, 29.

¹⁹² Staff brief, 16.

¹⁹³ Staff brief, 16.

the Commission considered the cost effectiveness of these programs in Case No. U-21658 and found them to be reasonable and prudent.¹⁹⁴

In her reply brief, the Attorney General acknowledges the position of DTE Electric and Staff that the additional capacity credits will reduce the need for capacity purchases in the MISO PRA to meet PRMR, but argues the record evidence does not make it clear that the Company would actually need to build or procure new capacity resources in the absence of increased demand response capacity.¹⁹⁵ The Attorney General argues that DTE Electric did not appropriately support its conclusions and repeats its recommendation that all cost for both the Smart Savers and Rider 12 programs should be disallowed.¹⁹⁶

In its reply brief, the Company repeats the arguments from its initial brief and maintains that the record supports the need for the Smart Savers and Rider 12 programs. The Company argues that Mr. Bidlingmaier clearly explained the benefits of these demand response programs, including reduction of the potential need to build or secure new capacity resources to meet PRMR.¹⁹⁷

In its reply brief, Staff note that the Attorney General did not address the testimony of Mr. Matthews and refer to the arguments in its initial brief.¹⁹⁸

This PFD finds the arguments presented by Staff and DTE Electric to be more persuasive. The Attorney General argues that if actual benefits are not demonstrated, then the Company did not demonstrate the expenses are reasonable and prudent.

¹⁹⁴ Staff brief, 16. See generally February 27, 2025, Order in Case No. U-21658.

¹⁹⁵ Attorney General reply, 13.

¹⁹⁶ Attorney General reply, 13.

¹⁹⁷ DTE Electric reply, 24.

¹⁹⁸ Staff reply, 9.

However, Staff correctly note this reflects a misunderstanding of the value of these demand response credits. As Mr. Bidlingmaier noted the Smart Savers and Rider 12 programs are registered as LMR with MISO. The demand response credits reduce the need to purchase capacity in the MISA PRA to meet the Company's PRMR and can reduce the need to build or procure new capacity resources to meet the PRMR. The PFD finds these credits have value beyond the "actual benefits" as desired by the Attorney General. Accordingly, this PFD finds DTE Electric supported the costs associated with the Smart Savers and Rider 12 programs in this matter.

This PDF also finds that the Commission approved these demand response costs in Case No U-21658.¹⁹⁹ Therefore, this PFD also finds the reasonableness and prudence of these demand response costs has been adjudicated by the Commission. Nothing in this record is sufficient to contradict those findings. Accordingly, this PFD recommends the Commission reject the Attorney General's proposed disallowances for the Smart Savers and Rider 12 programs.

5. Method used to Calculate Replacement Power Costs

Ms. Glick expressed concerns with the method used by DTE Electric to calculate replacement power costs.²⁰⁰ She testified:

DTE calculates replacement cost for plant outages over 7 days when a unit outage is either unplanned/random or planned but extends beyond the planned outage period AND the unit generates less during the entire year than was in the PSCR plan. This is because DTE has already included the cost associated with planned outages in its PSCR plan. The replacement power cost represents the gross margin of the plant in outage—that is, the difference between the fuel cost and market revenues of the plant during the time it was in outage.²⁰¹

¹⁹⁹ See February 27, 2025, Order in Case No. U-21658.

²⁰⁰ 2 Tr 295.

²⁰¹ 2 Tr 295.

Ms. Glick testified to three concerns about the Company's methodology. First, Ms. Glick asserted that the calculation of replacement power costs only if total generation from the unit is below that projected in the PSCR Plan fails to account for the timing of the outage. She indicated that the Company's method would not account for increase replacement power costs for an outage on a peak day. Second, Mr. Glick testified that generation levels projected in the plan could differ based on actual market conditions so the projections and market power prices can differ significantly from the plan. And third, Ms. Glick asserted that the method assumes replacement power is market power with no additional cost to obtain the power from a different and potentially more expensive generator like a peaking plant.²⁰² She testified that the Company's methodology may not fully account for the replacement power costs of an outage.²⁰³ In its brief, MEC repeats Ms. Glick's concerns.²⁰⁴

In its brief, Staff argues that the Commission should reject DTE Electric's method for calculating replacement power costs.²⁰⁵ Staff argues the Company's methodology "frustrates" the review of planned and forced outages for reasonable and prudent management of costs.²⁰⁶

Staff assert that DTE Electric explained its method for calculating incremental replacement power costs for outages in PSCR reconciliations in a discovery response to MEC.²⁰⁷ Mr. Bidlingmaier provided the answer in this discovery response which states:

²⁰² 2 Tr 295-296.

