

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

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In the matter of the application of DTE Gas )	
Company for reconciliation of its gas cost )	
recovery plan (Case No. U-20816) for the )	Case No. U-20817
12-month period April 2021-March 2022 )	
_____ )	

**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 September 18, 2023.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before October 9, 2023, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before October 23, 2023.

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

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

**Lesley C.  
Fairrow**

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September 18, 2023  
Lansing, Michigan

\_\_\_\_\_  
Lesley C. Fairrow  
Administrative Law Judge

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**PROPOSAL FOR DECISION**

**I.**

**PROCEDURAL HISTORY**

On June 28, 2022, DTE Gas Company (DTE Gas) filed an application including testimony and exhibits requesting authority to reconcile its gas cost recovery (GCR) revenues and expenses for the 12-month period ending March 31, 2022 under Public Act 304 of 1982 (Act 304). MCL 460.6h. It filed an erratum correcting errors in the initial application on June 29, 2022.

Retail Energy Supply Association (RESA) filed a Petition to Intervene on August 1, 2022.

The Commission issued a Notice of Hearing which set a prehearing for this matter on August 11, 2022. Administrative Law Judge (ALJ) Katherine E. Talbot convened a properly noticed prehearing. During the prehearing, RESA's unopposed Petition to Intervene was granted. The mutually agreed upon schedule was also adopted. The ALJ issued a Scheduling Memo on August 15, 2022.

The Michigan Department of Attorney General Dana Nessel (AG) filed a Notice of Intervention on September 6, 2022.<sup>1</sup>

The ALJ issued a Protective Order on February 23, 2023.

Administrative Law Judge Lesley C. Fairrow replaced Administrative Law Judge Katherine E. Talbot on March 24, 2023 and presided over the matter thereafter.

Consistent with the schedule, Staff and the AG filed testimony with exhibits on March 31, 2023, and DTE Gas filed rebuttal testimony with exhibits on April 28, 2023. DTE Gas filed a Motion for Partial Summary Disposition on May 30, 2023. An evidentiary hearing was held on June 9, 2023, during which all testimony was bound into the record<sup>2</sup> and cross-examination was waived. DTE Gas, the Staff, the AG, and RESA filed initial briefs on July 13, 2023. The Staff, the AG and RESA responded to DTE Gas's Motion for Partial Summary Disposition within their respective initial briefs. DTE Gas, the Staff, and the AG filed reply briefs on August 3, 2023. Oral argument on DTE Gas's Motion for Partial Summary Disposition was held on August 14, 2023.

The record in this case is comprised of 302 pages of transcript and 63 exhibits admitted into the record. Pertinent aspects of the evidentiary record are discussed in greater detail below.

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<sup>1</sup> The AG sought intervention pursuant to MCL 14.28, which provides that the AG may intervene when, in her judgment, the interests of the state require intervention and the people of this state "may be a party or interested." MCL 14.28; *Attorney General v Public Service Commission*, 243 Mich App 487, 496; 625 NW2d 16 (2000). In this case, the AG determined that the interests of the state and the People of the State required intervention. Notice of Intervention, p 2. No party objected to the AG's intervention. Although it was not formally addressed on this record, because the AG is authorized by statute to intervene on behalf of the people of this state, this PFD determines that she became a party in interest upon the filing of her first pleading. MCL 14.28 and 14.101.

<sup>2</sup> Confidential testimony was bound into a separate confidential transcript and confidential versions of certain DTE and AG exhibits were designated as confidential in accordance with the protective order.

## II.

### OVERVIEW OF THE RECORD

#### A. DTE Gas

DTE Gas presented the testimony of five witnesses:

1. Joseph P. Madigan

Joseph P. Madigan is the Senior Gas Supply and Planning Analyst at DTE Gas. He testified about his education and experience.<sup>3</sup> He earned a Bachelor of Science in Industrial Engineering, worked as a Tendering Manager and Contract Specialist at two engineering, procurement, construction, and installation companies in Texas.<sup>4</sup> He has been employed by DTE Gas since 2017.<sup>5</sup> From 2017 until 2022, he was a Fuel Resources Specialist and assisted DTE Gas witnesses prepare direct testimony, rebuttal testimony, and discovery responses in nine MPSC cases.<sup>6</sup> In his current position, Witness Madigan is responsible for purchasing natural gas and interstate transportation capacity, analyzing, planning and forecasting gas supply and transportation volumes, prices, and costs, and for developing and administering the fixed price program.<sup>7</sup> This is the first time that Witness Madigan has submitted testimony in a MPSC proceeding.<sup>8</sup>

Witness Madigan testified that DTE Gas took reasonable and prudent actions while implementing the GCR plan during the 2021-2022 GCR Year.<sup>9</sup> He sponsored 13 exhibits:

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<sup>3</sup> 2 Tr 20.

<sup>4</sup> 2 Tr 20.

<sup>5</sup> 2 Tr 20.

<sup>6</sup> 2 Tr 20.

<sup>7</sup> 2 Tr 21.

<sup>8</sup> 2 Tr 21.

<sup>9</sup> 2 Tr 22, 64.

A1, A-2, A-3, A-4 Revised, A-5 Revised, A-6, A-7 Revised, A-26, A-28 Revised, A-30, A-31, A-32 and A-33.<sup>10</sup>

After summarizing the components of DTE Gas's 2021- 2022 GCR plan, Witness Madigan testified that DTE Gas delivered 4.0 Bcf more volume than was planned, which cost an additional \$77.1 million as illustrated in Exhibits A-3 and A-4 Revised.<sup>11</sup> He testified that natural gas prices rose significantly at the end of 2021 and remained higher than forecasted during the GCR Year.<sup>12</sup> He said that the commodity costs were \$1.81/Dth higher than what was forecasted in the plan.<sup>13</sup> He testified that DTE Gas purchased more than was forecasted due to a greater than expected market demand.<sup>14</sup>

Witness Madigan testified that the actual costs were \$73.1 million greater than the plan.<sup>15</sup> The fixed-price purchases were \$500,000 less than was planned because of minor relocation of delivery points due to unforeseen pipeline outages.<sup>16</sup> Additional cost was offset by a lower than projected transportation cost due to pipeline credits and capacity-release revenue that were not a part of the plan.<sup>17</sup>

Witness Madigan testified that the company achieved price stability for customers by making 68 individual fixed-price purchases during the 24-month reconciliation period.<sup>18</sup> These purchases represented 75% of the projected plan volumes.<sup>19</sup> Witness Madigan testified that the number, timing, and size of the fixed price purchases were reasonable

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<sup>10</sup> 2 Tr 23, 24 66-67.

<sup>11</sup> 2 Tr 23-26, 28-29.

<sup>12</sup> 2 Tr 27.

<sup>13</sup> 2 Tr 27.

<sup>14</sup> 2 Tr 28.

<sup>15</sup> 2 Tr 26.

<sup>16</sup> 2 Tr 29-30.

<sup>17</sup> 2 Tr 30.

<sup>18</sup> 2 Tr 34.

<sup>19</sup> 2 Tr 31-32, 34.

and prudent.<sup>20</sup> He said that this is evidenced in Exhibit A-2, which shows that the fixed and spot-month purchases were spread out over a 36-month period to provide greater pricing stability.<sup>21</sup> Witness Madigan also said that gas buyers read industry trade publications, were in regular contact with potential suppliers, and monitored data from a real-time NYMEX feed to gather data and market intelligence.<sup>22</sup>

According to Witness Madigan, the plan established that the supply not under fixed-price contracts would be purchased through the spot market and DTE Gas purchased 3.1 MMDth more of spot-market-index priced gas than was forecasted, at an average cost of an additional \$1.81 per Dth.<sup>23</sup> In sum, DTE Gas paid \$75.7 million more than projected for the spot-market-index priced gas.<sup>24</sup> Witness Madigan testified that the spot market pricing forecast in December 2020 was less than the actual market when the purchases were made, and again, higher demand resulted in more volume purchased.<sup>25</sup>

DTE Gas also purchased 1.2 MMDth of gas for the market price of approximate cost of \$4.9 million (\$4.09/Dth) from MGAT and 10.2 MMDth of gas for approximately \$31.8 million (\$3.16/Dth) from DTEET.<sup>26</sup>

Witness Madigan testified that DTE Gas did not make any changes to its transport portfolio, but some changes did materialize during this reconciliation period.<sup>27</sup> He said that consistent with the agreement approved by the Commission in Case No. U-20994,

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<sup>20</sup> 2 Tr 33.

