

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
DTE GAS COMPANY for approval of a)	
gas cost recovery plan and authorization of)	Case No. U-21064
gas cost recovery factors for the)	
12 months ending March 31, 2023.)	
_____)	

At the October 12, 2023 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Katherine L. Peretick, Commissioner
Hon. Alessandra R. Carreon, Commissioner

ORDER

Procedural History

On December 17, 2021, DTE Gas Company (DTE Gas) filed an application, with supporting testimony and exhibits, pursuant to Public Act 304 of 1982 (Act 304), MCL 460.6h, requesting approval of a gas cost recovery (GCR) plan and factors for the 12-month period ending March 31, 2023. Application, pp. 1-3. The company also requested, *inter alia*, that its five-year forecast from April 2022 to March 2027 be accepted. *Id.*

A prehearing conference was held on February 8, 2021, before Administrative Law Judge Katherine E. Talbot (ALJ). At the prehearing conference, the ALJ recognized the intervention of

the Michigan Department of Attorney General (Attorney General)¹ and granted intervenor status to the Residential Customer Group and to the Retail Energy Supply Association (RESA). DTE Gas and the Commission Staff (Staff) also participated in the proceeding.

DTE Gas filed an amended application on May 31, 2022, with revised supporting testimony and exhibits. As a result, a second prehearing conference was held on August 2, 2022. On September 27, 2022, the ALJ entered a protective order for use in the matter. An evidentiary hearing was held before the ALJ on November 18, 2022, at which the parties agreed to the binding in of all testimony and exhibits. DTE Gas, the Staff, and the Attorney General filed initial briefs on December 19, 2022. DTE Gas, the Attorney General, and the Staff filed reply briefs on January 9, 2023. On July 13, 2023, the ALJ issued a proposal for decision (PFD) in this matter. DTE Gas and the Attorney General filed exceptions to the PFD on August 3, 2023. On August 17, 2023, the Staff, Attorney General, and DTE Gas all filed replies to the exceptions to the PFD.

The record in this matter consists of 385 pages of transcript and 81 exhibits admitted into evidence, with some of that evidence marked as confidential.

Proposal for Decision

The ALJ provided a thorough overview of the record on pages 3-10 of the PFD, which will not be repeated here. The ALJ identified the following contested issues: (1) DTE Gas's purchase of a call option for additional gas supply at the Belle River storage field, (2) the company's failure to attempt to renegotiate its NEXUS agreement, (3) the company's failure to lower the cost of gas supply by utilizing citygate purchases, (4) the company's affiliate purchases

¹ 1 Tr 4; MCL 14.28, MCL 14.101.

from DTE Trading Company, and (5) the company's purchase of responsibly sourced gas at a premium above the base cost of gas. Additionally, the ALJ addressed the Staff's concerns related to DTE Gas's modification to the calculation used to determine the Maximum Allowable GCR Factor which reduced the time period from the Plan New York Mercantile Exchange (NYMEX) average of 24 months to 21 months. PFD, pp. 7, 15-32.

The Commission finds the ALJ's analysis and recommendations related to the uncontested issues in this proceeding to be well-reasoned and supported in the record. *See, id.*, pp. 6-15.

Therefore, the Commission adopts the ALJ's recommendations on the uncontested issues. The Commission further finds that no party objected to the ALJ's recommendation regarding Issue 1, the call option purchase, thus rendering it moot. *See*, Attorney General's initial brief, p. 6; *see also*, DTE Gas's reply brief, p. 2, n. 1. Issues 2-6, objected to in exceptions, are discussed below.

Discussion

1. DTE Gas's Failure to Attempt to Renegotiate the NEXUS Agreement

DTE Gas's witness, Mr. Kenneth Sosnick, explained in his revised testimony that the NEXUS pipeline is "an approximately 250-mile natural gas transmission pipeline designed to transport up to 1.4 billion cubic feet per day (Bcf/d) of natural gas from receipt points in eastern Ohio to existing pipeline system interconnects in southeastern Michigan." 3 Tr 270. Mr. Sosnick proffered that DTE Gas holds a contract to receive gas from NEXUS until 2033, and that NEXUS reduced its prices in and around Michigan due to prices at MichCon citygate and Dawn (Ontario) Hub being lower. 3 Tr 272-273. Furthermore, DTE Gas's witness, Ms. Sherri Moore, testified that DTE Gas had made attempts to renegotiate its NEXUS contract as evidenced by its

“TEAL Amendments”². 3 Tr 107. Ms. Moore testified that the company did not participate in NEXUS compression projects presented by NEXUS because it did not make economic sense to its customers. 3 Tr 108. She testified that, in fact, DTE Gas met with NEXUS in June of 2022 to discuss renegotiation with a subsequent proposal and counter proposal being offered as late as September 2022. 3 Tr 108-109.

