STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **THE DETROIT EDISON COMPANY** for authority to implement a power supply cost recovery plan in its rate schedules for 2012 metered jurisdictional sales of electricity.	Case No. U-16892

At the June 28, 2013 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Orjiakor N. Isiogu, Commissioner
Hon. Greg R. White, Commissioner

ORDER

History of Proceedings

On September 30, 2011, The Detroit Edison Company (Detroit Edison)[1] filed an application, with supporting testimony and exhibits, pursuant to 1982 PA 304 (Act 304), MCL 460.6j *et seq.,* seeking authority to implement a power supply cost recovery (PSCR) plan in its rate schedules for 2012 metered jurisdictional sales of electricity, and approval of its five-year forecast.

A prehearing conference was held on November 29, 2011, before Administrative Law Judge Mark D. Eyster (ALJ). The ALJ granted petitions to intervene filed by the Michigan Department of the Attorney General (Attorney General), the Association of Businesses Advocating Tariff Equity, the Michigan Community Action Agency Association (MCAAA), and the Michigan

[1] As of January 1, 2013, Detroit Edison is now DTE Electric Company.

Environmental Council and Natural Resource Defense Council (together, MEC/NRDC). The Commission Staff (Staff) also participated in the proceedings.

On May 18, 2012, Detroit Edison filed a motion to strike MCAAA's direct testimony and exhibits of Ronald C. Callen. The same day, MCAAA filed its response in opposition to Detroit Edison's motion to strike.

An evidentiary hearing was held on May 21 and 22, 2012. After considering the arguments of the parties, the ALJ granted Detroit Edison's motion to strike. Thereafter, the parties submitted initial and reply briefs, and the ALJ issued a Proposal for Decision (PFD) on December 4, 2012.

On December 21, 2012, Detroit Edison, the Staff, the Attorney General, and MCAAA filed exceptions. On January 23, 2013, these parties filed replies to exceptions. The record consists of 704 pages of transcript and 64 exhibits admitted into evidence.

Positions of the Parties

According to its application, Detroit Edison requested that the Commission issue an order that: (1) approves its PSCR plan and factor; (2) approves its five-year PSCR forecast; (3) indicates whether the Commission, pursuant to MCL 460.6j(7), is unlikely to permit the company to recover the mercury (Hg) emission-related expense for 2015 or 2016 and thereafter; (4) approves the transfer price for renewable energy; and (5) approves its Reduced Emission Fuel (REF) project.

A. Power Supply Cost Recovery Plan, Factor, and Five-year Forecast

Detroit Edison projected total power supply costs of $1,554,663,000, which includes an estimated underrecovery of $158.360 million from the 2011 PSCR period. Exhibit A-3. Detroit Edison requested a 2012 levelized monthly PSCR billing factor of 4.18 mills per kilowatt-hour.

MEC/NRDC asserted that Detroit Edison did not demonstrate that its five-year PSCR forecast is reasonable and prudent. According to them, the company failed to reasonably pursue other

energy resources in order to mitigate the forecasted increase in the price of coal. MEC/NRDC stated that Detroit Edison did not evaluate whether retiring and replacing some of its aging coal units with other energy sources would reduce PSCR costs. MEC/NRDC recommended that the Commission indicate that it is unlikely, based on the evidence presented by Detroit Edison, to allow full recovery of its requested PSCR costs due to the company's continued operation of its aging coal plants.

The Staff stated that it "did not find [Detroit Edison's] proposed PSCR plan and factor to be unreasonable or imprudent." Staff's brief, p. 4.

B. Mercury Emission-related Expense

Pursuant to MCL 460.6j(7), Detroit Edison requested that the Commission indicate whether it is unlikely to permit recovery of the Hg emission-related expense associated with sorbents for 2015 and thereafter. According to Detroit Edison, it plans to use powdered activated carbon (PAC) and brominated activated carbon (BrPAC) to reduce Hg emissions, similar to the use of urea to reduce nitrogen oxide (NO_x) emissions. Because the Commission approved recovery of urea as a PSCR disposal cost in the November 13, 2008 order in Case No. U-15415, Detroit Edison requested that the Commission approve PAC and BrPAC as PSCR disposal costs in this case.

The Attorney General argued that the company is essentially asking the Commission to either pre-approve recovery of a future expense or to find that a future expense is unreasonable and imprudent. The Attorney General asserts that pursuant to MCL 460.6j(7), the Commission may only indicate if it is "unlikely to permit the utility to recover [cost items] from its customers in rates, rate schedules, or power supply cost recovery factors established in the future." Because

Detroit Edison's request constitutes a pre-approval or denial of a future Hg emission-related expense, the Attorney General asserts that the company's request is not permitted by the statute.

C. Transfer Price for Renewable Energy

Detroit Edison presented a projection of renewable power purchases pursuant to 2008 PA 295, which included power from third party renewable energy generating sources and from Detroit Edison-owned renewable energy generating sources, which are treated as purchased power from the company's renewable energy plan. *See,* Exhibit A-16. No party disputed the company's projection.

D. Reduced Emission Fuel Project

In its 2011 PSCR case, Detroit Edison presented information about the REF project at its St. Clair Power Plant (SCPP) and its Belle River Power Plant (BRPP). The Commission stated on p. 8 of its December 6, 2011 order in Case No. U-16434 (December 6 order) that:

> [I]nclusion of the REF Project costs in its 2011-2015 PSCR plan cases is premature. Even Detroit Edison indicates that the proposal is somewhat preliminary. The evidence offered simply does not demonstrate the reasonableness and prudence of the amounts to be paid for services rendered by the affiliates, nor does it demonstrate exactly to what extent the REF adder will actually reduce SO_2 and NO_x emissions. This decision has no impact on the requested factor, and the Commission is not rejecting the entire PSCR plan. However, the Commission finds that, in order to authorize these costs in future plan cases, it will require additional evidence.

In this case, Detroit Edison stated that it continues "to evaluate and implement a coal refinement technology . . . being developed by DTE Energy Services that promises to reduce NO_x, SO_2 and Hg stack emissions at coal-fired power plants." Application, p. 5. According to Detroit Edison, the REF project is a reasonable and prudent way of attaining maximum emission reductions for minimum cost. Detroit Edison explained that its affiliated fuel companies designed, constructed, owned, and operated the REF processing facilities at the company's plants because it

provided Detroit Edison a risk-free means to attain Hg emission reduction requirements and it assisted the company in avoiding capital investments and risks, tax risks and Internal Revenue Service (IRS) rules, and technology risks.