<sup>21</sup> 2 Tr 34.

<sup>22</sup> 2 Tr 34.

<sup>23</sup> 2 Tr 36-37.

<sup>24</sup> 2 Tr 37.

<sup>25</sup> 2 Tr 37.

<sup>26</sup> 2 Tr 61-62. See Exhibit A-7.

<sup>27</sup> 2 Tr 37.

DTE Gas pays \$1100/month in administrative fees for the AEP Gaylord Interconnect receipt point and transportation service, plus \$0.03626/Mcf for gas transported.<sup>28</sup>

Witness Madigan said that DTE Gas paid NEXUS a rate of \$0.695/Dth plus applicable fuel charges in accordance with their negotiated contract terms.<sup>29</sup> He found the rate to be reasonable because it is \$0.1274/Dth less than the Federal Energy Regulatory Commission (FERC) approved tariff rate, it is lower than other anchor shippers who charge approximately \$0.73 to \$0.7475 Dth/day, and it was the lowest landed cost between competing alternatives when DTE Gas conducted its analysis in July 2014.<sup>30</sup> Witness Madigan explained that DTE Gas negotiated the fixed rate of \$0.695/Dth for a fixed period of 15 years.<sup>31</sup> He also opined that based on Enbridge's 10-Q dated September 30, 2018, there were approximately \$500 million of cost overruns related to the NEXUS pipeline and the DTE Gas customers would have had to pay for a share of the overruns but for the negotiated fixed price arrangement.<sup>32</sup> And he testified DTE Gas had been guaranteed the opportunity to match any rate that is lower than the \$0.695/Dth if NEXUS entered into such an agreement with a similarly situated shipper prior to the in-service date of the pipeline.<sup>33</sup>

The NEXUS contract also allows for 37,500 Dth/day to be received at Clarington (75 miles south) instead of Kensington through October 31, 2024.<sup>34</sup> Witness Madigan testified that the additional transportation capacity received at Clarington increases the

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<sup>28</sup> 2 Tr 38.

<sup>29</sup> 2 Tr 40, 55

<sup>30</sup> 2 Tr 40-41, 67. See Case No. U-17691.

<sup>31</sup> 2 Tr 41.

<sup>32</sup> 2 Tr 41-42.

<sup>33</sup> 2 Tr 42.

<sup>34</sup> 2 Tr 42.

costs by \$0.15/Dth/day plus fuel, which is also the market rate.<sup>35</sup> He testified that DTE Gas continually evaluates available market offerings and determined the additional transportation capacity received at Clarington would reduce the cost to customers.<sup>36</sup>

Witness Madigan referenced the Commission's past decisions regarding the DTE Gas and NEXUS contract.<sup>37</sup> According to Witness Madigan, the projected gas prices in 2014/2015 were between \$5-10/Dth over the life of the NEXUS contract.<sup>38</sup> He said that natural gas production was projected to increase and U.S. proved reserves were projected to also increase, putting downward pressure on natural gas prices.<sup>39</sup>

Witness Madigan noted that the Commission approved DTE Gas's NEXUS contract in GCR plan Case No. U-20235 and ordered DTE Gas to provide adequate support for the reasonableness and prudence of the amounts associated with the NEXUS agreement and amendment in each reconciliation.<sup>40</sup> Witness Madigan testified that DTE Gas provided evidence in Case No. U-20236, a reconciliation case, and the Commission found DTE Gas's actions to be reasonable and prudent.<sup>41</sup>

Witness Madigan testified that DTE Gas responded to the Commission's concerns regarding DTE Gas's continued reliance on the 2014/2015 analysis of NEXUS by engaging FTI Consulting (FTI) in the first quarter of 2021 to review the market dynamics and evaluate the benefits of the NEXUS pipeline.<sup>42</sup> He said that the 2021 analysis was

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<sup>35</sup> 2 Tr 42-43.

<sup>36</sup> 2 Tr 42.

<sup>37</sup> 2 Tr 43-44.

<sup>38</sup> 2 Tr 44.

<sup>39</sup> 2 Tr 46-48

<sup>40</sup> 2 Tr 43-44, 55.

<sup>41</sup> 2 Tr 56.

<sup>42</sup> 2 Tr 49.

used in multiple cases on the Commission's docket including Case Nos. U-20544, U-20816, and U-21064.<sup>43</sup> And the 2021 FTI study concluded that the NEXUS agreement was appropriate when DTE Gas entered it.<sup>44</sup> He also said the FTI study showed that DTE Gas customers benefitted from the NEXUS pipeline. Specifically, MichCon city gate prices are down an average of \$0.08 per MMBtu over the life of the contract due to the NEXUS pipeline.<sup>45</sup> According to the FTI analysis, DTE Gas customers will save approximately \$199 million between 2022 and 2038 and all Michigan customers will save \$1 billion due to the NEXUS pipeline being built.<sup>46</sup> He testified that an example of the benefits of the NEXUS arrangement was seen in February 2021, when unprecedented freezing temperatures resulted in prices of \$999 in Oklahoma while MichCon city gate paid under \$8.<sup>47</sup> Witness Madigan said that the NEXUS pipeline provides additional supply reliability and the lower cost is an example of the impact of the increased supply.<sup>48</sup> Another benefit is that distribution rates are lower because NEXUS pays DTE Gas \$32.1 million annually to use a portion of DTE Gas's transportation system.<sup>49</sup> Witness Madigan also opined that NEXUS supplies have benefitted all Michigan gas utilities and therefore, all Michigan customers have benefitted.<sup>50</sup>

Witness Madigan testified that in 2021, gas prices were between \$2 and \$6/Dth over the life of the NEXUS contract.<sup>51</sup> He said gas prices increased "dramatically" in 2022

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<sup>43</sup> 2 Tr 49.

<sup>44</sup> 2 Tr 49.

<sup>45</sup> 2 Tr 50.

<sup>46</sup> 2 Tr 50-51.

<sup>47</sup> 2 Tr 51-52.

<sup>48</sup> 2 Tr 52.

<sup>49</sup> 2 Tr 56, 68.

<sup>50</sup> 2 Tr 56, 68.

<sup>51</sup> 2 Tr 44.

and aligned with the gas prices that had been projected by the analysis done in 2014/2015.<sup>52</sup> He also said that higher gas rates were not accounted for in the 2021 FTI study.<sup>53</sup> He attributed the 2022 increase to factors ranging from the war in Ukraine to increasing LNG exports.<sup>54</sup> He also testified that the volume in reserves has increased.<sup>55</sup> He said that the projected production of natural gas has significantly increased.<sup>56</sup> And he expected increased reserves and increased production to put downward pressure on the natural gas prices.<sup>57</sup>

Witness Madigan testified that market prices have doubled since the FTI study was conducted, but DTE Gas has not re-analyzed the data.<sup>58</sup>

Witness Madigan did acknowledge that the Commission directed DTE Gas to take steps to minimize the cost of gas, including suggesting that it renegotiate contracts.<sup>59</sup> He said that the NEXUS TEAL amendments are an example of DTE Gas's compliance with this directive and the projected savings for customers as a result of the amendments is \$5.8 million between November 1, 2022 and October 31, 2024.<sup>60</sup> According to Witness Madigan, DTE Gas reviewed its contract with NEXUS and found that the benefits that were expected in 2014 have materialized.<sup>61</sup> Further, Witness Madigan testified that long

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<sup>52</sup> 2 Tr 44-45.