Mr. Sosnick testified that he was asked to estimate the impacts to DTE Gas customers regarding the NEXUS Gas Transmission pipeline and he sponsored Exhibit A-32, entitled, “NEXUS Pipeline Impacts Analysis.” 3 Tr 268-269. In his analysis, Mr. Sosnick found that “NEXUS will decrease natural gas prices in Michigan significantly.” 3 Tr 269. Mr. Sosnick found that the NEXUS contracts “have been very beneficial to [DTE Gas’s] customers,” adding reliability and environmental benefits for all Michigan consumers. 3 Tr 269-270.

The Attorney General’s witness, Mr. Sebastian Coppola, stated that the NEXUS Agreement resulted in excessive pipeline transportation costs. 3 Tr 334-335. Mr. Coppola opined that in the PFD for Case No. U-20528, “the ALJ performed her own analysis . . . and reached the conclusion that . . . ‘the NEXUS agreements’” are not of long-term benefit to DTE Gas’s customers. 3 Tr 341. Mr. Coppola suggested that the Commission should issue a Section 7 warning³ regarding the NEXUS agreement. 3 Tr 335, 342. Lastly, in his discussion of GCR Plan Case No. U-20543, Mr. Coppola admitted that the Commission agreed with the ALJ that a Section 7 warning is unwarranted as “DTE Gas is under a continuing duty to support its long-

² “TEAL” stands for the Texas Eastern Appalachian Lease. *See*, 3 Tr 271.

³ MCL 460.6h(7) states that the Commission “shall evaluate the decisions underlying the 5-year forecast filed by a gas utility pursuant to subsection (4). The commission may also indicate any cost items in the 5-year forecast that on the basis of present evidence, the commission would be unlikely to permit the gas utility to recover from its customers in rates, rate schedules, or gas cost recovery factors established in the future.” This is also known as a “Section 7 warning.”

term contracts and affiliate transactions DTE Gas is under a continuing obligation to provide complete evidentiary support justifying its long-term contracts and compliance with the Code of Conduct.” 3 Tr 335-336.

In the PFD, the ALJ stated that the NEXUS agreement and TEAL amendments have been addressed regarding their reasonableness and prudence and that those previous decisions “should be given ‘preclusive effect.’” PFD, pp. 20-21 (quoting October 27, 2022 order in Case No. U-20816, p. 20, and January 19, 2023 order in Case No. U-20528, p. 24). The ALJ further noted that in Case No. U-20544, it was found that “the NEXUS agreement continues to provide benefits to ratepayers” and that “the simple fact of no renegotiation during the GCR period does not provide grounds for a disallowance.” *Id.*, p. 21 (quoting December 9, 2022 order in Case No. U-20544, p. 13). As such, the ALJ recommended that the Commission deny the Attorney General’s request for a Section 7 warning. *Id.*, p. 22.

The Attorney General filed an exception to the ALJ’s recommendation, stating that the ALJ erred regarding the NEXUS costs. Attorney General’s exceptions, p. 3. The Attorney General provides a summary of the ALJ’s reasoning and reiterates her argument for the suggestion of a Section 7 warning. *Id.*, pp. 3-4. The Attorney General argues that it is “impossible to predict the future[,]” and that the ALJ did not consider the actual costs to DTE Gas’s customers based on the “full scope of NEXUS implications in this specific case” *Id.*, p. 4. In conclusion, the Attorney General states that if a Section 7 warning is deemed inappropriate, then the Commission should “remain cognizant of the arc of NEXUS costs and how ever-changing dynamics of gas sourcing decisions and the utility realm make continued monitoring of DTE [Gas]’s decisions of paramount importance to its captive customers.” *Id.*, p. 5.