Detroit Edison explained that at SCPP and BRPP, customers will receive cost reductions through base rates without an increased PSCR cost. Detroit Edison detailed that through the REF project, its customers will receive an immediate multi-million dollar reduction in annual working capital expense through the sale, at market price, of a portion of the company's coal inventory to its affiliated fuels companies. The affiliated fuels companies will treat the coal with REF adder and then resell the treated coal to Detroit Edison for immediate consumption. According to Detroit Edison, "the PSCR cost of the Refined Coal Adder, if any, will be entirely offset by a corresponding savings in PSCR emissions allowance expense." Detroit Edison's brief, p. 12. Therefore, the cost of the REF project for PSCR customers is zero or less.

At Detroit Edison's Monroe Power Plant (MPP), the company receives a coal fee rate from the affiliated fuels company, reducing the cost of every ton of coal treated with REF adder that is consumed, which translates into a credit for the company's PSCR customers. Detroit Edison will retain all environmental benefits, which are projected to be worth $1.12 million in 2012. In addition, the working capital expense will be reduced following the sale of a portion of Detroit Edison's coal inventory to the affiliated fuels company when base rates are reset.

Detroit Edison asserted that its REF project complies with the Commission's Code of Conduct because there is structural separation between the company and its affiliated fuels companies, and there is no preferential treatment or subsidization of the affiliated fuels companies by the utility. *See*, Exhibit A-23.

The Staff indicated that it supports Detroit Edison implementing the REF project in the 2012 PSCR plan year. The Staff contended that, in compliance with the December 6 order, Detroit Edison further supported the REF project with sufficient evidence and that it continues to update the Staff about the REF project. The Staff added that Detroit Edison discloses every coal sale to its affiliates in its Affiliate Transaction Compliance report filed in Case No. U-13502. The Staff also agreed that the REF project complies with the Code of Conduct.

MEC/NRDC argued that Detroit Edison has not shown that the REF project is reasonable and prudent. According to them, the company failed to provide the Commission with sufficient information to review the project's business and technological structure, the project does not minimize the cost of fuel pursuant to MCL 460.6j(6), and it violates the Code of Conduct. According to MEC/NRDC, the evidence demonstrates that the affiliated fuels companies will receive tax credits for the REF project in the form of financial benefits, possibly in excess of $300 million. In comparison, Detroit Edison will receive relatively small benefits. Therefore, in order for the REF project to be reasonable and prudent, MEC/NRDC asserted that Detroit Edison should "negotiate a re-purchase price for the Refined Fuel that was below cost to ensure that the rate payers realized a portion of the economic benefit of the REF Project." MEC/NRDC's brief, p. 25.

Regarding the Code of Conduct, MEC/NRDC asserted that Detroit Edison failed to notify the Commission about the sales of its coal inventory to the affiliated fuels companies until *after* the sales had occurred. MEC/NRDC stated that the sales totaled well over $100,000 and should have triggered the pre-sale notification requirements of the Affiliated Transaction Guidelines (Guidelines), noting that, on cross-examination, the company's witness was unaware of any filing or disclosure to the Commission on the sale of the coal inventory 30 days before the sale itself.

MEC/NRDC also argued that the "the sale of the coal and the provision of coal-related services to the unregulated Fuel Companies at Detroit Edison's cost violates the Code's and the Guideline's transfer pricing standard." MEC/NRDC's brief, p. 34. Pursuant to the transfer pricing standard, the sale of the coal back to Detroit Edison has to be the lower of market price, or 10% over fully allocated embedded cost, regardless of the price at which the company sold the coal. MEC/NRDC contended that by repurchasing the REF treated coal from the affiliated fuels companies at booked cost, Detroit Edison disregarded the issue of how to set a fair market value for coal that has an automatic buy-back guarantee. In addition, the automatic buy-back guarantee provided to the affiliated fuels companies may also violate the Code's prohibition against directly or indirectly subsidizing the unregulated business of its affiliates.

Detroit Edison responded that the evidentiary record shows that the REF project complies with the Code of Conduct and the Guidelines. According to Detroit Edison, the "coal always remains under the supervision and control of Detroit Edison and [Midwest Energy Resources Company] MERC[2] (no Fuels Companies employees are involved in any process other than operation of the Fuels Companies separate equipment and facilities) and Detroit Edison's and MERC's books and records are maintained separately from the Fuels Companies." Detroit Edison's reply brief, p. 44. Detroit Edison also stated that, "With respect to fully allocated cost, the price at which Detroit Edison is selling the coal is equal to Detroit Edison's fully allocated cost, or booked cost." *Id.*, pp. 44-45.

In response to MEC/NRDC's claim that the company violated the pre-sale notification requirements of the Guidelines, Detroit Edison argued that the Commission never adopted this position and that the provision cited by MEC/NRDC was intended to provide the Commission

[2] Detroit Edison's coal transshipment facility.

with notice of any intent to sell utility plant or property such as a power plant. Detroit Edison claimed that the provision was not intended to apply to day-to-day business activities.

MCAAA agreed with MEC/NRDC and claimed that Detroit Edison did not comply with the Commission's December 6 order because the company denied access to the books and records of its affiliated fuels companies, which would provide critical information about the revenues these companies may receive from tax credits or other benefits relating to the REF project. In addition, MCAAA argued that Detroit Edison has never attempted to obtain advance approval of the REF project; it did not disclose the REF project in a formal way; the company engaged in the REF project for the self-serving benefit of receiving very lucrative tax credits; and Detroit Edison should have used the monetized tax credits and other benefits to offset Act 304 fuel costs.

Detroit Edison disagreed and responded that it supplied significantly more witnesses and information about the REF project in this case, and the company answered MCAAA's discovery requests. According to Detroit Edison, REF adder was not in existence prior to January 2011, and there was no REF adder to bring before the Commission's consideration in either the 2009 or the 2010 PSCR plan cases. Detroit Edison also stated that, pursuant to the Internal Revenue Code, it is ineligible to receive the tax credits for the REF project. Therefore, a comparison of the tax credits available to the affiliated fuels companies with the benefits available to the company's customers is irrelevant.