<sup>53</sup> 2 Tr 44-45.

<sup>54</sup> 2 Tr 45-46.

<sup>55</sup> 2 Tr 47.

<sup>56</sup> 2 Tr 46-47.

<sup>57</sup> 2 Tr 47.

<sup>58</sup> 2 Tr 47.

<sup>59</sup> 2 Tr 43-44. See Order issued in Case No. U-20543.

<sup>60</sup> 2 Tr 52.

<sup>61</sup> 2 Tr 52-53.

term contracts such as the one involving NEXUS are not typically renegotiated unless there has been a breach of the contract.<sup>62</sup>

Witness Madigan testified that DTE Gas contracts for 330 MDth/d of summer pipeline capacity and 400 MDth/d of winter pipeline capacity.<sup>63</sup> Taking the weather into account, Witness Madigan said that DTE Gas plans to use approximately 320 MDth/d of its pipeline capacity during the winter months, but it purchases more capacity to ensure reliable supply for customers.<sup>64</sup>

The GCR plan projected \$62.5 million in transportation costs.<sup>65</sup> According to Witness Madigan, actual transportation costs were \$58.8 million.<sup>66</sup> The actual costs were \$3.7 million less than what was projected because DTE Gas received \$2.56 million in pipeline credits from Panhandle, \$600 thousand in capacity release credits, a reduction in the fixed transportation rate on Viking as described in Case No. U-20816, and additional pipeline credits from NEXUS, Viking and ANR.<sup>67</sup> In September 2020, DTE Gas contracted for a gas supply physical call option to purchase up to 250,000 Dth/d for any ten days in January or February at a cost of \$250,000 plus a fixed rate for the gas.<sup>68</sup> DTE Gas did not execute the gas supply physical call option during the 2021-2022 GCR Year and therefore only incurred the premium costs of \$250,000.<sup>69</sup>

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<sup>62</sup> 2 Tr 53.

<sup>63</sup> 2 Tr 56-57.

<sup>64</sup> 2 Tr 57.

<sup>65</sup> 2 Tr 59.

<sup>66</sup> 2 Tr 59.

<sup>67</sup> 2 Tr 59.

<sup>68</sup> 2 Tr 60.

<sup>69</sup> 2 Tr 60.

Witness Madigan also testified that DTE Gas did not forecast any cashout refunds but received approximately \$300,000 of cashout credits during the 2021-2022 GCR Year from Interstate Pipelines' and DTE Gas's Cashout Mechanisms contained in the tariffs, which provide for monetary settlements of incidental imbalances each month.<sup>70</sup>

## 2. Lucian Bratu

Lucian Bratu, a Senior Gas Supply and Planning Analyst for DTE Gas testified and sponsored exhibits A-8, A-9, A-10, A-11, A-12, A-13 and A-29.<sup>71</sup> He earned a Bachelor of Electromechanical Engineering Degree from Polytechnic University of Bucharest and a Master's Degree in Business Administration from University of Windsor.<sup>72</sup> He also earned a Professional Engineer certification from the licensing and regulation body for professional engineers in Ontario, Canada.<sup>73</sup> He worked as an engineer in the automotive industry and for Union Gas Limited, a natural gas distribution company in Ontario, Canada before obtaining employment with DTE in 2015.<sup>74</sup> He has worked in the Emergency Preparedness and Response and Vegetation Management Departments.<sup>75</sup>

Witness Bratu has maintained his current position in the DTE Gas Supply and Planning Department at since 2018.<sup>76</sup> He is responsible for the planning of natural gas supplies.<sup>77</sup> He has been involved in eight prior Commission cases, including Case No. U-20816, the GCR plan that is reconciled here.<sup>78</sup>

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<sup>70</sup> 2 Tr 60-61.

<sup>71</sup> 2 Tr 109-110.

<sup>72</sup> 2 Tr 105.

<sup>73</sup> 2 Tr 106.

<sup>74</sup> 2 Tr 105.

<sup>75</sup> 2 Tr 105.

<sup>76</sup> 2 Tr 106.

<sup>77</sup> 2 Tr 106.

<sup>78</sup> 2 Tr 106-107.

Witness Batu testified that DTE Gas expected to begin the 2021-22 GCR Plan year with 13.4 Bcf GCR/GCC Working Gas on April 1, 2021, but it began with 15.5 Bcf of gas in storage because March 2021 was 19% warmer than normal.<sup>79</sup> He also said that DTE Gas expected to have a storage balance of 11.2 Bcf of gas at the end of the 2021-2022 Plan Year based on a send out of 159.7 Bcf, plus 157.6 Bcf of supply.<sup>80</sup> He testified that send out was actually 165.4 Bcf<sup>81</sup> for the 2021-2022 Plan Year so DTE Gas increased the supply by 2.6 Bcf, which resulted in an actual storage balance of 10.3 Bcf<sup>82</sup>, 0.9 Bcf less gas than projected in storage at the end of the Plan Year.<sup>83</sup>

Witness Batu testified about the reasons for these variances. He said that because the economy was recovering from the COVID-19 pandemic, there was a 5.1 Bcf higher sales volume.<sup>84</sup> He said that November, January, and February weather was colder than normal and resulted in greater winter supply purchases, but the weather for the operating year was 2.1% warmer-than-normal overall.<sup>85</sup> He also noted that Gas Customer Choice customers migrated to the GCR program, resulting in a need for additional GCR supply gas.<sup>86</sup> Company use and losses were 0.5 Bcf higher than planned, which Witness Batu said could be due to a variety of reasons including fuel for compressors, gas processing at storage facilities and gas to heat Company facilities, transmission losses, distribution system leaks, and theft and metering errors.<sup>87</sup>

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<sup>79</sup> 2 Tr 110-111, 113, 117.

<sup>80</sup> 2 Tr 111.

<sup>81</sup> DTE Gas calculates this as a difference of 5.6 Bcf higher, but it is actually 5.7 Bcf more.

<sup>82</sup> 2 Tr 115.

<sup>83</sup> 2 Tr 111-112.

<sup>84</sup> 2 Tr 112.

<sup>85</sup> 2 Tr 111, 118, 119.

<sup>86</sup> 2 Tr 120.

<sup>87</sup> 2 Tr 113.

Witness Batu also testified that if the dehydration equipment at Belle River Mills storage field failed, the Gas Supply Physical Call Option would function like an insurance policy and provide approximately 77% of the loss created by an outage.<sup>88</sup> The remaining 23% would have been procured from the spot market.<sup>89</sup> He said the Physical Call Option is not a long-term solution, but it is cost effective, less risky, highly reliable, and highly flexible compared to the alternative options according to DTE Gas's analysis.<sup>90</sup> Witness Batu said that long term solutions are being identified and analyzed.<sup>91</sup>

Witness Batu testified that cost related to DTE Gas's use and losses is included in its rate case, and are not a part of this reconciliation.<sup>92</sup>

### 3. Timothy Krysinski

Timothy Krysinski is a Principal Project Manager at DTE Gas. He testified about his educational background and experience which includes a bachelor's degree in accounting, a master's degree in finance, and certification as a Public Accountant.<sup>93</sup> He has worked in various positions at DTE since 2002 and was promoted to his current role in 2018.<sup>94</sup> He said that he is responsible for monitoring proceedings before the FERC, the Canadian Energy Regulator and the MPSC.<sup>95</sup> He has testified before this Commission in 13 prior matters, including Case No. U-20816.<sup>96</sup> He sponsored exhibit A-14 in this case.<sup>97</sup>

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<sup>88</sup> 2 Tr 121-123, 125-126.

