S T A T E O F M I C H I G A N

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, five-year forecast and authorization of gas cost recovery factors for the 12-month period ending March 31, 2016.	)))))))	Case No. U-17691

At the November 22, 2016 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

History of Proceedings

On December 30, 2014, DTE Gas Company (DTE Gas) filed an application, with supporting testimony and exhibits, requesting approval of its gas cost recovery (GCR) plan and factors for the 12-month period ending March 31, 2016. DTE Gas's application was filed pursuant to Section 6h of 1982 PA 304 (Act 304), MCL 460.6h. DTE Gas requests to implement a maximum base GCR factor consisting of $4.07 per thousand cubic feet (Mcf) that can be increased by a contingency factor matrix based on increases in New York Mercantile Exchange (NYMEX) gas commodity prices resulting in a new maximum GCR factor. The company also requests a pipeline reservation charge of $0.29 per thousand cubic feet (Mcf) to be billed to both GCR and Gas Customer Choice

(GCC) customers. DTE Gas projects total gas supply costs of $579.3 million and total supply requirement volumes of 136.7 billion cubic feet (Bcf). The utility also presented a five-year forecast of the cost of gas with its application.

A prehearing conference was held on February 10, 2015, before Administrative Law Judge Mark D. Eyster (ALJ). At the prehearing conference, the ALJ granted petitions to intervene filed by the Michigan Department of the Attorney General (Attorney General), the Residential Ratepayer Consortium (RRC), Interstate Gas Supply, Inc., (IGS), and the Retail Energy Supply Association (RESA). The Commission Staff (Staff) also participated in the proceedings. ANR Pipeline Company (ANR) filed a petition for leave to intervene on March 11, 2015, and the ALJ granted the petition on May 27, 2015.

An evidentiary hearing was conducted on August 20-21, 2015. With the exception of IGS, all other parties filed briefs on October 9, 2015. DTE Gas, the RRC, RESA, ANR, and the Attorney General filed reply briefs on November 9, 2015. The ALJ accepted supplemental briefs from DTE Gas and ANR on December 4, 2015. The ALJ issued his Proposal for Decision (PFD) on July 7, 2016. DTE Gas, the Staff, and the Attorney General filed exceptions on July 28, 2016, and DTE Gas, the Staff, the Attorney General, RESA, and ANR filed replies to exceptions on August 10 and 11, 2016. The record in this case consists of 884 pages of transcript and 91 exhibits that were admitted into evidence.

Proposal For Decision

An overview of the record and the positions of the parties are detailed in the PFD, pages 2-35, and will not be repeated here. The ALJ identified the following issues concerning DTE Gas's GCR plan and forecast: 1.) whether the Commission has the authority to approve the NEXUS capacity agreement; 2.) whether the Commission should issue a "Section 7 Warning" to disallow

full recovery of gas transportation services envisioned with the NEXUS agreement; 3.) whether DTE Gas should be permitted to continue its current pipeline capacity reservation charge or whether, as RESA proposes, that charge should be adjusted; 4.) whether DTE Gas should be permitted to continue its fixed price purchase (FPP) plan as is, or whether, as the Attorney General proposes, that plan should be amended; 5.) whether DTE Gas should be permitted to recover costs associated with the ANR Alpena interstate transport contract; and 6.) whether the Commission should approve DTE Gas's parking service proposal. In addition to these issues, DTE Gas also challenges the ALJ's grant of intervention to ANR and the ALJ's decision to seal certain documents over concerns raised about the disclosure of trade secrets and confidential information. The Commission will first address the issue of ANR's intervention and will then move on to the remaining contested issues in this matter.

Intervention of ANR Pipeline Company

On March 11, 2015, ANR filed a petition for leave to intervene out of time. In its petition, ANR argued that it has standing to intervene both "as of right" as it meets the two-prong test for standing articulated in *Ass'n of Data Processing Service Organizations v Camp*, 397 US 150, 153, n. 7; 90 SCt 827; 25 LEd2d 184 (1970), and also because it meets the requirements for permissive intervention.

On May 26, 2015, DTE Gas filed an objection to ANR's petition for leave to intervene. According to DTE Gas, ANR failed to show the requisite good cause for filing its petition in an untimely manner pursuant to the Commission's rules on practice and procedure, specifically Mich Admin Code R 792.10410. DTE Gas claimed that there is no good cause because there was no defective notice of hearing or other procedural irregularity that would warrant late intervention.

DTE Gas further argued that ANR failed to satisfy both prongs of the two-part test to intervene as of right, and failed to meet the requirements for permissive intervention.

A motion hearing was held on May 27, 2015, during which the ALJ determined that ANR had met the requirements for permissive intervention and, by doing so, had established good cause as well. 2 Tr 49-53.

DTE Gas took exception to the ALJ's decision to grant ANR permissive intervention. First, DTE Gas argues that the Commission should overrule the ALJ's decision to grant ANR intervention because both the Commission and the Michigan Court of Appeals have held that it is inappropriate for competitors to intervene in a GCR proceeding. DTE Gas further argues that there are no circumstances that warrant granting ANR permissive intervention because ANR has no interest that coincides with the interests of GCR or GCC customers, or that ANR's interests are not already being adequately represented by the Attorney General, the Staff, and the RRC. The utility maintains that granting ANR intervention has not proven useful in advancing the discussion of approval of DTE Gas's NEXUS transportation contract. Thus, it asks the Commission to clarify in its final order that permissive interventions granted to intervenors with competitive interests will not be allowed in future GCR proceedings.

In addition to these arguments, DTE Gas asserts that ANR should not have been granted intervention because it failed to intervene on time and failed to establish "good cause" under the Commission's rule regarding late intervention, Mich Admin Code R. 792.10410. Specifically, DTE Gas argues that "good cause" exists when there has been a procedural defect such as a defective notice of hearing and that, in this case, DTE Gas complied with its notice requirements. DTE Gas also asserts that ANR falsely represented that it was unaware that NEXUS capacity would be addressed in this GCR plan proceeding, citing an email that it claims shows ANR was

both aware of the plan proceeding, and aware that DTE Gas would address the NEXUS project in the plan filing as early as December 2012. DTE Gas further argues that it was wrong for the ALJ to conflate the issue of "good cause" with the requirements for permissive intervention based on a previous Commission order in a different proceeding. DTE Gas also argues that the ALJ was wrong to conclude that ANR is located outside Michigan when it has a Michigan office and had both constrictive and actual notice that the NEXUS pipeline would be a part of the GCR plan case. DTE Gas asks the Commission to either strike from the record the expert testimony of ANR witness Lee Bennett, Manager of Short-Term Marketing for TransCanada, and his accompanying exhibits, or alternatively, to give that testimony "zero evidentiary weight" in this proceeding.

ANR argues that the ALJ's decision to grant it intervention was proper because ANR met the requirements for permissive intervention. It explains that the Commission's requirements for standing are not as strict as those applied by the courts. It asserts that its status as a competitor does not disqualify it from intervening in this proceeding. It cites case law where the Commission has granted intervenor status to a competitor because the competitor was uniquely situated to provide the Commission with useful information. It argues that it is uniquely situated to provide information regarding the alternatives to NEXUS available to DTE Gas. Likewise, it agrees with the ALJ that the nature of the affiliated contract between DTE Gas and NEXUS provides another reason to grant ANR permissive intervention. Finally, ANR argues that "good cause" is not limited to a procedural defect or irregularity but can, as in this case, include where an intervening party can provide the Commission with useful information that will aid it in resolving the case and there is no delay in the hearing that would prejudice other parties. It argues that no party was prejudiced by its late intervention in this case and explains that it was unaware that DTE Gas would be raising approval of the NEXUS contract in this GCR plan proceeding until after the

deadline for intervention had passed. Finally, ANR points out that DTE Gas failed to establish that the ALJ abused his discretion in granting ANR intervention.