²⁰³ 2 Tr 296.

²⁰⁴ MEC brief, 5-6.

²⁰⁵ Staff brief, 10.

²⁰⁶ Staff brief, 10.

²⁰⁷ Staff brief, 10. See exhibit MEC-4, p 2.

Replacement cost analyses are conducted on an hourly basis. The replacement cost analysis provided for the BWEC outage in AGDE 1.12 reflects an hourly analysis conducted as described in MECDE-2.4c. For Fermi 2, the unit's generation in the Company's 2023 PSCR Plan, U-21259, was forecasted with an assumed outage rate based on historic unplanned outages spread across the hourly generation forecast. There would only be incremental PSCR replacement costs if the total outage amount reduces the unit's annual generation below the forecasted generation in the 2023 PSCR Plan as you are not replacing generation that was already assumed to not be available. The Fermi 2 Power Plant generated 9,356 GWHs in 2023 which is above the 2023 PSCR Plan value of 9,026 GWHs. Therefore, the drywell outage was within the outage rate assumed in the PSCR Plan and there is no incremental replacement cost associated with this outage.²⁰⁸

Referring to the three concerns expressed by Ms. Glick, Staff express agreement and specifically criticize the Company's method for calculating incremental replacement power costs and the decision "to only calculate replacement power costs when a unit's annual generation is below what was included in the plan."²⁰⁹ Staff also disagrees with the contention that no replacement power costs are incurred if a unit's annual generation is higher than projected in the plan.²¹⁰ Staff state that DTE Electric apparently belief that outages are reasonable and prudent when the generation is higher than projected is flawed and provide the following example:

Assume a scenario where a Company's poor planning or imprudence cause the Company to delay a planned outage into a future year. This delay would result in higher actual generation for the year than what the Company had included in the plan, all things being equal. Even if the Company then experienced a forced outage at this same unit, the total annual generation could still be higher than what was included in the plan (albeit inadvertently) if the forced outage is smaller in scale than the delayed planned outage. Under DTE's method, no replacement power costs would be calculated, and by the Company's standard no imprudence would have occurred. However, under this scenario, it is entirely possible that the Company's actions could have been imprudent both in causing the unit's generation to be higher for

²⁰⁸ Exhibit MEC-4.

²⁰⁹ Staff brief, 11.

²¹⁰ Staff brief, 11.

the year, as well as causing or extending the forced outage at this same unit during the year.²¹¹

Staff contend that the Company's method will unnecessarily complicate and increase the level of scrutiny necessary to review projected outages in a PSCR plan cases. And Staff argue DTE Electric's method creates an incentive to project the generation for each unit to be as high as possible in PSCR plans to reduce the likelihood of a disallowance in the reconciliation case.²¹²

Staff maintain that the Commission has addressed a similar issue previously in MPSC No. U-8866-R and provide a relevant cite:

The Commission also finds that a utility does not carry its burden of proof regarding the reasonableness and prudence of short outages simply by establishing that the actual availability of its generating plants exceeded the availability level projected in its PSCR plan or that the disallowance is a de minimus amount. Act 304 does not provide that negligence or mismanagement should be excused under any circumstances. Rather, a utility is statutorily-mandated to operate its generating facilities in a reasonable and prudent manner at all times. Nothing in Act 304 authorizes the Commission to ignore negligence or unreasonable and imprudent management practices on the ground that the utility may have exceeded its target for plant availability or that the resulting disallowance is small.²¹³

Staff argue that calculation of replacement power costs has no relationship to a unit's annual generation and these costs should be calculated whether or not the outage was included in the PSCR plan.²¹⁴ Staff request the Commission and ALJ to "determine that any outage can have incremental replacement power costs and direct DTE to calculate incremental replacement power costs for any outage in its PSCR reconciliation cases,

²¹¹ Staff brief, 12.

²¹² Staff brief, 13.

²¹³ Staff brief, 13-14; citing September 14, 1990, Order in Case No. U-8866-R, p 41.