The Attorney General asserted that any money paid to Detroit Edison's affiliated fuels companies to apply the REF adder is not a price paid to buy or transport coal, a reclamation cost, a disposal cost, or a reprocessing fee and therefore is not recoverable under MCL 460.6j(1)(a). In addition, the Attorney General maintained that because the REF costs occur while Detroit Edison has possession of the fuel, the REF costs should be treated as operations and maintenance (O&M)

costs, which are recoverable in base rates. The Attorney General also argued that the REF is an additional charge from the affiliated fuels companies, which increases the amount that Detroit Edison books for fuel burned and that this cost must be disallowed under MCL 460.6j(13)(e). Finally, the Attorney General stated that the REF adder should be distinguished from urea costs because REF is not plainly defined in the statute and including it as a recoverable PSCR expense will inappropriately expand the definition of PSCR costs.

Detroit Edison responded that the Attorney General has incorrectly interpreted the company's relationship with the affiliated fuels companies. Detroit Edison asserted that all of the coal processing costs take place before the coal is delivered to the company, which is consistent with the Code of Conduct. In addition, Detroit Edison argued that REF "expenses associated with the separation and disposal of various byproducts and emission associated with coal combustion are a disposal cost of fuel, similar to urea expense" and therefore, may be recovered as a disposal cost under MCL 460.6j(1)(a). Detroit Edison's reply brief, p. 36.

E. Other Issues

MCAAA argued that Detroit Edison failed to provide adequate evidence to support inclusion of the 2012 spent nuclear fuel (SNF) expense of $7,916,000. According to MCAAA, there is no state or federal law requiring the company to pay SNF fees and federal preemption does not prohibit the Commission from deciding this issue. In addition, MCAAA requested that the ALJ reverse his ruling to strike the testimony and exhibits of Mr. Callen.

Detroit Edison responded that MCAAA has presented these same arguments, testimony, exhibits, and recommendations regarding SNF to the Commission, and the Commission has repeatedly rejected them. Regarding MCAAA's request to reverse the ruling on the motion to

strike, Detroit Edison stated that Mr. Callen's testimony and exhibits are irrelevant, are barred by the doctrine of collateral estoppel, and are therefore, inadmissible.

Proposal for Decision

The ALJ stated that although the parties challenge some of the factors affecting the PSCR factor, five-year projection for coal costs, and the REF project, the calculation method for these items was not challenged and the ALJ accepted the calculation method as reasonable.

Regarding the sorbent expenses, the ALJ found that there were two issues: (1) whether these expenses should be considered a disposal cost and therefore, recoverable under MCL 460.6j(1)(a); and (2) whether the Commission is unlikely to permit recovery of the sorbent costs pursuant to MCL 460.6j(7). As to the first issue, the ALJ found that Detroit Edison planned to use PAC and BrPAC to reduce Hg emissions, as required by law, and like urea, the sorbent expenses should be approved as costs of disposal.

However, the ALJ found that it was unlikely that the Commission will permit Detroit Edison to recover the sorbent costs in the PSCR factor because the request is premature and lacks necessary supporting evidence. The ALJ stated that Detroit Edison: (1) did not present reliable sorbent cost estimates; (2) has not designed or installed the equipment necessary to run the emission reductions systems; (3) has not definitively identified which coal plants are candidates for closure or the emissions reductions systems; (4) has failed to address what effects the 10-year expiration of the REF project will have on sorbent expenses and Hg reduction systems; (5) has not explained how the REF project complies with the Code of Conduct; and (6) has not provided sufficient information on the efficacy of available methods for achieving mercury reductions, as required by the December 6 order. PFD, p. 75

Rather than presenting a benefit/cost analysis for the Hg emission reduction strategy, the ALJ observed that Detroit Edison claimed that "testing has shown [activated carbon injection] ACI to be the most efficient and cost effective method for Hg emission reductions and predicts it can meet Hg emission limits by using sorbents and ACI technology, with or without REF." PFD, p. 75. The ALJ found that Detroit Edison did not present any factual information to support this claim and there is not sufficient evidence on the record for an independent confirmation of the company's conclusions. In addition, Detroit Edison failed to provide an analysis of alternative emission control strategies and did not satisfactorily address any of the alternatives suggested by MEC/NRDC, including demand side management, increased renewable energy, and increased use of natural gas combined cycle generation. Therefore, because Detroit Edison did not establish that it incurred its emission-related fuel costs as a result of reasonable and prudent research, decisions, policies, and practices, the ALJ recommended that the Commission indicate that it is unlikely to permit recovery of the requested sorbent costs.

In response to MEC/NRDC's request for a Section 7 warning concerning future coal costs and plant closures, the ALJ found that Detroit Edison will have to show in future cases a benefit/cost analysis of the options available to the company to demonstrate that continued operation of its older plants is reasonable and prudent. Although Detroit Edison has not provided such an analysis in this case, the ALJ determined that a warning under MCL 460.6j(7) is not warranted at this time.

Regarding the REF project, the ALJ found that Detroit Edison has not complied with the Commission's December 6 order because the company failed to provide more complete information on alternative Hg emission reduction strategies. In addition, the ALJ determined that the company did not show that the REF project is a reasonable and prudent way of achieving maximum emissions reductions for minimum cost, and it did not demonstrate that the REF project

complies with the Code of Conduct. The ALJ found that although Detroit Edison provided some information about emissions reductions, the company stated that, in general, it cannot measure NO_x reductions that may be attributed to the use of REF. In addition, the ALJ found that Detroit Edison cannot measure Hg emission reductions attributable to REF at SCPP, and it has not established REF-related emission reductions at BRPP. In 2015 and beyond, Detroit Edison claimed that REF will not reduce mercury emissions at SCPP and BRPP, but will reduce the costs of sorbents. However, the ALJ stated that the company did not "present reliable estimates of the sorbent costs or the cost reductions attributable to REF." PFD, p. 78. At MPP, Detroit Edison estimated that the REF project will reduce Hg emissions, but the ALJ considered the current cost savings for the reduced emissions to be *de minimus*.