DTE Gas argues in replies that all of the Attorney General’s suggested exceptions should be

rejected and restates the ALJ's position that no Section 7 warning should be issued as DTE Gas provided testimony and evidence that NEXUS and the TEAL amendment provided cost savings. DTE Gas's replies to exceptions, pp. 3-4. DTE Gas relies heavily on the ALJ's discussion of the Commission's prior rulings finding that NEXUS was reasonable and prudent. *Id.*, pp. 4-5.

The Commission agrees with the ALJ that a Section 7 warning is not appropriate on this issue. The TEAL Amendments are proffered evidence of negotiation, and DTE Gas provided evidence that NEXUS and the TEAL Amendments provided cost savings. DTE Gas's reply to exceptions, pp. 3-4. Thus, the Commission ultimately agrees with the ALJ that "the NEXUS agreement continues to provide benefits to ratepayers." PFD, p. 21 (citation omitted); *see*, 3 Tr 273, 279-282.

2. Failure to Lower the Cost of Gas Supply

DTE Gas argued that its GCR plan is "the best way to provide reliable supply and reasonable prices" to its Menominee service territory and as such, is reasonable and prudent. DTE Gas's initial brief, p. 5. In fact, DTE Gas acknowledged that the "applicable standard of proof in this case is whether or not there is substantial record evidence that DTE Gas's proposals are reasonable and prudent." *Id.* The company acknowledged that "simply because costs exceed a particular market price does not mean they are necessarily unreasonable or imprudent." *Id.* In its initial brief, DTE Gas identified four factors that prove that its rates are reasonable and prudent: (1) normal weather forecast; (2) residential rate schedule sales; (3) commercial and industrial sales, gas customer choice, and aggregate customer sales; and (4) forecasted sales volumes, design day demand, and historical normalized sales. DTE Gas's initial brief, pp. 6-10. These factors are described in further detail below.

DTE Gas explained that one of the main determinants of natural gas demand is the weather.

Id., p. 6. The company then noted that use of actual volumes from past periods allows it to obtain weather normalized data to provide optimal planning, thereby reducing gas costs that will need to be recovered from customers. *Id.*, pp. 6-7. Furthermore, DTE Gas stated that it has utilized “a rolling 15-Year Normal weather pattern to project its normal demand requirements in this GCR Plan.” *Id.*, p. 7 (citing 3 Tr 213).

DTE Gas stated that it has a multistep process to determine its projected GCR residential rate schedules. First, the company asserted that its projected GCR residential rate schedule sales are forecasted by its number of customers per month in the seven different market areas it serves. *Id.*, p. 7. Then, DTE Gas explained that the usage per customer per Heating Degree Days is analyzed at various temperatures. DTE Gas then utilizes a “three-step linear factor model that determines the monthly demand for all rate cases” *Id.* (citing 3 Tr 215). In fact, in determining DTE Gas’s 5-year forecast plan, it is expected to add 10,5000-11,000 customers annually over a five-year period based on its billing data for the past 10 years. *Id.* (citing 3 Tr 218).

DTE Gas stated that it utilizes essentially the same process to forecast volumes in its commercial and industrial GCR and gas customer choice (GCC) market as it uses for its residential market. *Id.*, p. 8. As used for its residential customers, DTE Gas explained that it uses a three-step linear factor model. *Id.* In fact, DTE Gas “expect[ed] that approximately 116,200 customers, or about 9% of DTE Gas’s total rate schedule customers, will be served by an alternative supplier through the GCC program.” *Id.* (citation omitted). The company further stated that its number of GCC program customers has remained approximately the same recently. *Id.*

DTE Gas explained that its forecasted design day demand is based on its design day demand

model “that examined design weather at 16 different locations condensed down to five primary demand locations.” *Id.*, p. 9 (citation omitted). It acknowledged that the 2023 design day projection had changed from previous years, showing a decrease in design-day requirements. *Id.*, p. 9. In fact, DTE Gas stated that its historical normalized GCR and GCC sales show a “relatively steep decline” from 2009-2012 with a rebound in 2016. *Id.* (citing 3 Tr 225). The company explained that part of the long-term load reduction occurred due to ongoing replacement of old equipment with newer, more efficient equipment and household energy efficiencies that have increased due to newer homes built with better building materials and insulation. *Id.*, (citing 3 Tr 226). Of note, DTE Gas stated that it will continue to monitor customer behavior to make necessary adjustments as it has for the entire forecast period of this GCR Plan where the weighted average heating value for the 24-month regression period was 1,056.18 British Thermal Units per cubic feet, accounting for an increase of 0.397% based on usage factors. *Id.*, p. 10 (citing 3 Tr 227-228).