²¹⁴ Staff brief, 14.

regardless of the comparison of the unit's actual generation to the generation included in the plan, at least when requested by a party to the case."²¹⁵

In its reply brief, MEC recommends that the Commission adopt Staff's requested recommendation.²¹⁶ MEC repeats Ms. Glick's testimony and summarizes Staff's arguments, specifically agreeing that replacement power costs can be incurred whether or not an outage is forced or planned, and the calculation of these costs is not related to a unit's annual generation.²¹⁷

In its reply brief, DTE Electric argues that Staff and MEC have drawn incorrect conclusions based on the discovery response provided to MEC.²¹⁸ The Company argues that Staff and MEC improperly concluded that the treatment of replacement power costs for Fermi 2 is also utilized in other generating plants. And the Company maintains that "both MEC and Staff incorrectly assume that replacement power costs are *always* relevant."²¹⁹ The Company disputes the conclusion that its methodology is premised on the assertion that no replacement power costs exist when annual generation of unit is higher than in the PSCR plan.²²⁰ DTE Electric states that Staff and MEC ignore the context of the cited discovery response and argues the response described the specific circumstances at the Fermi 2 nuclear reactor.²²¹ DTE Electric points out that both MEC and Staff cite a part of the relevant discovery response, leaving out a portion which specifies the answer pertains to Fermi 2. The Company maintains that the discovery

²¹⁵ Staff brief, 14.

²¹⁶ MEC reply, 6 and 7-8.

²¹⁷ MEC reply, 7.

²¹⁸ DTE reply, 3. See Exhibit MEC-4. DTE Electric did not address this issue in its initial brief.

²¹⁹ DTE Electric reply, 3.

²²⁰ DTE Electric reply, 4.

²²¹ DTE Electric reply, 5. See Exhibit MEC-4.

response clearly states that replacement power costs are analyzed on an hourly basis for the BWEC generation facility.²²² And the Company asserts that if the PSCR plan accounts for outage of generation facility, the replacement power costs are not considered incremental.²²³

The Company disagrees with Staff's request that the Commission and ALJ determine that outages can have incremental replacement power costs and direct the calculation of those costs, regardless of the unit's annual generation.²²⁴ DTE Electric argues there is no basis for the Commission to adopt this recommendation and argues that discovery responses, not in the record are relevant and should be considered.²²⁵

This PFD finds the arguments of Staff and MEC to be more persuasive. DTE Electric correctly notes that both Staff and MEC did not include a portion of the relevant discovery response in their examinations. This portion of the answer indicates that replacement power costs are evaluated and conducted on an hourly basis for BWEC. However, even considering the entire response, it is not clear whether the Company considers a unit's projected annual generation when determining whether to calculate replacement power costs. The Company did not provide rebuttal testimony to Ms. Glick and did not provide any exhibits to clarify the matter; only providing argument in its reply brief. The Company makes reference to several discovery requests that are not in the

²²² DTE Electric reply, 5. See Exhibit MEC-4.

²²³ DTE Electric reply, 5.

²²⁴ DTE Electric reply, 6. DTE Electric objects to "Staff introducing a new position and request for relief in briefing, after the record has closed." *Id.* at 7. However, MEC witness Ms. Glick raised the issue in her testimony, and it is proper for any party to address testimony in its brief. Therefore, the PFD will not address the issue further.

²²⁵ DTE reply, 6. DTE Electric notes that no party offered the referenced discovery responses as exhibits. *Id.*

record and asserts they provide clarity on the Company's methodology for the calculation of replacement power costs.²²⁶ However, because those responses are not in the record, they cannot be considered. As a result DTE Electric's assertions are not supported.

This PFD also agrees with Staff and MEC that any outage, whether planned or unplanned, can potentially result in replacement power costs. The Company confirmed it does not calculate incremental replacement power costs if the outage is forecast in the PSCR plan because the unavailability of the unit is already accounted for.²²⁷ But Staff correctly argue that even a planned outage could ultimately result in incremental replacement power costs and even if an outage is planned and included in a PSCR plan, this does not guarantee that changes affecting the determination of the Company's reasonableness and prudence could occur. Staff provide an apt example (above).