<sup>89</sup> 2 Tr 122.

<sup>90</sup> 2 Tr 126-127.

<sup>91</sup> 2 Tr 127.

<sup>92</sup> 2 Tr 128.

<sup>93</sup> 2 Tr 131.

<sup>94</sup> 2 Tr 131-132.

<sup>95</sup> 2 Tr 132.

<sup>96</sup> 2 Tr 132-133.

<sup>97</sup> 2 Tr 134.

Witness Krysinski testified that the FERC has been investigating whether the rates that Panhandle Eastern Pipeline Company (Panhandle) charges are just and reasonable since 2019.<sup>98</sup> DTE Gas is an intervenor in the Panhandle cases before the FERC.<sup>99</sup> Witness Krysinski said that DTE Gas has been paying Panhandle higher rates for transportation service since March 1, 2020, but the overage could be refunded if the FERC determines that the rates should be lower.<sup>100</sup> He testified that the trial for one of the Panhandle matters was completed in September 2020 and the ALJ issued an initial decision in March 2021, but the FERC has not yet issued an order in that case.<sup>101</sup> The FERC has issued an order denying two of the complaint cases involving Panhandle.<sup>102</sup>

Witness Krysinski testified that DTE Gas has multiple contracts with ANR Pipeline Company (ANR).<sup>103</sup> He said that some of the contracts are up for renegotiation in 2022.<sup>104</sup> ANR filed a general rate case with the FERC in January 2022 and DTE Gas filed a motion to intervene.<sup>105</sup> Witness Krysinski said that if the rates go into effect in accordance with ANR's filing, DTE Gas's transportation costs will increase by an estimated \$10 million annually.<sup>106</sup> That matter has not yet been decided but the rates ANR filed became effective August 1, 2022 subject to refund at the ultimate outcome of the case.<sup>107</sup>

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<sup>98</sup> 2 Tr 135-138.

<sup>99</sup> 2 Tr 138, 143-144.

<sup>100</sup> 2 Tr 137-138.

<sup>101</sup> 2 Tr 139-140.

<sup>102</sup> 2 Tr 148.

<sup>103</sup> 2 Tr 141.

<sup>104</sup> 2 Tr 141.

<sup>105</sup> 2 Tr 139-141.

<sup>106</sup> 2 Tr 141.

<sup>107</sup> 2 Tr 140.

Witness Krysinski also testified that Great Lakes did not file a general rate case and reached a settlement agreement with its customers in March 2022 instead.<sup>108</sup> He said reaching a settlement prior to the rate case filing allowed the parties to avoid extended litigation, eliminated the possibility of pancaked rate cases, and provided rate certainty for the period of the moratorium.<sup>109</sup>

According to Witness Krysinski, DTE Gas received refunds and credits totaling \$2,798,649 during the current reconciliation period:

\$2,556,575	From Panhandle as a result of filing in Docket No. RP21-616-0000. <sup>110</sup>
\$182,490	From NEXUS's Applicable Shrinkage Adjustment annual filing in Docket No. RP21-549-000. <sup>111</sup>
\$5,181	From NEXUS OFO Penalty Disbursement Report in Docket No. RP22-495-0000. <sup>112</sup>
\$18,276	From Viking for an unplanned outage. <sup>113</sup>
\$6,740	From Great Lakes for planned outages in August and September 2021. <sup>114</sup>
\$29,387	From ANR's Penalty Revenue Crediting Report filing in Docket No. RP21-1189-000. <sup>115</sup>

Witness Krysinski testified that there were no major variations from the pipeline reservation rates that were forecasted in the GCR plan but that minor rate variations occurred.<sup>116</sup>

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<sup>108</sup> 2 Tr 142-143.

<sup>109</sup> 2 Tr 143.

<sup>110</sup> 2 Tr 143-148.

<sup>111</sup> 2 Tr 149.

<sup>112</sup> 2 Tr 149.

<sup>113</sup> 2 Tr 149.

<sup>114</sup> 2 Tr 149.

<sup>115</sup> 2 Tr 149.

<sup>116</sup> 2 Tr 150.

4. Gandolfo LoRe

Gandolfo LoRe, an accounting and finance Manager at DTE Gas, testified and sponsored exhibits A-15, A-16, A-17, A-18, and A-19.<sup>117</sup> He is responsible for accounting and reporting revenue and cost of gas sold.<sup>118</sup> He testified in five other MPSC cases.<sup>119</sup>

Witness LoRe said that DTE Gas sold gas during the 2021-2022 GCR Year totaling approximately \$490 million (an average of \$3.66/Mcf) and pointed to Exhibit A-15 to illustrate this calculation.<sup>120</sup> He said the total cost includes storage costs, costs related to sales with no GCR factor, and transportation costs.<sup>121</sup> He testified that DTE Gas is due \$8 million plus interest for prior period storage.<sup>122</sup> At that time, DTE Gas estimated the storage rate at \$3.05/Mcf from January to March 2021.<sup>123</sup> The actual rate was \$3.3021/Mcf.<sup>124</sup> And there was a net injection of 35 Bcf from April to December 2021, so the approximate cost of the storage was negative \$116 million.<sup>125</sup> According to Witness LoRe, DTE Gas estimates the storage needed for January to March 2022 at a volume of 40.1 Bcf and rate of 3.75/Mcf.<sup>126</sup> He calculates DTE Gas's unbilled GCR revenues at \$439 million.<sup>127</sup> Unauthorized gas use charges are also included in the GCR revenues.<sup>128</sup> DTE Gas did not have any non-GCR sales during this reconciliation period.<sup>129</sup> And DTE

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<sup>117</sup> 2 Tr 154, 156.

<sup>118</sup> 2 Tr 154.

<sup>119</sup> 2 Tr 155.

<sup>120</sup> 2 Tr 156, 160.

<sup>121</sup> 2 Tr 156-157; Exhibit A-16.

<sup>122</sup> 2 Tr 157, 162.

<sup>123</sup> 2 Tr 157. Exhibit A-17.

<sup>124</sup> 2 Tr 157. Exhibit A-17.

<sup>125</sup> 2 Tr 158.

<sup>126</sup> 2 Tr 157.

<sup>127</sup> 2 Tr 161.

<sup>128</sup> 2 Tr 161.

<sup>129</sup> 2 Tr 159.

Gas has a under recovery from Case No. U-20544 of \$5.4 million plus interest.<sup>130</sup> Witness LoRe concluded that DTE Gas has a net under-recovery of \$49.9 million.<sup>131</sup>

Witness LoRe testified that DTE Gas overcharged GCC customers for pipeline reservation costs. He calculates the over-recovery at \$1.8 million including interest.<sup>132</sup>

#### 5. Bradley Leiter

Bradley Leiter, a Transportation Account Manager at DTE Gas, testified and sponsored Exhibit A-27.<sup>133</sup> He testified that Unauthorized Gas Usage is explained on Sheets E-17 and E17.01 of the Rate Book and occurs in four ways: (1) if the customer's load balancing storage is below zero at the end of the month, (2) if the customer exceeds the seasonal 3% storage withdrawal limitation during the months of December through March, (3) if on any Gas Day the quantity in the customer's Load Balancing storage account is less than zero, and (4) if a customer is deemed non-compliant during an Operational Flow Order.<sup>134</sup> He testified that penalties are meant to protect the utility's system and the GCR gas supply from an End Use Transportation customer diverting the supply to other more lucrative markets.<sup>135</sup>

Witness Leiter testified that six DTE Gas customers did not meet their natural gas flowing supply obligations and used unauthorized gas during February 2021.<sup>136</sup> He noted that five of the six customers used gas outside of the 3% storage withdrawal limitation.<sup>137</sup>

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<sup>130</sup> 2 Tr 161.