The Attorney General disputed the reasonableness and prudence of DTE Gas’s residential rate schedules. Attorney General’s initial brief, pp. 4, 11, 13; *see also*, 3 Tr 342-349. Mr. Coppola opined that DTE Gas was not increasing its use of citygate purchases, nor was it evaluating alternatives to lower the cost of gas supply. *Id.*, 3 Tr 342. Mr. Coppola decried DTE Gas’s “reluctance to increase gas purchases at the MichCon citygate” due to “interruptible transportation capacity instead of firm transportation capacity” despite providing no evidence of such. 3 Tr 343. The Attorney General suggested that DTE Gas “undertake a thorough analysis of what [utilizing GLGT⁴] would look like, along with potential cost savings” for the Menominee

⁴ The Great Lakes Gas Transmission Company is referred to as “GLGT.” The Attorney General’s witness, Mr. Coppola, argued that DTE Gas should have evaluated service from GLGT to serve the Menominee area for potential cost savings. *See*, Attorney General’s initial brief, p. 4.

area and that the reliability factor should not be the reason a study is rejected. Attorney General's initial brief, p. 12. The Attorney General reasoned that DTE Gas would be able to lower its cost of gas supply by utilizing MichCon citygate producers and marketers, as Consumers Energy [Company (Consumers)] utilizes that strategy as part of its "less costly gas supply strategy" *Id.*, p. 11.

The Staff briefly expressed its agreement with the Attorney General's argument regarding the use of GLGT capacity to serve the Menominee service area customer load. Staff's reply brief, p. 2 (citing Attorney General's initial brief, pp. 11-13). Furthermore, the Staff suggested that potential cost savings should be considered if DTE Gas's "gas supply and cost review is to be deemed exhaustive." Staff's reply brief, p. 2.

The ALJ agreed with DTE Gas that there was sufficient evidence to establish that it has a reasonable, prudent supply purchasing plan, and that increased MichCon citygate purchases would not provide a diversity of supply for gas purchases since its GCR plan is "'a long-term philosophy' regarding the best way to provide reliable supply and reasonable prices." PFD, pp. 22-23 (citing DTE Gas's initial brief, pp. 7-8).

The Attorney General filed exceptions, stating that the ALJ provided no analysis or discussion to support her conclusion that DTE Gas's gas supply purchase was reasonable and prudent. Attorney General's exceptions, p. 6. However, the Attorney General states that she agrees with the ALJ regarding the Menominee service area so long as the Commission requires DTE Gas "be required to present evidence to establish the costs associated with renewal are a reasonable and prudent means to provide reliable supply" to the area. *Id.*, pp. 6-7.

In its exceptions, DTE Gas also highlighted that the ALJ noted that DTE Gas:

1) argued that its gas purchasing strategy is reasonable and prudent, 2) argued that increased purchases from the citygate would not provide the diversity of supply

provided by its current strategy for gas purchases, 3) argued that its GCR plan is a long term philosophy regarding the best way to provide reliable supply and reasonable prices and 4) argued that, because of this evidence, there is no need for further analysis regarding the Company's gas purchasing strategy.

DTE Gas's exceptions, p. 6 (citing PFD, pp. 22-23). As such, DTE Gas is confident that it has proved by a preponderance of the evidence that its plan is reasonable and prudent. *Id.*, p. 6.

The Commission agrees with the ALJ. The Commission finds that DTE Gas's customers "benefit from regional diversity of supply with increased supply reliability and mitigated price risk." 3 Tr 68. As DTE Gas has provided that the renewal of its contract was "the most reasonable and prudent means to ensure reliable transportation services to its customers", the Commission does not believe that DTE Gas failed to lower its cost of gas supply. PFD, p. 24.