For a number of reasons, the ALJ found that the REF project violates the Code of Conduct. First, the ALJ asserted that Detroit Edison failed to factually demonstrate that the sale and purchase of coal inventory at cost is, in fact, priced at cost. Pursuant to Section III.C of the Code of Conduct, compensation by any affiliate to Detroit Edison for services, products, or property shall be based on the higher of fully allocated embedded cost or market price. Compensation by Detroit Edison to any affiliate for services, products, or property shall be either the lower of market price or 10% over fully allocated embedded cost and transfers of assets shall be based upon the lower of fully allocated embedded cost or market price. The ALJ concluded that Detroit Edison has not factually established the market price for the transactions between the company and its affiliated fuels companies. In addition, the ALJ noted that Detroit Edison did not provide any of the actual contracts between the company and its affiliated fuels companies for consideration. In lieu of providing actual evidence showing that the transactions comply with the Code of Conduct, Detroit Edison argued that the "transactions cost PSCR customers nothing and that

'adjustments' to reflect market prices and, thereby, to comply with Section III.C of the Code, would only inflate the cost of the transactions." PFD, p. 80. While this may be true, the ALJ found that Detroit Edison did not provide evidence or explain how these transactions comply with the Code of Conduct.

The ALJ stated the site fees at the various plants are also of concern. The ALJ again noted that Detroit Edison did not provide copies of the actual contracts between the company and the affiliated fuels companies. The ALJ found that Detroit Edison provided no information regarding the market value of the services, products, or property provided under the site fees. As such, the ALJ concluded that he could not determine if the site fee arrangement between Detroit Edison and the affiliated fuels companies complies with Section III.C of the Code of Conduct.

According to Section II.B of the Code of Conduct, Detroit Edison may not subsidize, directly or indirectly, its affiliates. The ALJ found that the REF project may violate this section because Detroit Edison did not present any factual information about whether the purchase and sale of coal is at market price, whether the site fees compensate Detroit Edison for increased O&M, or whether the company is properly compensated "for permitting the Fuels Companies to occupy, as profit making enterprises, the real property of Detroit Edison's power plant sites." PFD, p. 81.

The ALJ stated that Detroit Edison failed to provide adequate information to explain the relationship between the company and the affiliated fuels companies. The ALJ found that Detroit Edison did not address its contractual relationships with four of the seven affiliated fuels companies and the company does not explain whether it is directly subsidizing these affiliates or indirectly subsidizing their customers. The ALJ is particularly concerned with the fact that these four affiliated fuels companies have equipment attached to Detroit Edison's power plants, have tested and refined their equipment and processes at the company's power plants, and, in the case of

two of the four affiliates, are relocating their equipment to non-DTE power plants, where they may make a profit – a profit, according to the ALJ, made possible, in part, by the affiliated fuels companies' access to Detroit Edison's power plants and goodwill. PFD, p. 82. Further, the ALJ stated, it is impossible to determine from the record whether subsidies were being provided prior to the date the REF facilities were constructed because Detroit Edison did not present evidence to show the dates the REF facilities were constructed, the effective dates of the contracts, and whether the company received any compensation prior to the operational date of the REF facilities.

Although Detroit Edison provided a brief overview of the 10-year research and development project, the ALJ found it "perplexing" that the company used the expertise of its affiliates to demonstrate the usefulness of the REF project. The ALJ stated that Detroit Edison "set the stage for the REF Project" and then created the affiliated fuels companies in order to profit from the project at the company's and other non-affiliated utilities' sites. PFD, p. 83. This, according to the ALJ, indicates that Detroit Edison may be directly subsidizing the affiliated fuels companies and indirectly subsidizing the affiliates' customers in violation of the Code of Conduct.

In a final note about the REF project, the ALJ stated that the intervenors requested that the Commission address the profits from the REF project, include them in the PSCR process, and consider them an offset to the cost of fuel. The ALJ observed that Detroit Edison did not directly address this issue and provided limited explanation as to why the company did not undertake the project itself. For example, Detroit Edison claimed that it does not have the rights to use ChemMod, a unique and proprietary chemical additive technology used in the REF project. However, the ALJ found that Detroit Edison failed to explain why after all of the research and development the company performed regarding ChemMod and the REF project, it could not

procure rights to the chemical. In addition, the ALJ stated that Detroit Edison provided little more than a summary dismissal of ChemMod alternatives without presenting an explanation and supporting evidence. The ALJ also noted that Detroit Edison cited many reasons for not undertaking the REF project itself, including that tax credits were not available to the company, avoidance of risk, and avoidance of capital expenditures. The ALJ stated that Detroit Edison did not provide sufficient evidence to explain why the company could not have devised a corporate and investor structure similar to that of the affiliated fuels companies in order to retain the tax credits for its customers. The company also failed to explain the nature and magnitude of the risks and the capital expenditures involved with the REF project. The ALJ recommended that the Commission remove Detroit Edison's REF project from the 2012 PSCR plan, open a separate docket, and require the company to provide more evidence to explain the structure of the REF project, the rationale for the structure, and alternatives for the project and why they were rejected.

The ALJ stated that the SNF issue raised by MCAAA has been extensively litigated before the Commission, and the MCAAA's claims have been consistently rejected. According to the ALJ, MCAAA has not presented any material changes in fact or law that would require a change in the Commission's long-standing opinion on this issue.

In response to MCAAA's request to reverse his ruling granting the motion to strike the testimony and exhibits of Mr. Callen, the ALJ noted that the motion was heard and decided on May 21, 2012. MCAAA did not file a motion to reconsider the ruling and no appeal of that ruling was filed. Instead, MCAAA requested the reversal in its June 18, 2012 brief. The ALJ asserted that the request to reverse the ruling was not properly presented and shall not be considered.

Exceptions and Replies

In its exceptions, Detroit Edison disputes the ALJ’s finding that the company was not able to present reliable sorbent cost estimates. In arriving at this conclusion, the ALJ determined that two of the company’s witnesses contradicted one another. Detroit Edison contends that it is clear from the record that the source of the PAC and BrPAC figures is Exhibit A-20, which was sponsored by company witness Ms. Wojtowicz, and that the figures were originally provided to company witness William C. Rogers by Electric Power Research Institute. As a result, Detroit Edison asserts that there is no contradiction between the two witnesses.