<sup>131</sup> 2 Tr 162.

<sup>132</sup> 2 Tr 163-164; Exhibit A-19.

<sup>133</sup> 2 Tr 167-168.

<sup>134</sup> 2 Tr 169.

<sup>135</sup> 2 Tr 170.

<sup>136</sup> 2 Tr 170-172.

<sup>137</sup> 2 Tr 176.

Because there was an energy crisis in Texas resulting in a higher gas cost at that time, the penalty for using the unauthorized gas was \$13.54/Ccf (\$640,354).<sup>138</sup> According to Witness Leiter, if the same unauthorized use had occurred in January 2021, the penalty would have been \$56,000 (92% less).<sup>139</sup> Witness Leiter testified that DTE Gas invoiced the customers for the unauthorized gas usage penalties but decided to discount the charge by requiring the customers to pay the highest price during the month (\$0.822/Ccf) plus a penalty rate of \$1/Ccf.<sup>140</sup> DTE Gas issued credits in the form of a Miscellaneous Credit on invoices to five of the six customers during the 2021-2022 GCR Year totaling \$511,931.<sup>141</sup> The sixth customer's credit of \$48,715 was issued outside of the 2021-2022 GCR Year in May 2022 (and is not included in this case).<sup>142</sup>

Witness Leiter also testified that DTE Gas provided relief to a seventh customer in January 2022. He explained that the customer, a government account with an End Use Transportation agreement for a new jail facility unintentionally procured gas commodity prior to the facility's completion, using unauthorized gas in December 2020.<sup>143</sup> DTE Gas did not have to buy gas at the daily rate because of the unauthorized consumption.<sup>144</sup> After "much" negotiation with the customer, DTE Gas waived the Unauthorized Gas charges and provided a credit of \$144,671 in January 2022 which effectively meant the customer paid the GCR rate for the additional gas that was used.<sup>145</sup>

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<sup>138</sup> 2 Tr 170-172, 175; Exhibit A-27.

<sup>139</sup> 2 Tr 173.

<sup>140</sup> 2 Tr 175.

<sup>141</sup> 2 Tr 173-175.

<sup>142</sup> 2 Tr 174.

<sup>143</sup> 2 Tr 177.

<sup>144</sup> 2 Tr 178.

<sup>145</sup> 2 Tr 177, 182.

Witness Leiter testified that the impacted customers all took action to bring their account back into compliance once notified of their penalty, that most of the customers had taken service in the past and had not incurred significant penalties or asked for relief from a penalty in recent years, and that they did not benefit financially by diverting gas to other markets.<sup>146</sup> He also said that GCR customers were not harmed by the unauthorized gas consumption since DTE Gas did not have to buy gas in the daily market to accommodate the additional use.<sup>147</sup> Witness Leiter testified that because of these unauthorized penalty cases, DTE Gas will propose amendments to the gas portion of the Rate Book consistent with the actions it took during the next rate case.<sup>148</sup>

B. Staff

1. Paul Ausum

Paul Ausum, an Economic Analyst for the MPSC, testified to his review of DTE's filing. He explained that he has worked for the MPSC since 2019 and testified in 14 other MPSC cases.<sup>149</sup> He reviewed DTE Gas's operating and purchasing decisions during the 2021-2022 GCR Year. As part of the analysis, he evaluated the information that the company had at the time of various purchases, the weather conditions during the plan year, and other data.<sup>150</sup>

Witness Ausum opined that DTE Gas procured gas and operated in a way that reasonably adhered to its GCR plan.<sup>151</sup> He specifically noted that DTE Gas ended the

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<sup>146</sup> 2 Tr 173, 178, 184.

<sup>147</sup> 2 Tr 176-177, 181-182.

<sup>148</sup> 2 Tr 178.

<sup>149</sup> 2 Tr 187-188.

<sup>150</sup> 2 Tr 189.

<sup>151</sup> 2 Tr 190.

winter with 2.107 Bcf less than its planned storage inventories despite the 5.095 Bcf increase in GCR deliveries during colder-than-expected winter.<sup>152</sup>

Witness Ausum also testified that DTE Gas's supply purchasing strategy to fix the price of 75% of its supply prior to the start of the GCR Year was likely a benefit to customers.<sup>153</sup>

Witness Ausum testified that the Commission should not disallow any of the costs and revenues incurred by DTE Gas.<sup>154</sup>

## 2. Diane Martin

Diane Martin, an Auditing Specialist with the MPSC, testified and sponsored Exhibits S-1, S-2, and S-3.<sup>155</sup> She testified about her education and experience, noting that she has worked for the MPSC since 2012 and testified in 18 prior cases.<sup>156</sup>

Witness Martin testified that MPSC Staff audited DTE Gas's exhibits, invoices, and billings for mathematical accuracy and conducted tests to verify DTE Gas's calculations were reasonable.<sup>157</sup> Consistent with the audit and illustrated in Exhibit S-1, Witness Martin testified that Staff made the following adjustments:

1. Increased December 2021 purchased gas volumes by 4,863 Mcf (from 10,088,877 Mcfs to 10,093,740 Mcfs) and increasing the total purchased gas volumes by the same amount correcting a miscalculation in the Dth to Mcf conversion.<sup>158</sup> This change also requires a correlating adjusted increase to the Lost and Unaccounted For volumes.

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<sup>152</sup> 2 Tr 190.

<sup>153</sup> 2 Tr 190-191.

<sup>154</sup> 2 Tr 191.

<sup>155</sup> 2 Tr 197.

<sup>156</sup> 2 Tr 195-196.

<sup>157</sup> 2 Tr 197.

<sup>158</sup> 2 Tr 198-199. Exhibits A-15 & S-1.

2. Reduced the jurisdictional rate slightly based on the increase in gas volumes. Staff calculated the jurisdictional rate to be \$3.4714 compared to DTE Gas's calculation of \$3.4716.
3. Reduced the costs for the sales that are priced with the no GCR factor.
4. Reduced the prior period storage adjustment based on Staff calculating the LIFO rate at \$3.3020 (DTE Gas calculated it at \$3.3021).<sup>159</sup>
5. Increased the storage costs by approximately \$4,000 based on the Staff's calculation with the adjusted LIFO rate.

Witness Martin also testified that Staff calculated the GCR interest based on the \$5,421,024 under recovery that was approved in Case No. U-20544<sup>160</sup> and without prior period storage LIFO adjustment.<sup>161</sup> Staff calculated that DTE Gas is owed \$304 in interest (compared to DTE Gas's calculation of \$758).<sup>162</sup>

Witness Martin concluded that DTE Gas's GCR reconciliation for this period results in an under recovery of \$49,880,678 including interest and recommended the Commission find that this amount is the beginning balance for the 2022-2023 GCR Year.<sup>163</sup> Staff also recommends the Commission approve a reservation charge over recovery of \$1,773,987 including interest and recommended the Commission find that amount to be the beginning balance for the 2022-2023 Reservation Charge Year.<sup>164</sup>

C. Attorney General Dana Nessel

1. Sebastian Coppola

Sebastian Coppola, a business consultant specializing in energy and utility regulation financial and strategic business issues, testified at the request of the AG and

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<sup>159</sup> 2 Tr 200. Exhibits S-1, S-2, S-3, & A-15.

<sup>160</sup> 2 Tr 201.

<sup>161</sup> 2 Tr 202.

<sup>162</sup> 2 Tr 202.

<sup>163</sup> 2 Tr 202.