The Commission agrees with the ALJ that a grant of permissive intervention was proper in this case for the reasons set forth below and in the PFD. The Commission has long held that prospective intervenors must generally satisfy the two-prong test established in *Association of Data Processing Services Organizations, Inc v Camp*, 397 US 150; 90 S Ct 827; 25 L Ed 2d 184 (1970), which has been applied to utility matters in *Drake v The Detroit Edison Company*, 453 F Supp 1123, 1127 (WD Mich, 1978). This test requires the party in question to show: (1) that it suffered an injury in fact, and (2) that the interest allegedly damaged falls within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.

Regarding the second prong of the two-part test in *Data Processing, supra*, DTE Gas argues that ANR's status as a competitor disqualifies it from intervening in this case. Although a panel of the Court of Appeals has concluded that competitive interests are not within the zone of interests protected by Act 304, *In the matter of the Application of Michigan Consolidated Gas Co (National Energy Marketer's Assoc v Pub Serv Comm)*, unpublished per curiam opinion of the Michigan Court of Appeals, issued January 21, 2010 (Docket No. 282810), the Commission's discretion to grant leave to intervene is broader than the two-prong test set forth in *Data Processing*. As recognized in prior Commission orders, the requirements for standing before the Commission are not as strict as those applied by the courts. December 8, 1992 order in Case No. U-10150; June 5, 1996 order in Case No. U-11057. For example, the Commission can allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenor's participation, or when the intervenor will bring a unique perspective to the issues raised by the case. *Id*.

In this case, the Commission finds that the ALJ correctly concluded the nature of the affiliated transaction presented here warrants a closer look at the proposed arrangement. The Commission further finds that ANR's proffered testimony provides the Commission with relevant information about DTE Gas's various available options for increasing its gas supply transportation capacity that the utility may not readily disclose given the affiliated transaction at issue. With respect to DTE Gas's argument that ANR lacks the requisite good cause for late intervention, the Commission disagrees. The Commission finds that Commission approval of an affiliate transportation capacity contract is not typically requested in a GCR plan proceeding under Act 304. For this reason, the Commission finds credible ANR's argument that it was unaware the contract would be presented in this GCR plan proceeding until after the deadline for intervention had passed. The Commission also agrees that ANR is not a frequent intervenor in the GCR plan cases. Finally, the Commission agrees with the ALJ that the Commission would benefit from ANR's unique perspective and information supplied in this case given the complexities that inure whenever an affiliate contract is presented to the Commission for approval. This constitutes good cause. Accordingly, the Commission concludes that ANR should be granted intervenor status.

Statutory Authority to Approve of the NEXUS Agreement

Regarding the first issue, *i.e.*, whether the Commission has the authority to approve the 75,000 Dekatherm per day (Dth/day) NEXUS transportation capacity agreement, the ALJ considered the parties' arguments and concluded that the Commission lacks such authority. The ALJ summarized both the Attorney General's and the RRC's arguments that the Commission lacks such authority, as well as DTE Gas's arguments to the contrary. *See* PFD, pp. 19 - 35. In rejecting DTE Gas's position on this issue, the ALJ followed the reasoning of *Application of Detroit Edison Co v Mich Pub Service Comm*, 296 Mich App 101; 817 NW2d 630 (2012), where the court concluded that the

Commission lacked the statutory authority to approve a revenue decoupling mechanism for an electric utility. Using the reasoning applied in that case, the ALJ noted that the Legislature, in outlining the Commission's required review of a five-year forecast in a GCR plan proceeding does not specifically require the Commission to approve, disapprove, or amend the five-year forecast. Rather, the ALJ points out that this statutory provision permits the Commission to "indicate any cost items" for which the Commission feels it would be unlikely to permit cost recovery in the future. MCL 460.6h(7). Thus, the ALJ concluded that a plain reading of both MCL 460.6h(6) and (7) reveals that the Commission may not approve cost items found exclusively in the five-year forecast. PFD, p. 39.

Exceptions and Replies

DTE Gas takes exception to the ALJ's interpretation of MCL 460.6h(7). DTE Gas insists that the ALJ wrongly concluded that Act 304 bars Commission approval of the cost recovery of expenses related to the 75,000 Dth/day of transportation capacity on NEXUS in this plan case proceeding. First, DTE Gas clarifies that it never requested Commission approval of its contract with NEXUS, as the ALJ suggested in the PFD. Rather, DTE Gas's request is limited to Commission approval of the *recovery of costs* for the 75 Dth/d of NEXUS pipeline transportation capacity beginning in 2017 that will result from the contract. The utility further argues that the issue is ripe because, even though the costs do not accrue during the 2015-2016 GCR plan year, MCL 460.6h(7) authorizes the Commission to evaluate decisions underlying the utility's five-year forecast and to provide a judgment on or determination of a gas utility's decision in advance of a future GCR year. DTE Gas summarizes its evidentiary record in this case, explaining its actions and inaction each step of the way in the NEXUS and ANR bidding processes. Based on this summary, DTE Gas argues that this issue is ripe for final review on the merits. The utility argues

that not only does the Commission have the statutory authority to review the issue under MCL 460.6h(7), but it also has the authority to approve or disapprove of the decision to take 75,000 Dth/d of transport capacity on NEXUS beginning in 2017.

The Staff urges the Commission to address these capacity costs in other ongoing dockets with better record evidence, arguing that, because the pipeline capacity costs are part of DTE Gas's five-year forecast and do not impact the utility's 2015-2016 GCR costs, it is appropriate to wait and address the costs in other dockets. Further, the Staff argues that waiting to address these costs in other dockets will essentially render each of DTE Gas's arguments raised here moot. According to the Staff, in Case No. U-17920, DTE Electric Company's 2016 power supply cost recovery plan case, DTE Gas's evaluation of the precedent agreement at issue in this case is referenced. The Staff also cites Case No. U-17941, DTE Gas's 2016-2017 GCR plan case, where DTE Gas provided its precedent agreement and articulated the reasons that it entered into the agreement. Based on the additional information provided in these other dockets, the Staff believes the terms of the agreement are reasonable. According to the Staff, there is no need to "preapprove" NEXUS pipeline capacity costs in this case when other dockets exist with more information.

The Staff goes on to argue that, should the Commission choose to address this issue, DTE Gas has misinterpreted Act 304. The Staff asserts that the Commission may approve a five-year forecast that includes NEXUS pipeline costs, yet this does not guarantee the Commission will approve the costs once they are included in the GCR plan.