Detroit Edison takes exception to the ALJ’s finding that the company must present a benefit/cost analysis of the options available to the company to justify the continued operation of aging coal plants. Detroit Edison argues that the ALJ improperly gave more weight to MEC/NRDC’s witness on this issue despite the fact that the company’s witness is better qualified. Detroit Edison asserts that its five-year plan is reasonable in light of the substantial uncertainty in the marketplace regarding Environmental Protection Agency (EPA) rules, wholesale market rules, fuel prices, and renewable energy mandates.

MEC/NRDC replies that Section 4 requires that the Commission consider “anticipated sources of supply” and “all relevant major contracts and power supply arrangements entered into or contemplated by the utility.” According to MEC/NRDC, this means that the five-year forecast is not limited to the company’s existing generation sources. In addition, MEC/NRDC notes while Detroit Edison and the Staff claim that the ALJ improperly gave more weight to MEC/NRDC’s witness these parties “ignore the weight that should be given to an ALJ’s credibility determinations, and fail to identify any errors or shortcomings in either [the witness’] testimony

and qualifications or in the ALJ's determinations regarding expert testimony." MEC/NRDC's replies to exceptions, pp. 24-25.

Detroit Edison also takes exception to the ALJ's finding that it has not identified which coal plants are candidates for the emissions reductions systems or closure in its five-year plan. Detroit Edison cites numerous exhibits that demonstrate that, following testing conducted in September and October 2011, specific units were recognized as candidates for dry sorbent injection and ACI, and other units, which are not expected to be candidates for these technologies, might indicate likely candidates for retirement.

In related exceptions, Detroit Edison and the Staff argue that the need to identify coal plants that may be candidates for closure in the five-year forecast exceeds the scope of Act 304. Detroit Edison asserts that MCL 460.6j(4) requires only that a utility file a five-year forecast of "its anticipated sources of supply… in light of its existing sources of electrical generation." Detroit Edison contends that it is not seeking pre-approval of any cost item from its five-year forecast, but instead, is requesting Commission evaluation of whether it is unlikely to approve recovery of sorbents in its 2015 PSCR plan and beyond. Detroit Edison states that the ALJ correctly found that the sorbent expenses are recoverable under MCL 460.6j(1)(a); however, the company argues that the ALJ incorrectly determined that the sorbent expenses and the REF project were inextricably linked and that the company failed to address what effect the 10-year expiration of the REF project will have on sorbent expenses and Hg emission reduction systems.

The Attorney General replies that Commission approval of sorbent expenses for the 2015 PSCR plan is outside the scope of the five-year plan under MCL460.6j(7), and, as such, the Commission may neither adopt nor reject this recommendation.

Detroit Edison argues in its exceptions that there is no evidence that sorbent expenses and the REF project are inextricably linked. Although the company admits that the REF project reduces sorbent expenses, "sorbent technology such as the ACI system or Wet FGD system must be utilized to comply with the [Mercury and Air Toxics Standard] MATS Rule and [1999, AC, R 336.2503] Rule 1503 [sic] with or without the REF Project." Detroit Edison's exceptions, p. 11. In addition, Detroit Edison asserts that the ALJ's determination that the company should have addressed the effect of the ten-year expiration of the REF project on sorbent expenses and Hg reductions systems is outside the scope of a five-year forecast under Act 304, and thus is irrelevant to this proceeding.

Detroit Edison takes exception to the ALJ's finding that the company failed to fully support its claim that testing has shown that ACI is the most efficient and cost effective method for Hg emission reductions. Detroit Edison claims that its witnesses presented ample evidence that using ACI at SCPP and BRPP will provide compliance with mercury rules at the lowest reasonable cost to the customer when coupled with REF. Detroit Edison also cites the EPA, which has stated that ACI is the most successful mercury-specific control technology. Detroit Edison adds that based on the successful testing of ACI technology, many power plants around the country have installed and are operating ACI systems.

Detroit Edison disagrees with the ALJ's finding that the company need present a benefit/cost analysis for sorbent costs. Detroit Edison asserts that the ALJ did not consider the company's evidence that every coal-fired power plant in Michigan must comply with the mercury standard by January 1, 2015; the EPA stated that ACI is the most successful mercury-specific control technology; and the company provided reasonable estimates of the costs of different sorbents based on industry standards. According to Detroit Edison, its five-year forecast meets the

requirements of MCL 460.6j(4) because the company must only provide an estimate of its future PSCR costs based on present evidence.

In reply, the Attorney General points out that MCL 460.6j(6) authorizes the Commission to "approve, disapprove, or amend the power supply cost recovery plan;" however, MCL 460.6j(7) does not contain similar options with respect to a 5-year forecast. In addition, the Attorney General argues that Section 7 permits the Commission to issue a specified type of negative warning, but it does not allow the Commission to indicate that it would *not be unlikely* to disallow recovery of future costs.

The Attorney General also requests that the Commission reject the ALJ's finding that reasonably and prudently incurred sorbent expenses are recoverable as a cost of disposal under 460.6j(1)(a). According to the Attorney General, the REF adder does not dispose of the fuel; it reduces NO_x and SO_2 emissions before the coal is burned, in contrast to urea, which is applied after coal is burned. The Attorney General compares REF to magnesium hydroxide ($Mg(OH)_2$) and scrubber oil costs, which, although related to the reduction of emissions, the Commission has found are not recoverable PSCR expenses.

Detroit Edison replies that the Attorney General is confusing REF project costs with sorbent expenses. Detroit Edison explains that the two expenses are separate, but related: sorbent chemicals are applied to coal burned at SCPP, BRPP, and MPP to reduce NO_x, SO_2, and Hg emissions, whereas REF adder will be applied to enable PAC to be substituted for BrPAC, which will reduce the overall Hg sorbent expense. In addition, Detroit Edison states that customers will only pay REF costs equal to their actual emissions savings at SCPP and BRPP, while MPP customers will receive a credit for the coal fee rate for the REF consumed. The company asserts

that the expenses and credit are related to coal consumption and emission allowances, both of which are Act 304 expenses.

Detroit Edison explains that REF, like urea, "facilitates economic separation and disposal of various byproducts and emissions associated with the combustion of coal." Detroit Edison's replies to exceptions, p. 24. Further, the company argues, there is no language in Act 304 that supports the Attorney General's distinction between chemicals applied before or after the coal is burned. Detroit Edison states that REF is different from $Mg(OH)_2$, which was used to reduce O&M through reduced furnace cleanings at *one* power plant. And, the company asserts that a comparison of REF to scrubber oil costs is inappropriate because the case involving the scrubber oil pre-dates Act 304 and is irrelevant.