3. DTE Gas Company's affiliate purchases from DTE Energy Trading, Inc.

Ms. Moore testified that as part of DTE Gas's volume cost averaging program (VCA),⁵ the company will purchase gas from an affiliate, DTE Energy Trading, Inc. (DTE Trading), during the plan period. 3 Tr 59. Ms. Moore also testified that purchasing gas from DTE Trading is not a new occurrence and that it was done to meet MichCon's supply requirements for GCR customers. 3 Tr 115-116. Furthermore, Ms. Moore testified that "DTE Gas has internal and external oversight, procedures, policies, regulations, codes of conduct, standard work instructions, training, compliance and ethical standards, all of which it follows in the conduct of its business" when referring to affiliate transactions such as the purchase of gas from DTE Trading. 3 Tr 116-117. Ms. Moore went on to state that DTE Trading's bid was deemed as a prudent and least cost option because "pricing was analyzed and was a lower cost than [the company's] next alternative supply source, which made it a reasonable purchase in the supply

⁵ "VCA" stands for the Volume Cost Averaging method of purchasing fixed natural gas. *See*, PFD, p. 4.

stack.” 3 Tr 118. Ms. Moore added that because “DTE Gas adhered to its gas buying protocol,” its purchase of gas from DTE Trading was both reasonable and prudent. 3 Tr 120.

To justify the request for a Section 7 warning regarding DTE Gas’s purchase from DTE Trading, the Attorney General relied upon Mr. Coppola’s testimony. Mr. Coppola stated that, as in this case, transactions with no competing bids can lack information and transparency. Attorney General’s initial brief, p. 14 (citing 3 Tr 351). Mr. Coppola further argued that “[a]ffiliated transactions always raise specific concerns and are subject to heightened scrutiny.” *Id.*, p. 14 (citing 3 Tr 351). The Attorney General noted that all purchases from DTE Trading were at the Kensington and Clarington locations and that other major gas producers and marketers were in those same locations but not utilized. Attorney General’s initial brief, pp. 14-15, *see also*, Exhibits AG-27 and AG-28.

In the PFD, the ALJ noted that the Attorney General repeated several of the same arguments that she presented in Case No. U-20816. In that case, the Commission stated that it:

remains cognizant that the burden of proof of the reasonableness and prudence of the DTE Trading transactions remains with DTE Gas and disagrees that the company has not provided adequate evidence to support the inclusion of these transactions in this plan case, including the instances where there was only a single bidder.

October 27, 2022 order in Case No. U-20816 (October 27 order), p. 25. However, the ALJ also found that in Case No. U-20816, a “similar bidding process, and resulting purchases, from DTE Trading were adequately supported by the Company in Case No. U-20544, noting the purchases were approved in prior gas reconciliation cases.” PFD, p. 27 (citing December 9, 2022 order in Case No. U-20816, pp. 18-19). As such, the ALJ found that DTE Gas provided “sufficient evidence that its bidding process and review result in reasonable and prudent costs, even when there is only a single bidder” and as such, a Section 7 warning was not warranted. PFD, p. 27.

In her exceptions, the Attorney General avers that the ALJ erred in failing to recommend a

Section 7 warning for DTE Gas’s gas supply purchases from its company affiliate, DTE Trading. Attorney General’s exceptions, pp. 7-8. The Attorney General states that DTE Gas failed to provide appropriate evidence that “its bidding process and review result in reasonable and prudent costs, especially where the only bidder is an affiliate.” *Id.*, p. 8. In short, while the Attorney General does not fully disagree with the ALJ, she asserts that “without more description or explanation,” there is insufficient evidence for the Commission to adopt the ALJ’s recommendation. *Id.* Lastly, the Attorney General states that DTE Gas should “adequately disclose how the price at which it purchased the majority of the natural gas volumes from its affiliate, DTE Trading, for the 2022-2023 GCR year conforms with competitive market prices.” *Id.*

In its reply to the exceptions, DTE Gas avers that the ALJ properly declined to recommend a Section 7 warning on this issue. DTE Gas argues that the Attorney General’s arguments and assertions are incorrect, are “not consistent with the ‘totality of the evidence in the record’” and as such, should be rejected. DTE Gas’s reply to exceptions, p. 6, (citations omitted). Furthermore, DTE Gas relies upon the fact that the ALJ considered Ms. Moore’s testimony and that Ms. Moore “detailed some of the controls in place to monitor affiliate transactions” even if there’s only one bidder. *Id.*, p. 7. Lastly, DTE Gas notes that the Attorney General rehashed arguments found in Case Nos. U-20816 and U-20544, in which the ALJ found that “a similar bidding process, and resulting purchases, from DTE were adequately supported by the Company” *Id.* (quoting PFD, pp. 26-27).