The Attorney General argues that the ALJ properly found the Commission lacks the authority to approve of DTE Gas's NEXUS agreement. The Attorney General cites case law that stands for the proposition that where powers are conferred by law they cannot be extended by inference. He maintains that the language in MCL 460.6h(7) confers upon the Commission the authority to

indicate any cost items in the five-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 GCR factors established in the future. He asserts that this language does not empower the Commission to approve or reject cost items in a five-year forecast, even though subsection (7) authorizes, but does not require, the Commission to issue warnings. The Attorney General also cites case law establishing rules of statutory construction, such as the principle that statutes addressing the same subject must be read harmoniously, and the requirement that a phrase must be considered in the context of the statute as a whole. He argues that subsection (7) must be read in context with the language in subsection (6), which requires the Commission to approve, disapprove, or amend GCR plans and to approve, reject, or amend the 12 monthly GCR factors requested by the utility in its GCR plan. The Attorney General notes that such language is missing in subsection (7). He argues that this omission was intentional under principles of statutory construction. He also compares the language of MCL 460.6j(13)(b) with MCL 460.6h and concludes that the Commission lacks the authority to approve natural gas contracts in advance.

ANR does not take a position on the ALJ's conclusion that the Commission lacks the statutory authority to approve costs that will be incurred outside of the company's annual GCR plan. Instead, it argues that DTE Gas failed to show that contracting with NEXUS was a reasonable and prudent course of action in light of the numerous less costly alternatives that remain available to DTE Gas to access Marcellus/Utica shale gas in the Appalachian Basin. Similarly, RESA takes no position on this issue.

The Commission, having considered the parties' arguments and the well-reasoned analysis presented in the PFD, agrees with the ALJ that it lacks the statutory authority to preapprove GCR costs to be incurred in future GCR plan years.

MCL 460.6h(7) reads as follows:

> In its final order in a gas supply and cost review, 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.

Although the language of subsection (7) does permit the Commission to evaluate decisions that form the basis of the five-year forecast, nothing in this statutory provision provides the Commission with the authority to approve of GCR costs to be incurred in future GCR plan years. For this reason, the Commission finds DTE Gas's request for approval of costs related to the NEXUS contract to be premature, and agrees with the Staff that a different case, such as a future GCR plan proceeding or even a general rate case, is a more relevant proceeding to raise the recovery of these GCR costs.

Section 7 Warning

The ALJ next considered whether a warning pursuant to MCL 460.6h(7) (Section 7 warning) is appropriate for future gas costs related to DTE Gas's decision to take 75,000 Dth/d of transport capacity on NEXUS beginning in 2017. The ALJ found that the evidence presented on this issue created the strong impression that this affiliate transaction is a part of a largely unexplained contractual scheme designed to foster the success of the NEXUS pipeline project, involving DTE Gas, DTE Energy, DTE Pipeline, DTE Electric, and NEXUS. PFD, p. 40. The ALJ concluded from the record that DTE Gas never seriously considered any other options for the acquisition of the 75,000 Dth/day transportation capacity. The ALJ did not believe that DTE Gas was bound by the unsigned December 2013 precedent agreement, which the ALJ opined would have been subject to the Commission's approval. The ALJ found that, while DTE Gas was looking into and securing transportation capacity on NEXUS, other avenues for the transport of Appalachian Basin

gas were and still are available and that those other options may be even less expensive than NEXUS. According to the ALJ, it is DTE Gas's responsibility to show that the contractual arrangement is in its customers' best interest. Therefore, the ALJ concluded that DTE Gas must present a transparent presentation that examines the nature of its NEXUS arrangements, including: any investments in its transportation system that DTE Gas's customers will be required to support, an explanation of the nature and risks associated with the precedent agreements for natural gas by DTE Gas and DTE Electric, and a full and complete examination of all the various transportation options available to DTE Gas. The ALJ concluded that, in the absence of such a presentation, it is appropriate to advise DTE Gas that the Commission may not permit full recovery of the cost of gas transportation services on NEXUS.

DTE Gas takes exception to the PFD's recommendation for a Section 7 warning. DTE Gas begins by disagreeing with a number of the ALJ's factual findings and conclusions of law in the PFD. First, the utility disagrees that DTE Gas's precedent agreements with NEXUS require Commission approval. Next, DTE Gas argues that the ALJ erroneously took official notice of information not available until after the close of the evidentiary record in this case. That information includes DTE Gas's filing of an abbreviated application with Federal Energy Regulatory Commission (FERC) on November 24, 2015, regarding the leasing of pipeline capacity to NEXUS, as well as an announcement dated December 9, 2015, by DTE Gas's parent company, DTE Energy Company, regarding the expansion of DTE Gas's system to support the NEXUS interconnection. DTE Gas argues that this information does not meet the Commission's requirements, pursuant to Mich Admin Code, R 792.10428, that the facts be "within the Commission's specialized knowledge" or that they are "material to the proceeding."

DTE Gas also disagrees with the PFD's recommendation that DTE Gas be required, in a future proceeding, to present information on its NEXUS arrangements that includes any investments in its transportation system. According to the utility, such an inquiry is beyond the scope of an Act 304 proceeding because a $200 million expansion of its transportation capacity is not part of the booked cost of gas sold as defined in the utility's tariffs. DTE Gas further argues that the ALJ erroneously found the utility's decision to subscribe for 75,000 Dth/day of transport capacity beginning November 2017 was not effective in December 2013. In addition, the utility claims that the ALJ wrongly concluded there were less expensive alternative greenfield pipeline projects that existed when DTE Gas made the decision to subscribe for transport capacity on NEXUS. DTE Gas also disagrees with the ALJ's conclusion that it has failed to consider other transportation services available to it that may result in cheaper gas costs for its customers, arguing that ANR East did not exist when it made the decision to use NEXUS and does not exist now as ANR abandoned the pipeline project. It also refers to the results of an independent cost analysis as validating its decision to use NEXUS as opposed to existing brownfield pipelines. DTE Gas argues that the Commission's approval of a GCR recovery of transportation costs with NEXUS is in its customers' best interests. DTE Gas argues that NEXUS is the least cost alternative and has other benefits such as a shorter time commitment to receive the benefits of "Anchor Shipper" status, which also required a lower volume commitment than what would have been required by ANR East to obtain the status of "Foundation Shipper." The utility notes that this anchor shipper status carries a guarantee that it will receive the lowest rate paid by any similarly situated shipper on NEXUS. DTE Gas further argues that plans are already underway to replace 75,000 Dth/day of existing transport with NEXUS capacity. DTE Gas also defends the value of anchor shipper status from ANR's arguments casting it into doubt.

The Staff did not respond to the request for a Section 7 warning, except to argue that all issues pertaining to the NEXUS contract are moot, as the matter should be considered in other later dockets where the utility has provided more information.

ANR argues that a Section 7 warning is appropriate in this case, as DTE Gas has failed to demonstrate that contracting with NEXUS was reasonable and prudent given numerous less costly alternatives that provide DTE Gas with access to Marcellus/Utica shale gas in the Appalachian Basin. ANR contends that DTE Gas is not required to support NEXUS, nor incur the substantial cost of contracting for NEXUS capacity in order to gain access to the shale gas at issue here. ANR references alternatives that include two competing greenfield projects, ANR East and the Rover pipeline, and service from existing capacity that currently accesses the Appalachian Basin. According to ANR, DTE Gas failed to adequately consider or negotiate with either ANR East or Rover because DTE Gas believed it was already committed to its parent company's sponsored project. ANR argues that the December 2013 precedent agreement that was signed by DTE Gas, but no other party, was not a binding agreement as there was no mutual assent or "meeting of the minds" required to form a binding contract. ANR argues that DTE Gas was free to pursue other options until July 23, 2014, when another precedent agreement was fully executed by both DTE Gas and NEXUS. Therefore, ANR contends that it was imprudent of DTE Gas to not negotiate for service on other greenfield projects based on the fact it was "committed" to NEXUS, when it was not bound by any such binding agreement.