In its replies to exceptions, MCAAA states that the Staff is rubber stamping Detroit Edison's PSCR plan, factor, and five-year forecast and has not done any independent analysis to confirm whether there are working capital benefits to the REF project, any emission allowance savings, or any environmental benefits received.

Detroit Edison takes exception to the ALJ's recommendation that the Commission reject the REF project. In response to the ALJ's determination that Detroit Edison failed to present sufficient evidence demonstrating that the REF project is a reasonable and prudent means of achieving maximum reductions for minimum cost, the company provides a table showing that in this case, it presented more witnesses, pages, paragraphs, lines, and words than in Case No. U-16434. Detroit Edison further argues that in this case, there was substantial cross-examination of its witnesses who fully explained the REF project from an operational, tax, and technical environmental prospective and how it complies with the Code of Conduct, that it answered 107

discovery requests from MCAAA regarding REF, and that it disclosed the REF contracts between the company and the affiliated fuels companies to the intervenors.

In its exceptions, the Staff argues that the company complied with the December 6 order to provide more detailed information about the REF project. The Staff asserts that Exhibit A-21 provides an overview of the REF project at SCPP, BRPP, and MPP and that the company's witnesses testified regarding the structure of the separate fuel companies, their relationship to Detroit Edison, and their relationship to DTE Energy (DTE). The Staff reiterates Detroit Edison's arguments regarding the benefits of the REF project to PSCR customers. The Staff agrees with Detroit Edison that the ALJ did not fully consider the company's evidence.

The Attorney General replies that the issue here is not the volume of evidence presented; rather the issue is whether the company has proved that the REF project qualifies for recovery under MCL 460.6j and whether the underlying decisions and costs are reasonable and prudent. The Attorney General asserts that Detroit Edison has not met its burden of proof by failing to demonstrate that REF is risk-free for the company, that the REF project actually saves money for ratepayers, that working capital expenses will be reduced, and that ratepayers will not pay more than the value of environmental benefits received from buying treated coal from the affiliated fuels companies.

In reply, MEC/NRDC likewise argues that Detroit Edison and the Staff focus on the amount of testimony in the record to show that the company has satisfied its burden of proof regarding the REF project. However, MEC/NRDC argues that the volume of testimony does not prove whether the company fully addressed the issues necessary to evaluating the propriety of the REF project. MEC/NRDC agrees with the ALJ that Detroit Edison has not satisfactorily explained critical aspects of the REF project. In addition, MEC/NRDC asserts that pursuant to MCL 460.6j(6), the

standard by which the Commission may approve a PSCR plan is not whether the REF project may have *some* benefit to ratepayers; it is whether the utility has taken *all appropriate steps* to minimize the cost of fuel (emphasis added).

Detroit Edison argues that the ALJ's reliance on the absence of the contracts in the evidentiary record is misplaced as a matter of law and fact. Detroit Edison asserts that Act 304 only requires a description of all relevant major contracts, but does not require admission of the actual contracts. Detroit Edison claims that it provided a general description of the contracts and that it provided copies of the contracts to the Staff and intervenors during discovery. None of the intervenors presented the contracts as evidence, and the ALJ specifically instructed the parties that he did not want to receive copies of the discovery responses.

MEC/NRDC replies that although MCL 460.6j(4) requires a "description of all relevant major contracts," it does not preclude review of the actual contracts. MEC/NRDC states that in some cases, review of the actual contracts may be necessary, especially in situations where the utility must include "such other information as the commission may require." MEC/NRDC adds that it is not the intervenors' responsibility to provide the contracts as evidence in order to assist the company in meeting its burden of proof.

Detroit Edison takes exception to the ALJ's finding that the company did not adequately explain the "proper allocation of REF project profits between DTE Energy, its investors, and Detroit Edison's customers." PFD, p. 86. Detroit Edison states that the question of whether there is a disparity in the allocation of tax credits between the company and its affiliated fuels companies is irrelevant to an Act 304 proceeding. According to Detroit Edison, PSCR expenses, not profits, are the proper subject of an Act 304 proceeding.

The Staff agrees with Detroit Edison and states that while there is potential for the affiliated fuels companies to profit from the REF project, Detroit Edison is not eligible for the tax credits and the potential for the affiliated fuels companies to profit from the REF project is not a proper subject of an Act 304 proceeding.

The Attorney General replies that Detroit Edison's ineligibility to receive the tax credits is not supported by references to the terms and conditions stated in the IRC or related regulations. In addition, the Attorney General states that, pursuant to Michigan law, the legal opinions of the company's expert witnesses on this issue are not considered to be competent evidence.

MEC/NRDC replies that the disparity in the allocation of tax credits between the company and its affiliated fuels companies is relevant to show whether the REF project constitutes improper subsidization of the affiliated fuels companies. MEC/NRDC also argues that Act 304 requires Detroit Edison to show that it took appropriate steps to minimize the cost of fuel for its ratepayers. MEC/NRDC argues that Detroit Edison could have negotiated a better deal with the affiliated fuels companies, in light of the tax credits, in order to reduce the company's fuel costs. MEC/NRDC asserts that Detroit Edison failed to explain why it could not have created a corporate structure to allow the company to retain the tax credits for its customers.

Because the Staff did not provide any expert witnesses in this case, MCAAA asserts that the Staff's statements regarding the IRC and the tax benefits of the REF project are unsupported by the record. Similarly, MCAAA argues that none of Detroit Edison's witnesses were qualified to make any determinations about the company's ability to receive the tax benefits and the company does not have any IRS private rulings, regulatory interpretations, or any other authority to support its claim.

In its exceptions, MCAAA reiterates the arguments from its brief that the cost and rate issues in this case are not limited to increased cost impacts, but should include the cost offsets or credits to fuel and other costs from the tax credits received by the affiliated fuels companies. In addition, MCAAA requests that all of the books and records, contracts, cost and revenue impacts, and financial records of Detroit Edison, DTE, and its affiliated fuels companies be made available to the Commission, the Staff, and intervenors in Act 304 cases, which according to MCAAA, would be consistent with amendments to the Public Utility Holding Company Act, 42 USC 1265 (PUHCA).