<sup>164</sup> 2 Tr 202-203.

sponsored twenty exhibits, Exhibits AG-1, AG-2, AG-3, AG-4, AG-5, AG-6, AG-7, AG-8, AG-9, AG-10, AG-11, AG-12, AG-13, AG-14, AG-15, AG-16, AG-17, AG-18, AG-19 and AG-20.<sup>165</sup> He testified about his more than forty years of experience in public utility and related energy work.<sup>166</sup> He said that he has testified in numerous cases before the MPSC, including Case No. U-20543.<sup>167</sup>

After detailing the history of the DTE Gas/NEXUS Pipeline agreement, Witness Coppola testified that DTE Gas incurred higher costs because of the transportation contract with NEXUS.<sup>168</sup> He based this opinion on his comparison of the costs DTE Gas incurred for transportation through other pipelines, like ANR-Southwest (ANR-SW), Vector, and Panhandle, with the costs for NEXUS gas supply.<sup>169</sup> According to Witness Coppola, DTE Gas's analysis of the reasonableness of the NEXUS rate that was paid should have compared the NEXUS rate to other pipeline options and their all-in cost.<sup>170</sup> Specifically, Witness Coppola calculated purchases through the other pipelines based on the terms of their long-term gas supply contractual agreements would have cost between \$2.80 and \$2.86/Dth on average, while DTE Gas paid \$3.90/Dth to NEXUS.<sup>171</sup>

Witness Coppola repeated his analysis from Case No. U-20544, noting his estimations of fatal shortcomings in DTE Gas's projections for cost savings from the NEXUS agreement and the ALJ's Proposal for Decision in Case No. U-20528, which

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<sup>165</sup> 2 Tr 210-211.

<sup>166</sup> 2 Tr 207.

<sup>167</sup> 2 Tr 207-209.

<sup>168</sup> 2 Tr 211-214.

<sup>169</sup> 2 Tr 214; Exhibit AG-1.

<sup>170</sup> 2 Tr 225.

<sup>171</sup> 2 Tr 216.

found a lack of material, quantifiable long-term benefit.<sup>172</sup> He found no benefit to customers through the NEXUS agreement during the 2021-2022 GCR Year.<sup>173</sup> He testified that gas costs increased by more than \$26 million for this GCR Year.<sup>174</sup> He opined that contrary to DTE Gas's past assertions that the NEXUS arrangement would result in a cost savings for customers, costs have increased incrementally for four years because of the NEXUS agreement.<sup>175</sup> And he said those unnecessary costs are likely to increase in the future.<sup>176</sup>

Witness Coppola testified that costs for some of the purchases on pipelines other than NEXUS, including Vector-Alliance, ANR-ML3, and Chicago-Alpena, would have been higher than at NEXUS.<sup>177</sup> But he said the transportation capacity on those pipelines is used during the winter months or for limited geographical service areas and are therefore, not comparable to year-round gas purchases and deliveries with NEXUS.<sup>178</sup> He also noted that the higher rates were due to an unexpected, but significant, spike in prices in 2022.<sup>179</sup>

Witness Coppola acknowledged the greenfield nature of NEXUS but disagreed with DTE Gas Witness Madigan's statement that NEXUS was the lowest delivered cost of gas option among other greenfield pipeline projects bringing Utica/Marcellus gas supply to Michigan.<sup>180</sup> Referencing NEXUS's statements in its June 2021 FERC filing,

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<sup>172</sup> 2 Tr 249-262.

<sup>173</sup> 2 Tr 216-217.

<sup>174</sup> 2 Tr 217, 262; Exhibit AG-2.

<sup>175</sup> 2 Tr 218, 220.

<sup>176</sup> 2 Tr 220, 263.

<sup>177</sup> 2 Tr 215.

<sup>178</sup> 2 Tr 215.

<sup>179</sup> 2 Tr 215.

<sup>180</sup> 2 Tr 223.

Witness Coppola testified that NEXUS has a daily capacity of 1,590,000 Dth but only sold 58% of the available capacity.<sup>181</sup> He opined that the pipeline's low utilization reflects the minimal number of prospective customers willing to pay its rates, even with a limited gas supply in the area.<sup>182</sup>

Witness Coppola found discrepancies in two transactions that he said unnecessarily increased the cost of gas supply for DTE Gas customers because DTE Gas rejected the lower price bids at the time of the transactions.<sup>183</sup> He recommended disallowing \$221,950 because DTE Gas could have purchased gas at the lower rates.<sup>184</sup>

Witness Coppola testified that DTE Gas's calculation of penalties for the customers who had unauthorized gas usage was correct, legitimate, and properly recoverable from the customers.<sup>185</sup> He noted that according to DTE Gas, the customers in question did not adequately track their gas usage during the month and did not monitor their compliance with the maximum storage allotment.<sup>186</sup> He said that they could have nominated gas supply through an alternative gas supplier to avoid the significant overrun, but they did not.<sup>187</sup> And because of this negligence, they exceeded their storage withdrawal quantity, four by 40% to 60% and two between 4% and 18%.<sup>188</sup> He opined that this usage was significant and implied a lack of due diligence in complying with the transportation rules.<sup>189</sup>

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<sup>181</sup> 2 Tr 248-249.

<sup>182</sup> 2 Tr 249.

<sup>183</sup> 2 Tr 265-267.

<sup>184</sup> 2 Tr 266-268.

<sup>185</sup> 2 Tr 271-272.

<sup>186</sup> 2 Tr 271.

<sup>187</sup> 2 Tr 271-272; Exhibit AG-18.

<sup>188</sup> 2 Tr 271-272.

<sup>189</sup> 2 Tr 272.

Witness Coppola found that DTE Gas bears “proportional responsibility” for the unauthorized gas usage given its practice of providing customers with oral, instead of written, instruction was inadequate in helping the customer avoid unauthorized gas usage.<sup>190</sup> He concluded that DTE Gas waived the fees to maintain customer goodwill which he found to be a generally accepted business practice.<sup>191</sup> Witness Coppola testified that the Commission should not allow DTE Gas to recover the waived penalties, however, because it would set a bad precedent of allowing penalties incurred by customers for violating rules to be paid for by other customers.<sup>192</sup>

D. Retail Energy Supply Association

Retail Energy Supply Association (RESA) did not present any evidence into the record.

III.

**DISCUSSION**

MCL 460.6h(12) grants the MPSC the authority to conduct a gas cost reconciliation. It provides, in relevant part:

At the gas cost reconciliation the commission shall reconcile the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility with the amounts actually expensed and included in the cost of gas sold by the gas utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue could not have been considered adequately at a previously conducted gas supply and cost review.

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<sup>190</sup> 2 Tr 273.

<sup>191</sup> 2 Tr 273-274.

<sup>192</sup> 2 Tr 274.

Under MCL 460.6h(14), if DTE Gas incurred excess costs for reasonable and prudent actions not precluded by the Commission's GCR plan order, then DTE Gas shall recover those excess costs from customers. If DTE Gas incurred excess costs that are "contrary to the commission's gas supply and cost review order," then the excess costs are recoverable if supported by clear and convincing evidence that the excess costs were beyond the ability of DTE Gas to control by reasonable and prudent actions. MCL 460.6h(14).

A utility has a duty to act reasonably and prudently whenever it purchases gas. MCL 460.6h(12). The utility bears the burden of proof and it must demonstrate annually that it minimized costs. MCL 460.6h(1)(b); MCL 460.6h(3), (6); MCL 460.6j(12)-(15).

The MPSC is required to review whether gas purchasing decisions were reasonable and prudent in light of the existing conditions at the time the decision to purchase gas was made. *Attorney General v Public Service Commission*, 161 Mich App 506, 517 (1987). It is for the MPSC to weigh conflicting opinion testimony of the qualified or competent experts to determine how the evidence preponderated. *North Michigan Land & Oil Corporation v Public Service Commission*, 211 Mich App 424, 439 (1995).

DTE Gas asks the MPSC to make the following findings of fact<sup>193</sup>:

1. DTE Gas took all appropriate legal and regulatory actions during the 2021-2022 GCR Year to minimize the cost of purchased gas.
2. DTE Gas's actual system operations for the April 2021 through March 2022 GCR Year were reasonable and prudent.
3. DTE Gas's gas supply decisions for the April 2021 through March 2022 GCR reconciliation period were reasonable and prudent.