ANR calls DTE Gas's landed cost analysis and its independent analysis "after-the-fact efforts" to substantiate the decision the utility took to support its parent-sponsored project. ANR considers these to be flawed because they compare DTE Gas's negotiated rates with NEXUS to publicly-posted non-negotiated rates by ANR East and Rover. It argues that DTE Gas's failure to negotiate

rates with ANR East or Rover was imprudent and renders the cost comparisons meaningless. ANR further points out that the posted reservation rate for ANR East was lower than the negotiated reservation rate with NEXUS. ANR further argues that the analyses were based on DTE Gas's forecast that fuel costs would be much lower on NEXUS over the 15-year period ending in 2031 than for ANR East and Rover, with DTE Gas projecting that fuel costs on the other pipelines would be almost double the costs on NEXUS. According to ANR, these fuel cost estimates are unreliable.

With respect to DTE Gas's beneficial status as "anchor shipper" on NEXUS, ANR argues that this status is uncertain as it depends on the contingent event of adding electric generation that needs additional pipeline capacity. ANR further disputes that such status would result in a guaranteed lower rate. Finally, ANR argues that DTE Gas's point about ANR East being an abandoned project now is irrelevant as the "reasonable and prudent" standard requires the Commission to evaluate the prudence of DTE Gas's decision "in light of existing conditions at the time its decision is made." It points out that, when DTE Gas assumed a legally binding obligation to NEXUS in July 2014, the ANR East project was a viable option. And, ANR argues that, had DTE Gas attempted to negotiate for capacity on the ANR East project at that time, the project might not have been abandoned. ANR disagrees with DTE Gas's suggestion that the Commission must either approve of the NEXUS contract or subject Michigan ratepayers to increased rates based on ANR's pending rate case filed with the FERC. ANR further contends that DTE Gas's existing capacity could be upgraded "with minor facility enhancements" to provide the capacity DTE Gas is seeking from the Appalachian Basin to its city gates. It also suggests that increasing its existing capacity with ANR is a safer option than relying on a single pipeline such as NEXUS because a *force majeure* event that results in a curtailment of service from any one point would

leave DTE Gas at greater risk with NEXUS than with a diversified system of alternative delivery points that provides greater reliability. ANR further suggests, referring to the Lebanon Lateral and Glen Karn open seasons, that if the cost of transportation on the combination of two existing pipelines that extend back to the Appalachian Basin is lower than the cost of one proposed greenfield pipeline like NEXUS that extends back to that basin, there is no reason to incur the substantially greater cost of the greenfield pipeline.

Finally, ANR argues that lower cost alternatives to NEXUS still exist today as it has offered and continues to offer DTE Gas a lower cost alternative than NEXUS for accessing Appalachian supplies. ANR argues that the savings DTE Gas claims it will achieve are based on the utility's ability to access the lower cost supplies in the Appalachian Basin instead of more expensive gas attached to the contracts DTE Gas intends to replace, and that these savings could be achieved by any pipeline that accesses gas in the Appalachian Basin, including the Rover pipeline and contracting for service from ANR's interconnections with the upstream pipelines that access the basin. It identifies alternatives that it believes are less costly than transportation service on NEXUS. Thus, ANR argues that DTE Gas's precedent agreement with NEXUS is neither reasonable nor prudent, and should not be approved. It further requests that the Commission require DTE Gas to engage in a competitive and transparent process for choosing its transportation services.

The Attorney General argues that DTE Gas's request for approval of its proposed agreement to buy 75,000 Dth/day of NEXUS pipeline capacity beginning in 2017 is not reasonable and prudent based on the evidence presented. The Attorney General argues that the annual costs of the NEXUS contract will equal approximately $19.2 million per year. He suggests that the analysis presented by DTE Gas is unrealistic because it demonstrates a cost savings that is due to projected

reductions in gas commodity costs, when it is not likely that the market prices for natural gas from competing resources will remain at the current levels DTE Gas used for its analysis. He asks the Commission to compare the duration and the level of variable cost savings that DTE Gas projects with the utility's acknowledgement that the NEXUS contract requires DTE Gas to pay a new $24 million for reservation costs over the 15 years of the contract period with no assurance that the future variable cost projections will actually exceed the fixed costs. Based on the contract's terms, the Attorney General argues that neither DTE Gas nor NEXUS is willing to take the risk and construct the pipeline in the absence of an assurance from the Commission that they will recover the projected fixed costs from DTE Gas's customers as well as future variable costs. According to the Attorney General, the fact that the utility is unwilling to take the risk inherent in making the planned investment without regulatory protection calls into question the credibility of DTE Gas's projections. The Attorney General alludes to ANR's argument that the actual fuel costs that will be incurred are unknown and argues this uncertainty does not support the utility's claim that ANR's fuel costs will be greater than NEXUS's fuel costs. The Attorney General discusses the cheaper alternatives that exist for transportation capacity from the basin. He argues that the utility does not need to incur the high transportation charges on the NEXUS project to reap commodity gas cost savings that will result from the additional liquidity provided by both existing infrastructure and the additional capacity being constructed from the Appalachian Basin to delivery points in Michigan. The Attorney General concludes by arguing that the record is insufficient to justify an order approving the NEXUS contract with its resulting fixed costs and speculation about potential savings resulting from an affiliate transaction. Finally, he argues that there is no evidence proving that the projected costs will not be higher than the actual costs

incurred by its affiliate as required by the Commission's Code of Conduct governing affiliate transactions.

Based on an evaluation of the record evidence and a consideration of the parties' arguments and the analysis and recommendations in the PFD, the Commission rejects the ALJ's recommendation that a Section 7 warning regarding the likelihood of recovering GCR costs resulting from the NEXUS contract is warranted. Pursuant to MCL 460.6h(7), the Commission may indicate any cost items in the five-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. The Commission agrees with the ALJ that costs associated with NEXUS should not be recoverable absent a transparent evidentiary presentation examining the full nature of the NEXUS arrangements. PFD, p. 41. The Commission also acknowledges the various pending proceedings in which NEXUS issues are further examined, including the DTE Gas rate case and the DTE Electric power supply cost recovery proceedings. As the Staff argued, additional evidence is available in other proceedings to inform the Commission's decisions about NEXUS-related costs. The Commission prefers to examine these issues more holistically and therefore refrains from issuing a Section 7 warning. Accordingly, the Commission rejects this recommendation in the PFD.

Pipeline Capacity Reservation Charge

The next issue is whether the Commission should require DTE Gas to adjust its pipeline capacity reservation charge as RESA has requested. The PFD provides a thorough review of the testimony and parties' positions on this issue at pages 41 to 51. In the PFD, the ALJ recommends that the Commission adopt RESA's current proposal to have separate reservation charges for GCC and GCR customers that would be adjusted and reconciled based on the value each group realizes

from DTE's capacity assets. The PFD provides that DTE Gas is expected to cooperate in developing an equitable and accurate mechanism that best ensures the reservation charge is based on actual operations and expenses and is commensurate with the benefits afforded by supplier of last resort (SOLR) service for both GCR and GCC customers. PFD, p. 53.