The Commission agrees with the ALJ that the affiliate purchases from DTE Trading resulted in reasonable and prudent costs. This is an issue that has already been before the Commission. Previously, in Case Nos. U-20816 and U-20544, the Commission found that DTE Gas provided

adequate evidence that its transactions with DTE Trading were reasonable and prudent. October 27 order, p. 25. As Ms. Moore testified in the instant case, purchasing gas from DTE Trading is an established act and one done to meet MichCon's supply requirements for GCR customers. 3 Tr 115-116. As the ALJ found that DTE Gas's purchase of gas from its affiliate was reasonable and prudent, the Commission finds no reason to issue a Section 7 warning on this issue in this case.

4. The Payment of a Premium to Purchase Responsibly Sourced Gas

DTE Gas seeks to recover an underlying commodity cost and the cost of a third-party certification premium of \$36,808 for responsibly sourced gas (RSG). 3 Tr 100-101; DTE Gas's initial brief, pp. 22-23. In its initial brief, DTE Gas stated that it issued a request for information (RFI) to understand market dynamics for RSG. Based on the RFI, DTE Gas purchased 674,100 dekatherms (Dth) of gas and seeks recovery for the RSG purchase premium of \$36,808. DTE Gas rationalized that the "commodity cost would have been incurred whether the gas was traditional or RSG, as the gas is needed to meet requirements." DTE Gas's initial brief, p. 22. The company then went on to state that its premium paid was "incremental and is becoming a new industry standard for lower methane gas" and as such, was reasonable and prudent. *Id.*

Mr. Coppola stated that DTE Gas purchased RSG "at a premium over other competitively bid gas prices." 3 Tr 352. As Mr. Coppola explained, DTE Gas seeks guidance from the Commission "as to whether recovery of the payment of the RSG premium is permitted within Public Act 304." 3 Tr 354. Furthermore, Mr. Coppola stated that it was not clear from Ms. Moore's testimony how RSG lowers the composition of methane in the gas. 3 Tr 357 (citing 3 Tr 101).

The Attorney General opined that Act 304 did not authorize recovery of premium costs.

Attorney General's initial brief, pp. 18-19. As such, the Attorney General argued that DTE Gas's RSG proposal is immature, uses unproven technology, lacks industry standards, and that there are legislative and U.S. Environmental Protection Agency initiatives to reduce methane production. Thus, per the Attorney General, the reduction of greenhouse gas emissions was not worth the additional cost to consumers. *Id.*, pp. 17-19. Further, the Attorney General argued that "the clear language of Act 304 does not permit recovery of the premium paid by DTE Gas above the base cost of gas, because DTE [Gas] would not have taken all appropriate legal and regulatory actions to minimize the cost of purchased gas." *Id.*, p. 18.

The Staff agreed with the Attorney General in recommending a Section 7 warning "that the cost of the \$36,808 premium paid for RSG may not be recoverable." PFD, p. 30 (citing Staff's initial brief, p. 4). The Staff found that just "because the RSG requires a premium[,] it "is not a more reliable source of supply than gas that is not RSG certified" and as such, should not be deemed reasonable or prudent as a source of gas supply under Act 304. Staff's initial brief, p. 4.

In her PFD, the ALJ made note of Ms. Moore's testimony explaining that RSG undergoes third-party certification and regular monitoring to meet high standards and that "a critical component of RSG for DTE [Gas] will be focusing on RSG being a lower methane intensity natural gas product in comparison with other supply alternatives." PFD, p. 27 (quoting 3 Tr 93). While there is no dispute as to the underlying cost of the RSG, the ALJ noted that both the Staff and the Attorney General dispute the cost of the premium paid to a third-party for certification, requesting that a Section 7 warning be issued. *Id.*, pp. 27-31.

While DTE Gas argued that paying an RSG premium is a new industry standard making such costs reasonable and prudent, the ALJ rejected this argument, agreeing with the Staff and the Attorney General that the RSG premium of \$36,808 may not be recoverable in future

reconciliations and is premature given the current state of the natural gas industry. PFD, pp. 30-31 (citing DTE Gas’s reply brief, p. 13; Attorney General’s initial brief, p. 19).