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<sup>193</sup> DTE Gas's Initial Brief, pp 9-30.  
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4. DTE Gas had a total under-recovery including interest of approximately \$49.9 million for the 2021-2022 GCR Year.
5. DTE Gas had a Gas Customer Choice (GCC) over-recovery of approximately \$1.8 million.
6. DTE Gas in providing credits to some End Use Transportation (“EUT”) customers related to unauthorized gas use experienced during the GCR Plan Year.<sup>194</sup>

In reviewing the arguments and testimony presented, the issues in dispute are whether DTE Gas purchases during the 2021-2022 GCR year, especially those related to the NEXUS pipeline, were reasonable and prudent and whether DTE Gas should recover waived penalty fees related to unauthorized gas usage.

A. Motion for Partial Summary Disposition

According to DTE Gas’s calculations, gas purchases totaled approximately \$490 million during the 2021-2022 GCR Year resulting in an under-recovery of \$49,896,324 including interest.<sup>195</sup> DTE Gas disagrees with AG Witness Coppola when he says that \$26.6 million was imprudently incurred because the NEXUS agreement is more costly than other sources of gas supply and should be disallowed.<sup>196</sup> Emphasizing its position, DTE Gas filed a Motion for Partial Summary Disposition asking the MPSC to find that a prior judgment found the decision to enter into the NEXUS contract was reasonable and prudent and order that DTE Gas is entitled to a judgment as a matter of law in this case on the issue of the AG’s recommendation that the MPSC disallow recovery of excess gas supply costs because of the NEXUS agreement.<sup>197</sup> Given that the AG concedes that she

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<sup>194</sup> This ALJ has interpreted this to mean that DTE Gas seeks approval of its decision to provide credits to certain customers and treat such credits as an expense.

<sup>195</sup> 2 Tr 156, 160, 162; Exhibit A-18; DTE Gas’s Initial Brief, pp 24-25.

<sup>196</sup> 2 Tr 264-265, 274; AG’s Initial Brief, p 18; DTE Gas’s Initial Brief, pp 22-23.

<sup>197</sup> DTE Gas’s Motion and Brief for Partial Summary Disposition.

is not seeking to relitigate whether entering into the original NEXUS agreement was proper<sup>198</sup>, the question as to whether DTE Gas's costs during the 2021-2022 GCR Year related to that agreement were proper is one of fact that will be discussed further below. Because a factual dispute exists, summary disposition under MCR 2.117(C)(7) is not appropriate. See *RDM Holdings, Limited v Continental Plastics Company*, 281 Mich App 678, 687 (2008).

B. NEXUS Transportation Costs

Over the past year, this Commission has issued multiple orders addressing the reasonableness of the decision for DTE Gas to use the NEXUS pipeline.<sup>199</sup> Indeed, in October 2022 the Commission reaffirmed a prior determination that contracting for capacity on the pipeline was proper and further found it unnecessary to reevaluate the original agreement in each subsequent GCR and PSCR case.<sup>200</sup> Still, DTE Gas remains required to continuously monitor and respond to market conditions and system need and to ultimately demonstrate the reasonableness and prudence of its fuel costs.<sup>201</sup> MCL 460.6h(12); MCL 460.6h(1)(b); MCL 460.6h(3), (6); MCL 460.6j(12)-(15).

DTE Gas Witness Madigan testified that using the NEXUS pipeline provides low-cost supply to DTE Gas GCR customers, brings diversity of supply to Michigan, and puts downward pressure on gas prices within the State, all of which he estimates is beneficial to DTE Gas customers.<sup>202</sup> He maintains that DTE Gas used the best available information

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<sup>198</sup> DTE Gas's Initial Brief, pp 12-13.

<sup>199</sup> See U-20528, U-20816, U-20826, U-20544, and U-20222.

<sup>200</sup> Order issued 10/27/2022 in U-20816, pp 15-21.

<sup>201</sup> Order issued 10/27/2022 in U-20816, pp 20-21 citing Orders issued 10/5/2022 and 9/24/2021 in U-20222.

<sup>202</sup> 2 Tr 68-69, 73, 96.

at the time it entered into the agreement with NEXUS and that NEXUS has proposed amendments to the agreement, including during the 2022-2023 reconciliation year, that DTE Gas has rejected.<sup>203</sup> He says that DTE Gas customers have indeed benefitted from DTE Gas's contract with NEXUS because their costs were reduced by \$1.8 million during this reconciliation period.<sup>204</sup> And Witness Madigan argues that Witness Coppola presents no evidence to support his contention that customers will be burdened in the future.<sup>205</sup>

Witness Coppola testified that his calculation of increased gas costs of approximately \$26.6 million for the 2021-2022 GCR Year was based on the incremental cost of the NEXUS gas supply versus similar purchases delivered through the other pipelines' capacity that NEXUS displaced.<sup>206</sup> According to Witness Madigan, AG Witness Coppola miscalculated the gas costs when he included the transportation demand cost in his analysis.<sup>207</sup> Witness Madigan indicates that transportation demand costs are a sunk cost that the Commission has not accepted in past cases.<sup>208</sup>

Witness Madigan testified that DTE Gas does not expect to fully use every pipeline in its portfolio each month.<sup>209</sup> He testified that DTE Gas intentionally contracts for more gas than it expects to use during the winter months to ensure its customers are provided with reliable supply.<sup>210</sup> He said that approximately 100% of the capacity on TEAL and 99% on NEXUS was used during the reconciliation period which includes 75,000 Dth per

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<sup>203</sup> 2 Tr 67, 76, 82, 93.

<sup>204</sup> 2 Tr 74-76, 84.

<sup>205</sup> 2 Tr 74-76.

<sup>206</sup> 2 Tr 217.

<sup>207</sup> 2 Tr 70.

<sup>208</sup> 2 Tr 70.

<sup>209</sup> 2 Tr 86.

<sup>210</sup> 2 Tr 87, 89.

day of capacity from Kensington to MichCon Citygate and 37,500 Dth per day on TEAL from Clarington.<sup>211</sup> Witness Madigan noted that Witness Coppola did not include this capacity in his calculation of the capacity utilization even though this is how DTE Gas has reported its pipeline utilization in past cases.<sup>212</sup>

Witness Coppola testified that DTE Gas previously represented that it would be able to access sufficient gas supply at Kensington and that compared to other supply sources, the lower cost of the purchases at Kensington would offset the cost of transportation.<sup>213</sup> He stated that it was imprudent of DTE Gas to commit to purchasing 75,000 Dth/day of capacity since it was not attainable.<sup>214</sup> He also stated that DTE Gas rejected alternative gas supply bids for lower prices than what it paid in transactions on December 21, 2021 and January 24, 2022.<sup>215</sup> Witness Coppola testified that those transactions amounted to \$221,950 in excess costs.<sup>216</sup> Witness Madigan testified that all of DTE Gas's purchases, including those made at Kensington on December 21, 2021 and January 24, 2022, were reasonable and prudent.<sup>217</sup> He said that DTE Gas purchased all that was available at the low cost but needed additional supply.<sup>218</sup> Even still, Witness Madigan claimed that the secondary purchases were among the lowest when evaluating all of the costs in December 2021 and January 2022.<sup>219</sup>

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<sup>211</sup> 2 Tr 88.

<sup>212</sup> 2 Tr 88.

<sup>213</sup> 2 Tr 235.

<sup>214</sup> 2 Tr 236.

<sup>215</sup> 2 Tr 265-267

<sup>216</sup> 2 Tr 268.

<sup>217</sup> 2 Tr 97.

<sup>218</sup> 2 Tr 98-101.