MCAAA recommends that the Commission dispense with a separate proceeding to investigate the REF project because MCAAA believes that the project is clearly within the purview of Act 304, it will not resolve the other cases involving these same REF issues, and it may obviate the rate remedies that are necessary and appropriate under Act 304. In addition, MCAAA asserts that it would be insufficient for the Commission to reject the REF project as a violation of the Code of Conduct. MCAAA requests that the Commission find that the REF tax credits incurred in 2012 must be included in Detroit Edison's 2012 PSCR reconciliation.

Detroit Edison replies that Act 304 does not authorize "the Commission to include third party expenses or revenues related to coal or any other fuel supply into Act 304 review and ratemaking." Detroit Edison's replies to exceptions, p. 27. In addition, Detroit Edison argues that MCAAA's reliance on PUHCA is misplaced because PUHCA only provides the Commission with access to the books and records for affiliates but does not extend such access third party intervenors. Detroit Edison states that there is no other legal authority to support such a request.

Detroit Edison requests that the Commission reject MCAAA's proposal that the REF tax credits incurred in 2012 must be included in Detroit Edison's 2012 PSCR reconciliation. Detroit

Edison asserts that MCAAA used data from 2009-2010 to make its calculations when no REF was sold to the company. Using the correct data, Detroit Edison argues that there was no "excess margin on Detroit Edison's coal sales to the Fuels Companies due to the tax credits" for the 2012 PSCR plan. Detroit Edison's replies to exceptions, p. 30. Detroit Edison states that there is no legal authority to support MCAAA's proposal and, in any event, REF tax credits are irrelevant to an Act 304 proceeding involving PSCR expenses.

In its exceptions, Detroit Edison disputes the ALJ's determination that the company failed to explain the capital costs involved with the REF project. The company cites Exhibit A-22 to show that the company explained the capital costs and states that it provided testimony explaining that the company will never have to pay for avoided Hg capital amortization. The Staff reiterates in its exceptions that it supports the REF project for the same reasons stated in its brief and reply brief.

Detroit Edison also takes exception to the ALJ's finding that the REF project violates the Code of Conduct. According to the company, Detroit Edison and the affiliated fuels companies do not share facilities, equipment or employees; they do not engage in joint advertising, marketing, or other promotional activities related to the provision the fuels processing service; and regulated service is not being used to subsidize unregulated service.

Detroit Edison states that the sale and purchase of coal between the company and the affiliated fuels companies comports with the asymmetric pricing requirement of Section III.C of the Code of Conduct. According to Detroit Edison, the sale of coal to the affiliated fuels companies at booked cost, and the sale of the coal back to the company at the same booked cost, results in a no net impact transaction for PSCR customers. In addition, at SCPP and BRPP, Detroit Edison charges the affiliated fuels companies for logistical services, which are then invoiced back to the company by the affiliated fuels companies, with no net impact to Detroit Edison's O&M costs. Similarly, at

MPP, the affiliated fuels company pays a fee which is apportioned by Detroit Edison between reducing the plant's O&M expense and reducing the plant's PSCR expense. Detroit Edison states that it provides other services to the affiliated fuels companies and that the company charges the affiliates an allocation of its costs to provide these services, which is in turn used to decrease Detroit Edison's operating costs. Under the asymmetric pricing system, the affiliated fuels companies resell the REF-treated coal to Detroit Edison at the same booked cost. At SCPP and BRPP, REF adder is applied to the coal, which is equal to the value of SO_2 and Hg emissions capped at the affiliated fuels companies' revenue requirement, and there is a charge for incremental fly ash handling costs and a credit for incremental fly ash revenue enhancement.

In summary, Detroit Edison argues that with respect to Section III.C of the Code of Conduct, the company is selling coal to its affiliates at its fully allocated cost and that any adjustments to the sale price to reflect a higher market pricing would only serve to increase the resale price to Detroit Edison. Detroit Edison claims that it is clear from the record that the company is not subsidizing its unregulated affiliated fuels companies.

The Staff agrees with Detroit Edison and argues that Exhibit A-23 details the company's compliance with the Code of Conduct. The Staff argues that if there are additional concerns about the REF project, Detroit Edison could agree to provide additional information on the project in its annual report in Case No. U-13502, or the Commission could open a separate docket to specifically investigate the REF project.

In response to the Staff's assertion that Detroit Edison updates the Staff on the status of the REF project and discloses every coal sale through its annual report in Case No. U-13502, the Attorney General observes that the Staff filed no testimony in this case, and the Affiliate Transactions report attached to Staff's exceptions is not a part of the evidentiary record.

In its exceptions, Detroit Edison disputes the ALJ's recommendation that the Commission open a separate docket to further examine the REF project and the company's long-term emission control strategy. According to Detroit Edison, no party suggested that a separate docket be opened for this purpose and there is no competent, material or substantial evidence cited to support such a recommendation. In addition, because the REF project addresses emission allowances, the cost of fuel burned, payments to 1989 PA 2 suppliers, and the future consumption of PAC to dispose of fuel burned, an Act 304 proceeding is the proper forum to address the REF project.

The Attorney General also disagrees with the ALJ's recommendation to open a separate docket to investigate the reasonableness and prudence of Detroit Edison's REF project. Because Detroit Edison is requesting recovery for the REF project under Act 304, it is appropriate to review the REF project in an Act 304 proceeding. In addition, the Attorney General believes that review of the REF project in a separate docket would be duplicative.

In its replies, MEC/NRDC reiterated its arguments that, for a number of reasons, the REF transactions fail to comply with the Code of Conduct. In addition, MEC/NRDC asserts that:

> [T]rue arms-length negotiations would factor in the approximately half a billion dollars of revenue that the Fuels Companies would generate from the REF project in a way that would ensure that the net impact of the sale and repurchase prices was that the Fuels Companies were paying a price to access the coal needed to generate that revenue.

MEC/NRDC's replies to exceptions, p. 13. MEC/NRDC argues that the affiliated fuels companies are using Detroit Edison's coal to generate substantial profits and it is the type of subsidization prohibited by the Code of Conduct.