DTE Gas takes exception to the PFD's recommendation that the Commission adopt RESA's proposal of separate pipeline capacity reservation charges for GCR and GCC customers. The utility argues, that the Commission's prior approval of its current reservation charge proves that DTE Gas presented an equitable and accurate reservation charge and that no existing obligation exists for the utility to cooperate in the development of some other party's proposal. DTE Gas's Exceptions, p. 60. The utility maintains that the purpose of this proposal is to advance the competitive interests of RESA's members against DTE Gas. DTE Gas further argues the proposal is based on a flawed premise and would result in GCC customers receiving a double recovery of the pipeline spread value and reduced base rates that GCC and GCR customers are already receiving. According to DTE Gas, the basis for GCC customers paying a lower reservation charge is RESA's allegation that only GCR customers realize a pipeline capacity spread value. DTE Gas refers to testimony that midstream services include both utilization of pipeline capacity and arbitrage of gas price differences at various gas receipt and delivery points. The utility contends that the revenue it receives from activity that captures the value of the price spreads between the receipt and delivery points reduce the base rates charged to both GCR and GCC customers. DTE Gas explains that this means that the spread's impact is not connected with the amount of the reservation charge or the booked cost of gas sold. The company references testimony that the pipeline spread values that RESA calculates would be reflected in the midstream revenues included in base rates. DTE Gas argues that this testimony was not refuted during the cross

examination of RESA's expert witness, Daniel Dishno, Director of Gas Supply – Central Division for IGS. Thus, DTE Gas argues that RESA's alternative reservation charge is based on the complete fiction that only GCR customers realize a pipeline spread value. It urges the Commission to reject the proposal because it would result in GCC customers receiving a double recovery of the pipeline spread value that GCR customers would not receive and would constitute undue or unreasonable discrimination against GCR customers pursuant to MCL 462.17.

In addition, DTE Gas argues that RESA failed to prove the Commission should approve its alternative reservation charge. According to the utility, the record shows RESA's model grossly overstates the benefits GCR customers receive by more than 300%, or more than $10 million. It further claims that, eliminating this flaw, leaves about $3 million of alleged benefits or $0.02/Mcf, which it argues is both insignificant and overstated due to a number of other technical errors in the model, identified on pages 66 and 67 of its exceptions. DTE Gas describes the assumptions underlying RESA's model as conjectural and speculative. Specifically, DTE Gas contends it is undisputed that key inputs having to do with the market value of gas at delivery and receipt points in RESA's model cannot be reconciled.

The Staff also takes exception to the PFD's recommendation on this issue, arguing in part that RESA has overstated the benefits GCR customers receive from the pipeline capacity that DTE Gas purchases to satisfy its SOLR obligations. The Staff agrees that RESA's model overstates interstate pipeline utilization for GCR supply by over 18 billion cubic feet (Bcf) and overstates the assumed benefits of lower priced GCR supply by nearly $4 million. Further, the Staff agrees with DTE Gas that RESA overstates the benefits that GCR customers receive by more than 300% or more than $10 million. The Staff points out that RESA's premise ignores the disproportionate benefits GCC customers receive from other parts of the choice program. The Staff further argues

that RESA's model is flawed because it relies on data that is not quantifiable or publicly available, such as the benefits that firm pipeline capacity assets provide to GCR and GCC customers. The Staff explains that, even after the plan year is complete, the Staff and other parties will not have the information they need to calculate this value. Relying on testimony from DTE Gas, the Staff explains that two key inputs that can't be quantified are the market value of gas at the receipt points into the gas interstate pipelines for which DTE Gas holds capacity and the market value of that gas at the delivery points into the DTE Gas system. The Staff references testimony that quantifying these inputs would be pure speculation. The Staff further suggests that testimony indicates RESA's model would cause DTE Gas to undercollect reservation revenue because it results in a double recovery of GCR commodity cost savings. The Staff considers RESA's model to be unworkable and explains that it has an interest in ensuring that the model is workable so that the Staff can perform a meaningful audit. Thus, the Staff urges the Commission to reject RESA's proposed amendment to the reservation charge.

The Attorney General also takes exception to the ALJ's recommendation to adopt RESA's pipeline capacity reservation charge proposal. He argues that the idea that GCC customers receive less value ignores the fact that pipeline reservation costs for DTE Gas are higher because DTE Gas must provide natural gas to GCC customers as a SOLR. He argues that price differences at receipt points and points of delivery are unrelated to the amount of total pipeline capacity reservation costs. He explains that DTE Gas would have to buy less capacity and would incur less fixed costs but for its obligation to serve GCC customers as a SOLR. The Attorney General discusses how revenues from midstream services such as arbitrage activity go to reducing the base rates charged for GCR and GCC customers. He maintains that the evidentiary record demonstrates that RESA is incorrect in concluding that GCR customers receive more benefits from the value of gas price

spread. He identifies many of the flaws of RESA's model including various assumptions about utilization of capacity, MDQ levels, and deliveries always equaling receipts, which Mr. Dishno acknowledged during cross examination. The Attorney General concludes by arguing that RESA's spread value calculations are not realistic or reasonably accurate and that the Commission should reject the proposed revisions to the SOLR reservation charge.

RESA replies that the Commission should accept its proposal because the current pipeline capacity reservation charge is inequitable and unjust. According to RESA, the current charge does not account for the fact that GCC customers do not receive the cost savings resulting from DTE Gas's use of its capacity assets. RESA argues that, in Case No. U-17332, the Commission determined that the pipeline reservation charge is inequitable and inaccurate. There, RESA pointed out that Administrative Law Judge Sharon L. Feldman (Judge Feldman) noted in the PFD that the charge tilts the playing field in favor of DTE Gas and its GCR program, and that the Commission issued a directive instructing GCR plan review of the charge in each plan case to ensure, going forward, that the charge is based on actual operations and expenses and commensurate with the benefits afforded by SOLR service for both GCR and GCC customers. It argues that in Case No. U-17332, the Commission acknowledged the allocation of capacity costs and capacity reservation charge was not equitable or accurate, but did not believe the record was sufficient to order a capacity assignment plan. It suggests that the current charge at issue in this case suffers from the same deficiencies previously identified by Judge Feldman and acknowledged by the Commission in Case No. U-17332. Likewise, RESA maintains that the ALJ in this case correctly determined that RESA's proposal is reasonable based on the substantial evidence that RESA presented in support of its proposal. It argues that, at this time, GCC customers are subsidizing GCR customers through the reservation charge. According to RESA, Mr. Dishno's

capacity valuation model uses DTE pipeline data and market price information to determine the total value of DTE's capacity assets. According to RESA, the model's calculations reflect actual data for the first three months of the GCR year and projected data for the remaining nine months and incorporate DTE's variable costs when calculating each pipeline spread value. RESA disagrees with the arguments that its model is based on a false premise and asserts that GCR customers do receive value from DTE's capacity assets. RESA argues that the model does not overstate the benefits GCR customers receive from DTE's capacity. RESA argues that, even assuming its projected benefit of the pipeline assets are inaccurate, the correct response is to reduce the amount of the adjustment and reconcile the adjustment based on actuals in a future GCR proceeding rather than to reject the adjustment altogether. RESA maintains that it made predictions based on information available at the time, and that a reconciliation of projected costs and revenues included in the plan to actual costs and revenues will alleviate concerns about the accuracy of RESA's model.