Accordingly, this PFD recommends that Commission make the determination, requested by Staff, that any outage can have incremental replacement power costs and direct DTE to calculate incremental replacement power costs for any outage in its PSCR reconciliation cases, regardless of the comparison of the unit's actual generation to the generation included in the plan, at least when requested by a party to the case.²²⁸

6. Avoidance of Sole Supplier Contracts

During his analysis of the NEXUS costs, Mr. Coppola noted that the Company uses a sole supplier to provide gas at the Kensington receipt point. He recommended the Commission "direct the Company to avoid sole-supplier gas purchase arrangements

²²⁶ DTE Electric reply, 6.

²²⁷ See Exhibit MEC-5.

²²⁸ Staff brief, 14.

and instead conduct a transparent and competitive gas procurement procedure when procuring gas supply from all gas purchase locations.”²²⁹

Based on the testimony of Mr. Swiech, the Company disagrees with the proposition that it should avoid use of sole supplier arrangements.²³⁰ Mr. Swiech testified that DTE Electric conducts a transparent and competitive gas procurement process prior to selecting a sole supplier. He stated the Company reviews proposals from five suppliers and selected the one with the lowest cost arrangements.²³¹ He testified that “sole supplier arrangement has provided a reliable source of gas supply and significant value for DTE customers.”²³² Referring to the gas supply at Kensington, Mr. Swiech noted that the sole supplier has provided economic supply when overall supply was limited.²³³

In her brief, the Attorney General repeats Mr. Coppola’s request.²³⁴ The Attorney General expresses concern that there is a lack of competitiveness and transparency in sole supplier contracts and asserts there is a possibility that the practice will result in overpayment for gas supply.²³⁵ The Attorney General criticizes Mr. Swiech’s assertion that the sole supplier at Kensington has provided adequate supply in a location with limited supply, and inquires why the Company did not confirm sufficient supply would be available. And the Attorney General notes that DTE Electric does not rebid the gas purchases, daily or monthly, so the rate paid may not reflect current market conditions.²³⁶

²²⁹ 2 Tr 231.

²³⁰ DTE Electric brief, 24.

²³¹ 2 Tr 180.

²³² 2 Tr 179.

²³³ 2 Tr 178-179.

²³⁴ Attorney General brief, 16.

²³⁵ Attorney General brief, 15.

²³⁶ Attorney General brief, 15-16.

In its brief the DTE Electric argues that sole supplier arrangements provide significant value and strike a “reasonable balance between reliability and affordability.”²³⁷ Referring to Mr. Swiech’s testimony the Company argues cessation of sole supplier arrangements would be a detriment to ratepayers.²³⁸ And in its reply brief, the Company generally repeats the arguments from its brief and references to Mr. Swiech’s testimony.

This PDF finds the arguments made by DTE Electric to be more persuasive. First the Attorney General requests the Commission direct DTE Electric to avoid sole supplier arrangements, but the request comes in the context of a protracted discussion of NEXUS cost. The Attorney General does not make it clear whether the request relates to all supply contracts or only those supplying the NEXUS pipeline. And, the Company provides a reasonable explanation for use of sole supplier arrangements, asserting they produce value. The Attorney General did not identify any improper or excessive costs actually resulted from the use of sole supplier contracts and did not propose any disallowance. Accordingly, this PFD recommends that the Commission decline the request to instruct DTE Electric to avoid sole supplier arrangements.

7. Inefficient Operation of Generation Fleet

Mr. Bidlingmaier explained and supported the Company’s power supply system operations, including system generation, third party wholesale purchases and sales of power, MISO market expenses, and emission allowance expenses.²³⁹ He concluded that

²³⁷ DTE Electric brief, 24.

²³⁸ DTE Electric brief, 24.

²³⁹ 2 Tr 25-41.

the Company's electric system was operated in a reasonable and prudent manner in 2023.²⁴⁰

Ms. Glick provided a detailed review of the Company's use of its generation fleet and asserted that DTE Electric utilized its peaking units more than indicated in the plan and operated its baseload fleet less than planned.²⁴¹ She noted that the Company experienced several overlapping outages at baseload units in July and August, a period of high load.²⁴² Ms. Glick asserted that peaking units are more expensive to operate and are not an economical substitute for baseload units.²⁴³ She testified that the Company did not account for the impact of multiple overlapping outages in its PSCR plan and it's likely that the plan understated the replacement power costs incurred during these overlapping outages.²⁴⁴ Ms. Glick also stated that DTE Electric operated its baseload fleet in a must-run status too often which amounted to an uneconomical commitment of the units.²⁴⁵ While Ms. Glick expressed concern that Company's operation of its generation units resulted increased costs, she did not recommend any disallowance.