The ALJ discussed Act 304 and why it does not allow for an increase in gas costs. The PFD quoted Section (6) of MCL 460.6h, which provides:

In its final order in a gas supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the gas cost recovery plan filed by the gas utility pursuant to subsection (3), and shall approve, disapprove, or amend the gas cost recovery plan accordingly. In evaluating the decisions underlying the gas cost recovery plan, the commission shall consider the volume, cost, and reliability of the major alternative gas supplies available to the utility; the cost of alternative fuels available to some or all of the utility's customers; the availability of gas in storage; the ability of the utility to reduce or to eliminate any sales to out-of-state customers; whether the utility has taken all appropriate legal and regulatory actions to minimize the cost of purchased gas; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly gas cost recovery factors requested by the utility in its gas cost recovery plan. The factors ordered shall be described in fixed dollar amounts per unit of gas, but may include specific amounts contingent on future events, including proceedings of the federal energy regulatory commission or its successor agency.

PFD, pp. 31-32. As the ALJ notes, Act 304 specifically requires that a utility “has taken all appropriate legal and regulatory actions to minimize the cost of purchased gas” and that because “RSG serves the same function as gas procured without the ‘responsibly sourced’ designation”, it does not meet the reasonable and prudent standard. *Id.*, p. 32 (quoting 3 Tr 297). As such, the ALJ agreed with the Staff and the Attorney General that since the premium is not supported by Act 304, a Section 7 warning is appropriate. *Id.*, p. 32.

In fact, the ALJ noted the Attorney General’s following argument:

The Company has not made a compelling and convincing case that purchasing RSG is in the best interest of customers or that it will make a significant difference in reducing greenhouse gas emissions. Furthermore, the payment of RSG premiums above the base cost of gas purchases is likely not recoverable under Act 304.

PFD, p. 29 (quoting Attorney General’s initial brief, p. 5).

In its exceptions to the PFD, DTE Gas argues that the Section 7 warning for the \$36,808

RSG premium should be rejected. To support its argument, DTE Gas cites Rule 435 of the Rules of Practice and Procedure before the Commission, Mich Admin Code, R 792.10435(3) and (4), stating that it has the initial burden of proof by a preponderance of the evidence which, when challenged, shifts the burden to the challenging parties. DTE Gas's exceptions, pp. 3-4. DTE Gas argues that it met its burden of proof and contends that the ALJ erred because she agreed with the Attorney General's arguments. *Id.*, pp. 3-6. DTE Gas asserts that the ALJ disregarded "other relevant factors" as found in Act 304 and that those other relevant factors allow for reimbursement of the \$36,808 premium. *Id.*, p. 6.

In its reply to DTE Gas's exceptions, the Staff comments on the singular issue of the \$36,808 premiums paid for RSG. Staff's reply to exceptions, pp. 1-2. The Staff reiterates that "premiums related to RSG do not qualify for cost recovery under Act 304" and that to not issue a Section 7 warning would be giving "tacit approval for recovery of RSG premiums." *Id.* The Staff states that by not issuing a Section 7 warning, "it risks opening the door for the Company to justify failure to comply with Act 304 on the basis of other broad criteria that are completely unrelated to the cost minimization, reasonable and prudent operation, and reliability considerations that are the primary purposes of Act 304." *Id.*, p. 2.

In her replies to exceptions, the Attorney General also asserts four arguments on this issue: (1) DTE Gas's argument that it is being held to a heightened burden of proof is erroneous, (2) DTE Gas misunderstood and therefore misapplied Act 304's language, (3) DTE Gas's argument that its purchase of RSG was reasonable and prudent is false, and (4) DTE Gas's argument that RSG is "akin to 'other environmental costs'" ignores that RSG is a developing field and the utilization of RSG results in voluntary costs. Attorney General's reply to exceptions, pp. 4-6.

While the Commission recognizes the potential value in RSG, it agrees with the ALJ, the Attorney General, and the Staff, and finds that a Section 7 warning should be issued for the premium payment for RSG. However, this decision is based on the lack of support on the record for this purchase and is not an indication that all RSG procurement is imprudent. The Commission's finding that a Section 7 warning is warranted does not preclude DTE Gas from requesting recovery of the expense as part of a future rate case or expedited pilot case, or from providing additional support for the requested premium as part of the reconciliation of costs in the instant case. Indeed, the Commission notes that its decision in the December 9, 2021 order in Case No. U-20940 (December 9 order) involving recovery of research and development costs connected with reducing the carbon intensity of DTE Gas's operations is somewhat analogous to the costs associated with RSG in the instant case. In the December 9 order, the Commission expressed its expectation that DTE Gas provide "a better correlation between the costs of [research and development] with the reduction of risk and benefits of sustained services for customers in order to support that some portion of these expenses be included in customer rates." December 9 order, p. 180. Similarly, should the company seek to recover all or a portion of RSG premiums in its reconciliation case or in future filings, it will need to see fuller support for the expected benefits to its customers compared to the additional costs incurred from emergent third-party certifications such as those verifying RSG. However, the record evidence in this case does not provide sufficient information on how RSG will benefit DTE Gas's customers, including potential cost savings from supply chain emissions reductions achieved by monitoring and certifying responsibly sourced and lower methane intensity natural gas.