With respect to DTE Gas's and the Attorney General's arguments that the pipeline spread values are already shared with GCC customers through base rates, RESA disagrees and claims that the pipeline spread value is unrelated to midstream services and instead is a quantifiable amount of reduced gas costs GCR customers receive for having the ability to use DTE Gas's pipeline capacity assets for natural gas deliveries. RESA argues that the midstream revenue does not negate the fact that DTE Gas is using its pipeline capacity assets to reduce the gas delivery costs just for GCR customers. RESA emphasizes that shared benefits stemming from pipeline holdings do not undermine its recommendation to recognize pipeline spread values that are going only to GCR customers in the calculation of the pipeline capacity reservation charge. Finally, RESA contends that there is no merit to the Staff's concerns that reconciliation inputs are not publicly

available. RESA explains that during the reconciliation process, DTE Gas will know the price it paid for gas, its variable costs to transport it, and the city-gate price DTE would have paid at the time of purchase in order to determine the actual spread. This is the information DTE Gas is required to demonstrate regarding whether the decision to buy and transport gas was reasonable and prudent. In addition, RESA argues that there is no loss of revenue to DTE Gas due to RESA's proposal because it recovers DTE's total pipeline capacity costs. Finally, RESA disagrees with the Staff's argument that its model is unworkable. It contends that it is no more discretionary or complex than other predictive models that are subject to reconciliation before the Commission. Thus, it urges the Commission to approve its proposal.

Having reviewed the parties' arguments, the record, and the PFD, the Commission finds that the PFD's analysis is well-reasoned and adopts the PFD's recommendation to approve RESA's proposal. The Commission agrees with RESA's initial premise that GCR customers benefit from gas commodity cost savings that are not available to GCC customers thus placing GCC customers at a relative disadvantage. Though the exact amount of that benefit was disputed in this case, the record indicates that GCR customers do benefit to some degree. *See*, 4 Tr 343, 537. The Commission also agrees with RESA that the pipeline spread value resulting in gas commodity cost savings for GCR customers is separate from midstream revenues from arbitrage activity of buying gas at a lower price and selling it at a higher price. The Commission approves of RESA's proposal, which amounts to a discount for GCC customers of 30% of the reservation charge. The GCR customers will be responsible for the balance of the reservation charges. Using this 30% discount to the GCC customers resolves the complexities presented by RESA's proposed flat fee reservation charges.

DTE Gas's Trade Secret Issue

In addition to the other issues raised in this case, DTE Gas, in its exceptions, asks the Commission to consider information about the 2014-2015 GCC year supplied by DTE Gas in its rebuttal testimony regarding:

- the total volume of gas that DTE Gas billed to IGS's GCC customers under the GCC program;
- the total dollar amount that DTE Gas billed to IGS's GCC customers under the GCC program; and
- the annual average rate per Mcf that DTE Gas billed to IGS's customers under the GCC program number of IGS customers.

Specifically, RESA filed a motion arguing that this information was IGS' trade secret information, and IGS filed a similar motion arguing that the information constitutes confidential financial information that should be redacted and/or placed under seal. A motion hearing was held on August 14, 2015, during which IGS, RESA, DTE Gas, and the Attorney General argued their respective positions on this issue. At the end of the hearing, the ALJ decided to grant temporary relief pending a permanent ruling on the motion, ordering that the respective documents at issue to be sealed and redacting the information appearing on page 7 of Mr. Brunnell's rebuttal testimony. 6 Tr 106 - 107. However, the ALJ failed to issue a permanent ruling on this issue.

Both DTE Gas and the Attorney General raise this issue in their exceptions requesting that the Commission issue a permanent ruling denying both RESA's and IGS's motions with prejudice and unsealing the record for DTE Gas's and the Attorney General's relevant filings in this docket. DTE Gas argues that IGS and RESA abandoned consideration of this argument by failing to cite any legal authority showing that the bulleted information was confidential or a trade secret.

Further, the utility argues that the bulleted information did not belong to IGS, was never developed by IGS, but instead consists of DTE Gas's information developed by DTE Gas during the course of performing its billing functions pursuant to GCC tariffs. It explains that, under its GCC tariffs, GCC customers remain customers of DTE Gas, and that DTE gas performs all the billing and collection functions for GCC customers. It further argues that its GCC tariffs permit DTE Gas to disclose GCC rate information to the Commission and the Staff upon request. In performing these billing and collection functions, DTE Gas uses its billing system that only it, and not any alternative gas suppliers, has access to. DTE Gas explains that it never obtained the information from IGS because DTE Gas developed it during the regular course of business from its billing system. It regularly discloses this information to the Commission and, as such, the information is available to the public under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*. DTE Gas argues that the information at issue here does not qualify as trade secret under Michigan Uniform Trade Secrets Act, MCL 445.1901 *et seq*. nor as confidential information because the information is available or ascertainable by DTE Gas who is a competitor of IGS, because DTE Gas is the "owner" of the information having developed it through its own billing system, because the information disclosed is of no value to IGS competitors, and because the information could be readily acquired by any other party as it is information routinely disclosed to the Staff and available to the public under FOIA. Finally, DTE Gas points out that the Commission launched a natural gas price comparison website just in October 2015 that provides actual prices offered for the cost of gas by every AGS in the state including IGS. According to DTE Gas, what was disclosed in rebuttal was average price information and the Commission website discloses far greater information than what was disclosed during rebuttal. Thus, DTE Gas argues that the concern for potential harm that the ALJ expressed is no longer relevant. Accordingly, DTE Gas

requests that the Commission deny the motions of RESA and IGS, and that it enter a permanent ruling unsealing the documents that the ALJ ordered sealed in this case.

RESA replies arguing that the ALJ's ruling correctly removed the gas supplier-specific data from the public record based on RESA's showing that the information at issue is a trade secret or otherwise confidential and that disclosure would work a clearly defined and serious injury. RESA argues that there is no legitimate public interest in irrelevant information. RESA maintains that gas suppliers should be able to participate in proceedings before the Commission without fear that their sensitive data will be disclosed by utilities. RESA maintains this disclosure was punitive and in response to Mr. Dishno's decision to testify on behalf of RESA in this case. Finally, RESA argues that DTE Gas's conduct will have a "chilling effect" on gas supplier experts providing testimony in future cases. RESA argues that the sealing of the record should stand.

Discussion

The Commission finds that the ALJ did not abuse his discretion when he ordered the documents sealed in this case. According to the administrative hearing rules applicable to practice and procedure before the Commission, the admissibility of evidence is generally based on the rules of evidence as applied in nonjury civil cases in circuit court. Mich Admin Code, R 792.10427. Further, "…in reviewing an evidentiary ruling of an Administrative Law Judge, the Commission uses the same standard of review which an appellate court applies in reviewing an evidentiary ruling of a trial court, and will overturn a ruling of an Administrative Law Judge only if an abuse of discretion is shown." *See,* Commission's March 31, 1981 Order in Case No. U-5732. In addition, just like a trial judge in a civil case, an administrative law judge has the discretion to determine the scope of rebuttal. *Fireman's Fund American Ins Companies v General Elec Co,* 74 Mich App 318, 328; 253 NW2d 748 (1977).