<sup>219</sup> 2 Tr 98-99, 101.

Staff argues that costs incurred over the course of the 2021-2022 GCR year “are open for scrutiny and potential disallowance.”<sup>220</sup> Staff Witness Ausum testified that DTE Gas procured gas and operated in a way that reasonably adhered to its GCR plan.<sup>221</sup> And Staff Witness Martin’s audit of DTE Gas’s invoices, ledger accounts, and other supporting documentation, produced the following discrepancies: DTE Gas purchased more gas volume in December 2021 than reported, a reduction in the jurisdictional rate slightly based on the increase in gas volume, a reduced sales cost for the sales that are priced with the no GCR factor, a reduction in the prior period storage adjustment based on Staff calculating the LIFO rate at \$3.3020, and increased storage costs based on the Staff’s calculation with the adjusted LIFO rate.<sup>222</sup> No other party has offered evidence contradicting these adjusted calculations. Staff Witness Martin concluded that DTE Gas’s GCR reconciliation for this period is an under recovery of \$49,880,678 including interest which is \$15,646 less than DTE Gas’s calculation<sup>223</sup>, not including the waived penalties discussed below.

### C. Penalty Waivers

DTE Gas seeks to recover approximately \$600,000 in penalties related to unauthorized gas used by six of its customers during this reconciliation period.<sup>224</sup> Based on the evidence presented, it appears that the six customers used unauthorized gas outside of their 3% storage withdrawal limitation.<sup>225</sup> Witness Coppola calculated that four

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<sup>220</sup> Staff’s Initial Brief, p 4.

<sup>221</sup> 2 Tr 190.

<sup>222</sup> 2 Tr 197, 200. Exhibits S-1, S-2, S-3, & A-15; DTE Gas’s Initial Brief, pp 27-29.

<sup>223</sup> 2 Tr 202.

<sup>224</sup> 2 Tr 170-172, 181.

<sup>225</sup> 2 Tr 176.

of the customers exceeded their storage withdrawal quantity by 40% to 60% and two between 4% and 18%.<sup>226</sup> No other party challenges this computation.

Witness Leiter said the legislative intent of the penalty is to prevent GCR customers from incurring unnecessary harm.<sup>227</sup> The parties agree that because of the energy crisis in February 2021, the unauthorized gas use penalty was unusually high and equivalent to one of the affected customer's annual gas bill.<sup>228</sup> Witness Leiter notes that two of the customers were public schools and another was a city, and he argues that these customers should be spared from paying the excessive damages.<sup>229</sup> He also said that compliant GCR customers were not harmed since DTE Gas did not have to buy additional gas to accommodate the unauthorized volume.<sup>230</sup>

RESA, a group of retail energy suppliers and an intervenor in this case, argues the Unauthorized gas usage provision is intended to provide sufficient incentive for EUT customers to supply gas needed to serve them and to compensate GCR customers for backstopping shortfalls, protecting the system and GCR customers.<sup>231</sup> RESA concurs with DTE Gas's request to have the GCR factor adjusted for the waived penalties.<sup>232</sup>

The AG argues that DTE Gas is inappropriately attempting to circumvent the tariff rules that require imposing the penalties, that DTE bears proportional responsibility for its customers unauthorized gas usage because it inadequately advises them of the rules and potential penalties, and that DTE Gas should absorb the cost of its decision to waive

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<sup>226</sup> 2 Tr 271-272.

<sup>227</sup> 2 Tr 181.

<sup>228</sup> 2 Tr 173, 181.

<sup>229</sup> 2 Tr 172, 175, 181.

<sup>230</sup> 2 Tr 176-177, 181-182.

<sup>231</sup> RESA's Initial Brief, pp 2-3.

<sup>232</sup> RESA's Initial Brief, p 2.

the penalties.<sup>233</sup> Contrarily, Witness Leiter said that DTE Gas provides new EUT customers with a copy of the Rate Book and rate card which includes information about unauthorized gas usage and seasonal load balancing.<sup>234</sup> He contended that these documents and the oral instructions are sufficient.<sup>235</sup> He also noted that only one of the customers that was penalized was new and that the others had been customers for years and had not incurred significant penalties in the past.<sup>236</sup>

As discussed above, Staff Witness Ausum concluded that none of the costs and revenues incurred by DTE Gas should be disallowed and Witness Martin did not reduce her GCR calculation because of the unauthorized usage fees when she concluded that DTE Gas had an under recovery of \$49,880,678 including interest.<sup>237</sup> It appears, however, that Staff's recommendation has changed, in part, and it now recommends that the MPSC adopt the AG's proposed disallowance of \$656,602 for the unauthorized gas usage penalties and find that DTE Gas had an under recovery of \$49,210,603 including interest.<sup>238</sup>

According to Section E14 of the Rate Book, penalties related to "Unauthorized Gas Usage" are triggered if a customer's load balancing storage is below zero at the end of the month, if the customer exceeds the seasonal 3% storage withdrawal limitation during December through March, if on any Gas Day the quantity in the customers Load Balancing storage account is less than zero, and if a customer is deemed non-compliant

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<sup>233</sup> 2 Tr 273-274; AG's Initial Brief, pp 22-25.

<sup>234</sup> 2 Tr 183-184.

<sup>235</sup> 2 Tr 183.

<sup>236</sup> 2 Tr 184.

<sup>237</sup> 2 Tr 191, 197, 200, 202.

<sup>238</sup> Staff's Reply Brief, p 1-2, 4.

during constrained operational conditions or an emergency situation as defined by the Rate Book. Section E14, Sheet Nos. E-17.00-E-17.01. The tariff dictates that under those circumstances the utility has discretion and “may” charge a penalty if on a Gas Day the quantity in the customer’s Load Balancing storage account is less than zero, but under the remaining three circumstances the utility “shall” charge the penalty. Section E14, Original Sheet Nos. E-17.00-E-17.01. And the Unauthorized Gas Usage “shall” be \$1 per cubic feet plus the highest price reported in Gas Daily in the midpoint column of the Daily Price Survey for the month in which the Unauthorized Has Use occurred. Section E14, Original Sheet No. E-17.01. The current language of the Tariff does not set a limit or maximum amount for the penalty.

DTE Gas cites no authority or precedent whereby the requirements of the tariff may be abandoned.

#### IV.

#### **CONCLUSION**

In considering the whole record, I find the evidence shows the following:

1. For the 2021-2022 GCR Year, DTE Gas’s total under recovery including interest is \$49,210,603 which was incurred through reasonable and prudent actions.
2. For the 2020-2021 GCR Year, DTE Gas’s Gas Customer Choice over-recovery amounts to approximately \$1.8 million including interest.
3. DTE Gas expenses associated with DTE Gas’s agreements with NEXUS were reasonable and prudent.

4. DTE Gas was required by the tariff to assess Unauthorized Gas Usage penalty under the circumstances described herein for seven customers. And the tariff dictates how the penalty shall be calculated.
5. DTE Gas's decision to issue credits for \$656,602 of penalties previously billed to transportation customers, a customer goodwill gesture, was outside of the tariff's directives, and DTE Gas's reconciliation should be adjusted to incorporate the waived penalties as Staff and the Attorney General recommend.

Therefore, I recommend the MPSC approve DTE Gas's 2021-2022 GCR reconciliation consistent with the above stated analysis and findings.

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

**Lesley C.  
Fairrow**

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Lesley C. Fairrow  
Administrative Law Judge

Issued and Served:  
September 18, 2023

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

\* \* \* \* \*

STATE OF MICHIGAN	)	
	) SS.	Case No. U-20817
County of Ingham	)	
_____	)	

PROOF OF SERVICE

Meaghan Dobie being duly sworn, deposes and says that on September 18, 2023, 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 18<sup>th</sup> day of September 2023.



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

Case No. U-20817  
Service List

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