5. DTE Gas's Modification to use 21 Months Instead of the Gas Cost Recovery Plan New York Mercantile Exchange Average of 24 Months

The GCR Plan NYMEX average uses 24 months of data to determine the maximum

allowable GCR factor. Staff's initial brief, pp. 4-5. However, the Staff observed that DTE Gas suggested a change to the contingency mechanism that would reduce the contingency calculation from 24 to 21 months. *Id.*; *see also*, 3 Tr 258-262. The company's reasoning for this change is that January, February, and March experience higher gas costs for storage and by omitting these months, "that ultimately brings gas costs down due to the Company's use of last in, first out accounting." *Id.*, p. 5 (citing 3 Tr 299). In response to this request, the Staff agreed to using only 21 months of data but requested a back-test be provided by DTE "with the filing of the reconciliation of this plan case demonstrating what factor would have been yielded by the contingency mechanism had the full 24 months been used." Staff's initial brief, p. 5 (citing 3 Tr 300). The ALJ was persuaded by the Staff's argument and stated that the recommendation for a back-test was appropriate. PFD, p. 8.

The Commission agrees with the Staff and the ALJ that a back-test should be utilized to reconcile DTE Gas's GCR plan in this case. While DTE Gas argued that 21 months was appropriate due to the increased gas costs in January, February, and March, the Staff proffered the back-test for DTE Gas to demonstrate "what factor would have been yielded by the contingency mechanism had the full 24 months been used." Staff's initial brief, p. 5 (citing 3 Tr 300); *see*, PFD, pp. 7, 11, 16, 34. As the GCR Plan NYMEX average uses 24 months of data, the Commission finds that DTE Gas should be required to provide the same information via a back-test.

THEREFORE, IT IS ORDERED that:

A. DTE Gas Company's gas cost recovery plan for 2022-2023 is reasonable and prudent and should be approved.

B. DTE Gas Company's five-year forecast is approved subject to the MCL 460.6h(7)

warning issued below.

C. DTE Gas Company is authorized to implement a maximum gas cost recovery factor of \$5.07 per thousand cubic feet which may be adjusted to a new maximum rate by the simplified contingent factor mechanism in Exhibit A-23.

D. DTE Gas Company is authorized to include a supplier of last resort reservation charge of \$0.45 per thousand cubic feet for GCR customers and \$0.30 per thousand cubic feet for GCC customers to be reflected in the company's monthly billings.

E. DTE Gas Company's proposal to alter the method used for calculation of the Maximum Allowable GCR factor is approved, as is the Commission Staff's recommendation to instruct DTE Gas Company to provide a back-test that demonstrates what the maximum factor would have been had the full 24 months been used.

F. A warning, pursuant to MCL 460.6h(7), is issued to DTE Gas Company that the premium of \$36,808 paid for responsibly sourced gas may not be recoverable in future reconciliation cases without first providing evidence of how responsibly sourced gas delivers a benefit to customers.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Katherine L. Peretick, Commissioner

Alessandra R. Carreon, Commissioner

By its action of October 12, 2023.

Lisa Felice, Executive Secretary


PROOF OF SERVICE

STATE OF MICHIGAN)

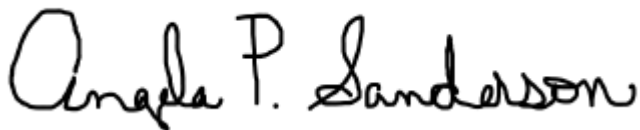
Case No. U-21064

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on October 12, 2023 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).


Brianna Brown

Subscribed and sworn to before me
this 12th day of October 2023.



Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

Service List for Case: U-21064

Name	On Behalf of	Email Address
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Brian W. Coyer	Residential Customer Group	bwcoyer@publiclawresourcecenter.com
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