Here, the ALJ made the initial determination that the record should be sealed based on his conclusion that neither the public nor DTE Gas would be harmed by the decision, whereas IGS would be harmed by the release of information to competitors regarding the quantity of gas sold and the price for which it was sold. 3 Tr 106. Indeed, the record reveals that the rebuttal testimony was not particularly relevant to any contested issue germane to this proceeding. The quantity of gas sold to IGS's GCC customers, the price those customers paid, and the average rate billed to IGS's GCC customers under the GCC program make no difference. The Commission concludes that the ALJ did not abuse his discretion in sealing the record in this case, and that, regardless of whether the information at issue here constitutes a trade secret or confidential information, any error in sealing the record was, at best, harmless error. Accordingly, the Commission rejects DTE Gas's request to issue a ruling denying RESA's and IGS's motions and unsealing the record.

VCA Gas Purchasing Strategy

The ALJ rejected DTE Gas's volume cost averaging (VCA) gas purchasing strategy, which consists of 75% of its future supply requirements being fixed price purchases over a two-year period prior to the start of delivery. The ALJ explained that DTE Gas's gas purchasing practices have resulted in increased costs to its customers. The ALJ considered DTE Gas's claims about the benefits of its purchasing strategy to be exaggerated. The ALJ opined that the smoothing out of price volatility in the natural gas market comes at a significant cost to customers in the form of higher rates. Further, the ALJ surmised that, although the purchasing strategy permits the utility to participate in downward price movements, purchasing gas supply at index prices also provides this benefit. The ALJ concluded that DTE Gas's claim that its strategy protects customers from upward price movements is overstated because, for sustained upward price movements, the

strategy will, over time, incorporate those increased costs. According to the ALJ, the record does not establish that, over the long haul, DTE's Gas's purchasing strategy protects customers from upward price movements. The ALJ acknowledges that, although this gas purchasing strategy eliminates speculation, it also eliminates the use of educated professional judgment and discretion in purchasing decisions. The ALJ finds that, over the last decade, gas prices have generally been in decline with the occasional unforeseen events that cause short term price spikes. He noted that future supply in terms of quantity and diversity of source has never been greater and opines that the planned pipeline expansion to bring greater supplies of Appalachian gas to the Midwest will lessen the likelihood of future price spikes caused by weather related events. The ALJ surmised that DTE Gas's purchasing strategy suffers from the same defect as the RRC's presentation. Namely, the utility fails to establish that its future performance will be any different than past performance. Further, the ALJ pointed out that DTE Gas has the burden of proving its plan is reasonable and concluded that the utility has failed to carry its burden of proof regarding the reasonableness of its VCA gas purchasing strategy. The ALJ noted that DTE Gas did not examine other mechanisms for cost swing moderation and has not shown that increased cost is worth the increased likelihood of price stability. Thus, the ALJ recommended that the Commission not approve the purchasing policy and directs the utility to present an evaluation of cost and risk mitigation in future gas purchasing strategy presentations. The ALJ further directed the utility to present evidence on how more complex purchasing policies might work to reduce costs.

In its exceptions, DTE Gas urges the Commission to reject the PFD's recommendation and approve its gas purchasing strategy. It begins by summarizing a history of the Commission's approval of the VCA method as a reasonable and prudent purchasing strategy. It refers to its updated analyses and information regarding the cost of the VCA method as support for the

approval of this gas purchasing strategy. Specifically, it argues that its random price analysis once again confirms that the level of price risk borne by customers depends on the level of fixed-price coverage. 4 Tr 262. It further explains that, from a historical perspective, the average GCR customer's total cost of gas under this purchasing method would have been $3.08 more per month or $37 more per year than the cost of gas under the index method, but that gas price volatility was significantly less. 4 Tr 267-268. DTE Gas argues that the Commission should not be persuaded by the ALJ's assessment that the benefit of price stability is not worth the cost of the VCA method. DTE Gas references a gas customer survey in which customers indicated they liked the current purchasing strategy and expressed a willingness to pay a premium to lock in fixed prices for up to two years. It also references testimony that the optimal level of fixed price protection is 75%.

DTE Gas argues that protecting customers from rising prices is important because customers are generally believed to have a fixed amount of non-discretionary income to spend on their natural gas utility bill. The utility also states that the VCA method worked during the polar vortex of 2013-2014, shielding customers from potentially higher prices and higher price volatility. 4 Tr 266. It argues that the Commission has, in the past, recognized that the VCA method is consistent with the philosophy that "beating the market" is impossible over the long term, and that the ALJ's assertion that purchasing gas at index prices using educated judgment and discretion runs counter to this philosophy. DTE Gas reminds the Commission of the "no hindsight" standard of considering the gas supply decision in light of existing conditions when the decision to purchase gas is made. It also reminds the Commission that it has recovered GCR costs in reconciliation cases using its FPP and VCR methods through the 2013-2014 GCR period without any disallowance. The utility further disagrees with the ALJ's conclusion that it failed to prove its

VCA fixed purchasing strategy was reasonable. In addition, DTE Gas maintains that there is no support for the RRC's contention that historical gas prices have been stable and argues the opposite is true, referencing weather events such as Hurricane Katrina and the polar vortex winter of 2013-2014 as contributing to historically volatile prices for gas supply. DTE contends that the record contains ample evidence to support its continued use of the VCA method. It argues that the RRC's proposal of reduced VCA coverage results in greater risk exposure for customers. And, the utility argues that the RRC has provided no evidence to support its recommendation for shortening the VCA term from 24 months to 12 months. Thus, DTE Gas urges the Commission to approve its continued use of the VCA method for the company's fixed price purchase program.

No party replies to DTE Gas's exception on this issue.

The end of the GCR plan year in this plan proceeding renders a decision regarding approval or disapproval of DTE Gas's gas supply purchasing strategy inconsequential for this plan year, but useful in terms of providing the utility guidance regarding its gas supply purchasing strategies going forward. It is undisputed that the VCA method has historically cost DTE Gas's GCR customers approximately $3.08 more a month or $37 more a year than the cost of gas under the Index method. 4 Tr 267-268. The salient issue is whether DTE Gas's use of the VCA method provides a commensurate benefit rendering the gas supply purchasing strategy a reasonable one. DTE Gas has provided evidence that demonstrates this purchasing strategy has resulted in a smoothing out of price volatility and protection from upward price spikes. The RRC argued that natural gas prices have been and will continue to be stable thus rendering this purchasing strategy an expense without any benefit. In the PFD, the ALJ suggests that the cost is not worth the benefit because DTE Gas has exaggerated and overstated the benefits of the strategy. The Staff did not take a position on this issue in this plan proceeding.

The Commission concludes that the record demonstrates use of the VCA method accomplishes the purpose of insulating customers from the risk of upward price spikes, as was shown during the polar vortex winter of 2013 and 2014. The Commission also tends to agree with the utility that the ALJ's conclusion that the price of gas is likely to remain both stable and low in the foreseeable future is somewhat speculative. One cannot predict future weather events nor the future spot market price of gas with any reasonable accuracy. Although expansion of pipeline access to previously unused sources of natural gas may result in stable or even lower gas commodity costs, tougher environmental standards, and any number of other unforeseen circumstances could reduce or cancel out anticipated cost savings. The Commission is unwilling to determine the reasonableness of a utility's gas purchasing strategy based solely on speculation about what might happen tomorrow. In light of the evidence presented in the record, including the utility's updated random price analysis and the updated back test of historical NYMEX prices, the Commission concludes that DTE Gas met its evidentiary burden of proving the reasonableness of its gas supply purchasing strategy. Accordingly, the Commission finds the continuation of this purchasing strategy reasonable. Nevertheless, unreasonable or imprudent purchases, even if made in accordance with this gas purchasing strategy, could result in a disallowance in the GCR reconciliation.