DTE Electric disputed Ms. Glick's assertion that its dispatch of generation units was uneconomical, that it did not account for overlapping outages, or that it over committed its baseload fleet.²⁴⁶ Mr. Bidlingmaier testified that the Company offered more generation into the market than was utilized by MISO, noting that MISO makes the

²⁴⁰ 2 Tr 29.

²⁴¹ 2 Tr 290.

²⁴² 2 Tr 303-306.

²⁴³ 2 Tr 292.

²⁴⁴ 2 Tr 308.

²⁴⁵ 2 Tr 314-315.

²⁴⁶ DTE Electric brief, 7. 2 Tr 46.

decision to dispatch.²⁴⁷ He maintained the Company followed the same economic reserve and cycling process that was accepted by the Commission in prior reconciliation cases, and testified the Company did account for overlapping outages in the 2023 PSCR plan.²⁴⁸ Mr. Bidlingmaier noted that Ms. Glick did not provide any specific instance of increased customer costs due to the Company's of MISO's commitment and dispatch decisions.²⁴⁹ And Mr. Kimmel contended that the Company did not intentional overlap random outages and testified, "[t]he fact that a few random outages overlap in a specific year is simply a coincidence and not a reason for concern."²⁵⁰

The parties' briefs generally relied on the testimony of their respective witnesses and do not expound on the arguments.

This PFD finds that MEC expressed concern and provided a review of the Company's dispatch decisions, overlapping outages, and over commitment to must run status, however it did not request any disallowance or other relief. While overuse of peaking units is less economical there is no evidence that DTE Electric's dispatch decisions were not reasonable and prudent. And while several overlapping outages of baseload units could be unreasonable, Mr. Kimmel provided unrebutted testimony that in this case it was a coincidence. Accordingly, this PFD does not recommend the Commission take any action regarding MEC's concerns.

²⁴⁷ 2 Tr 47.

²⁴⁸ 2 Tr 47-48.

²⁴⁹ 2 Tr 46.

²⁵⁰ 2 Tr 115.

V.

CONCLUSION

Based upon the findings and conclusions above, this PFD recommends that the Commission:

- (1) Revise the 2023 beginning balance consistent with the final order in MPSC No. U-21051.
- (2) Disallow \$520,753 in replacement power costs as recommended by the Attorney General for the outage at Monroe Unit-1. Or, in the alternative, disallow \$294,314 in replacement power costs as recommended by Staff.
- (3) Disallow a total of \$6,435,615 in replacement power costs for the spring and fall outages at BVEC as recommended by MEC, consisting of \$4,681,010 replacement power costs for the spring outage and \$1,754,605 for the fall outage.
- (4) Reject the proposed disallowances for NEXUS related costs made by the Attorney General and MEC.
- (5) Reject the disallowances proposed by the Attorney General for demand response costs for the Smart Savers and Rider 12 programs.
- (6) Accept Staff's recommendation regarding the method used to calculate replacement power costs and determine that any outage can have incremental replacement power costs and direct DTE to calculate incremental replacement power costs for any outage in its PSCR reconciliation cases, regardless of the comparison of the unit's actual generation to the generation included in the plan, at least when requested by a party to the case.

- (7) Decline to instruct DTE Electric to avoid sole supplier arrangements.
- (8) Decline to act on MEC's analysis and conclusion that DTE Electric operates its generation fleet inefficiently.

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

**Katherine
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Administrative Law Judge

Issued and Served:
November 14, 2025

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

* * * * *

STATE OF MICHIGAN)		
)	SS.	Case No. U-21260
County of Ingham)		
_____)		

PROOF OF SERVICE

Meaghan Dobie, being duly sworn, deposes and says that on November 14, 2025, she served a copy of the attached Notice of Proposal for Decision and Proposal for Decision via email and/or first-class mail to the persons as shown on the attached service list.



Meaghan Dobie

Subscribed and sworn to before me this
14th day of November 2025.



Brianna L. Brown
Notary Public, Gratiot County, Michigan
My Commission Expires July 4, 2028