ANR-Alpena Costs

The next issue is whether DTE Gas reasonably allocated its capacity costs connected with an ANR interstate gas transportation agreement given provisions in the utility's Commission-approved settlement agreement in a previous gas rate case, Case No. U-16999, in which DTE Gas agreed it would not recover these contract-related costs twice by recovering them from base rates and through the GCR reconciliation process. The Attorney General recommended that the

Commission remove the additional $963,908 for ANR reservation charges arguing that those charges should be recovered via base rates pursuant to the Commission's final order in Case No. U-16999. The Attorney General argued that it is unreasonable to split the recovery for the reservation charges based on record evidence. DTE Gas argued that the Attorney General misinterpreted the Commission's final order in Case No. U-16999. According to the utility, the costs associated with the incremental 30,000 Dth/day summer capacity under Contract No. 122065 were for GCR system supply rather than for extending DTE Gas's transmission system. Changing the receipt hub is a supply function rather than a system integration function. DTE Gas further argued that the incremental 30,000 Dth/day summer capacity was needed to replace expiring GCR interstate transport capacity on Great Lakes Gas Transmission Pipeline. The utility claimed that acquiring capacity pursuant to Contract No. 122065 saved its customers approximately $1.7 million per year in GCR costs. Finally, DTE Gas asserted that recovering the costs for the summer capacity via gas cost recovery reconciliation does not violate the settlement agreement in Case No. U-16999.

In the PFD, the ALJ recommended that the Commission find that DTE Gas properly allocated the capacity costs. Specifically, the ALJ explained that in Case No. U-16999, the Commission approved the inclusion of capacity costs resulting from Contract No. 117623 in base rates given the parties' stipulation that this capacity represented an extension of the utility's gas transportation system from Woolfolk to Alpena. The ALJ further reasoned that, Contract No. 117623 was replaced by Contract No. 122065, which added an additional 30,000 Dth/day summer capacity at the added cost of $963,908. The ALJ found the added expense appears reasonable. The PFD quoted DTE Gas testimony distinguishing system supply capacity and system integration capacity and explaining that base rates recover the costs associated with system integration capacity and the

GCR mechanism recovers the remaining costs attributable to the system supply capacity. The ALJ found this allocation of costs to be reasonable and to avoid double recovery. Therefore, he recommended the Commission approve DTE Gas's allocation as part of the GCR plan.

The Attorney General takes exception to the PFD's recommendation on this issue. The Attorney General argues that it was error for the ALJ to conclude that DTE's allocation of a portion of the capacity costs to be recovered through the GCR mechanism was proper. The focus should not have been on double recovery but on whether the contracts have the same designated delivery points and whether the two contracts have material changes. The Attorney General disagrees that the 30,000 Dth/day summer capacity is for gas system supply as opposed to system integration capacity. From the Attorney General's perspective, the only change between the old and new contracts was the amount of capacity, not the kind of capacity. He explains that, other than changing the receipt points and capacity amounts, the basic purpose of the contract remained the same throughout its various amendments and iterations. Thus, the Attorney General asks the Commission to reject the ALJ's recommendation. He further requests that the Commission remove the additional $963,908 for ANR reservation charges as those costs should be recovered in base rates.

DTE Gas replies the settlement agreement is a contract with unambiguous terms that must be enforced as written. The utility focuses on the settlement agreement's specific reference to a particular ANR transportation contract instead of referring to any or all ANR transportation contracts. According to DTE Gas, this indicates the scope of the settlement agreement is limited to only the ANR transportation contract that existed when the settlement agreement was executed and not to any subsequent transportation contracts. Next, DTE Gas argues that the transportation contract in existence when the settlement agreement was executed is materially different from

Contract No. 122065. Further, the utility points out that the Attorney General concedes that the amount of capacity has changed. This change in capacity is a material change. DTE Gas also explains that, even if Contract No. 122065 is considered to be a mere modification of the earlier Contract No. 117263, it is an entirely new agreement under principles of contract law, thus, the settlement agreement and final order in Case No. U-16999 would not apply to Contract No. 122065. The utility also reiterates its arguments that the 30,000 Dth/day summer capacity added in Contract No. 122065 was for GCR security and reliability of supply and not for extending DTE Gas's transmission system. The utility explains why this extra capacity was necessary and that it saves GCR customers $1.7 million per year in GCR costs. DTE Gas therefore urges the Commission to adopt the ALJ's recommendation to reject the Attorney General's proposed allowance.

The Commission finds the PFD's reasoning and recommendation on this issue persuasive and agrees that DTE Gas's capacity cost allocation is reasonable and supported by the record. Adopting the PFD's analysis and recommendation, the Commission approves of DTE Gas's capacity cost allocation as part of its GCR plan.

Firm Parking

The final issue concerns whether DTE Gas's plan to purchase 4.8 Bcf parking service should be approved. DTE Gas provided testimony indicating that its storage facilities underperformed by having less than the expected level of storage to meet the winter design day plan during the winter of 2013 and 2014. Thus, the utility proposed purchasing 4.8 Bcf parking service to maintain a cycleable storage capacity of 71.9 Bcf for GCC and GCR customers and to provide on March 31, 2016 an additional 301 MMcf/d of deliverability necessary to achieve its requirements to serve GCC and GCR customers. The RRC, in turn, proposed a few different alternatives to this parking

service proposal and further requested that the Commission disallow DTE Gas's costs that exceed its alternatives. Those proposals include reducing the amount of storage dedicated to storage service sales unless DTE Gas proves that the 4.8 Bcf of storage service sales equals or is greater than the cost of the parking service. Alternatively, the RRC recommended that, if the storage service sales do provide a greater financial benefit, DTE Gas should purchase additional gas utilizing unused firm transportation during normal weather. The Attorney General agreed with the RRC's recommended disallowance. On rebuttal, DTE Gas changed its parking service plan to a more modest 2.1 Bcf, which would involve the delivery of 70 MMcf/day from December 1, 2015 through December 31, 2015 and the withdrawal of 10 MMcf/d from April 1, 2016 through October 31, 2016.

The ALJ rejected alternative proposals concluding that, because DTE Gas executed parking service of 2.1 Bcf at the vastly reduced cost of $900,000 that the Attorney General's recommendation was "based on circumstances that do not exist." Therefore, the ALJ recommended that the Commission approve DTE Gas's parking service expense of $900,000.

No party took exception to the PFD's recommendation regarding the utility's firm parking service plan and expense. The Commission finds the PFD's analysis and conclusions reasonable and adopts the PFD's recommendation for the reasons expressed therein. DTE Gas's proposed parking service expense is approved.

THEREFORE, IT IS ORDERED that:

A. DTE Gas Company's 2015-2016 gas cost recovery plan, as modified by this order, is approved.

B. DTE Gas Company's five-year forecast is accepted.

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, under 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 the Attorney General - Public Service Division at pungp1@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

Sally A. Talberg, Chairman

By its action of

Norman J. Saari, Commissioner

Kavita Kale, Executive Secretary

Rachael A. Eubanks, Commissioner