In its replies to exceptions, MCAAA contends that Detroit Edison is requesting Commission approval of an underrecovery of at least $148 million, which results from the non-recognition of the REF tax credits as an offset to coal costs. MCAAA argues that the non-recognition of REF tax

credit offsets to coal costs will accumulate and become more severe throughout the 10-year REF project, placing an unwarranted burden on ratepayers.

The Attorney General argues in his exceptions that Detroit Edison always has supervision and control over the coal, even during the time it is being treated with the REF adder by the affiliated fuels companies; thus, the cost for chemical treatment is being incurred as a part of the coal handling process at Detroit Edison's plants. As such, the Attorney General recommends that the Commission find that the company's REF project does not qualify for recovery under MCL 460.6j(13)(d).

Detroit Edison replies that the Attorney General's interpretation of the relationship between the company and the affiliated fuels companies is incorrect. According to Detroit Edison, all of the costs incurred in treating the coal with the REF adder occur *before* the coal is delivered to the company, which is consistent with the Code of Conduct and properly included in Detroit Edison's fuel inventory. Detroit Edison contrasts this with the language of MCL 460.6j(13)(d), which provides for disallowance of "unloading and handling expenses incurred *after* receipt of fuel by the utility." In addition, Detroit Edison claims that there is no fuel handling expense for the company or the affiliated fuels companies included in the PSCR expense.

Detroit Edison takes exception to the ALJ's finding that the company failed to seek arrangements for the REF project with anyone other than its affiliates. Detroit Edison disagrees and states that DTE Energy Services (DTEES) was one of only three companies that had licenses to market ChemMod technology. Detroit Edison asserts that it investigated REF arrangements with the two other licensees, but that DTEES offered Detroit Edison the most advantageous terms.

In response, MEC/NRDC argues that Detroit Edison failed to identify any negotiations between the company and one of the licensees, it only referenced "one single data point" from

testimony submitted by another utility that had a REF arrangement with this same licensee, and it received a term sheet from the other licensee, after which a small amount of negotiations took place. MEC/NRDC's replies to exceptions, p. 14. MEC/NRDC asserts that Detroit Edison did not make sufficient effort to get the best deal for ratepayers.

In his exceptions, the Attorney General asserts that the ALJ's recommendation to remove the REF project from Detroit Edison's PSCR plan requires that $416,000 for REF adder should be deducted from the company's total PSCR expenses and factor.

MCAAA takes exception to the ALJ's rejection of the SNF issues and his failure to reverse his ruling to strike the testimony and exhibits of Mr. Callen, reiterating its arguments from its brief.

Detroit Edison, the Staff, and the Attorney General reply that the Commission has repeatedly recognized that the company's SNF disposal expenses are required by federal law. The parties assert that MCAAA's arguments regarding SNF fees have been raised and rejected by the Commission on numerous occasions, and the Commission's orders have been affirmed by the Court of Appeals. In addition, the United States Supreme Court has denied *certiorari* on the same issue.

Discussion

The Commission finds that Detroit Edison's PSCR plan and factor are reasonable and prudent pursuant to MCL 460.6j. The Commission reviewed the testimony and evidence of the company's witnesses and finds that Detroit Edison complied with MCL 460.6j(3) by providing an evaluation of its "decisions to provide power supply . . . in light of its existing sources of electrical generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility."

The Commission also accepts Detroit Edison's five-year PSCR forecast. According to MCL 460.6j(4), Detroit Edison must provide in its five-year forecast the "power supply requirements of its customers, its anticipated sources of supply, and projections of power supply costs, in light of existing sources of electrical generation[.]" The Commission finds that Exhibits A-13 through A-20, along with supporting testimony, comply with MCL 460.6j(4) by showing the 2013 through 2016 projection of the system generation, emissions and associated emission allowance expense, and purchased power requirements and associated expense required to serve Detroit Edison's anticipated full service load requirements.

MEC/NRDC argued that the five-year forecast is not limited to Detroit Edison's existing generation sources and that the company failed to reasonably pursue other energy resources. The Commission agrees with Detroit Edison that MCL 460.6j(4) only requires that the company provide a five-year forecast "in light of its existing sources of electrical generation." In addition, the Commission finds that Detroit Edison is not required to pursue other energy sources. As discussed above, the Commission reviewed the record and concludes that Detroit Edison's five-year forecast is reasonable in light of the uncertainty in the marketplace regarding EPA rules, wholesale market rules, fuel prices, potential plant closures, and renewable energy mandates.

The Commission declines to issue a Section 7 warning with respect to Hg emission-related expense associated with sorbents for 2015 and 2016. The Commission agrees with Detroit Edison, the Staff, and the ALJ that the sorbent expenses could be considered costs of disposal, because similar to urea, PAC and BrPAC are applied to reduce various emissions. Although the Commission declines to issue a warning, Section 7 does not preclude the Commission from disallowing recovery after a current PSCR plan year. The company will be required to show that these expenses are reasonable and prudent disposal costs in a future Act 304 proceeding.

The Commission disagrees with the ALJ that the REF project is inextricably linked to the sorbent costs. As Detroit Edison explained, sorbent technology is utilized to comply with the MATS Rule and Rule 2503, with or without the REF project. In addition, the Commission finds that the company is not required to address what effect the ten-year expiration of the REF project will have on sorbent expenses and Hg emission reduction systems because it is outside the scope of the five-year forecast.

The Commission reviewed Detroit Edison's testimony and finds that the company provided sufficient evidence that ACI is the most efficient and cost effective method for Hg emission reductions. As mentioned above, the EPA has indicated that ACI is the most successful mercury-specific control technology, and many power plants around the country have installed and are operating ACI systems. And, although the company did not provide a benefit/cost analysis, it did provide estimates of the costs of different sorbents based on industry standards.

Detroit Edison's request for approval of its transfer price for renewable energy was uncontested and is therefore approved.

The Commission finds that Detroit Edison's REF project should be approved and that it complies with the Code of Conduct and the Guidelines. The Commission reviewed the company's testimony and Exhibits A-21 through A-23 and finds that Detroit Edison, in compliance with the directive in the December 6 order, provided the Commission with sufficient additional information to evaluate the reasonableness and prudence of the REF project.

The Commission believes that the REF project is a reasonable means of attaining maximum emission reductions for minimum cost. As explained by Detroit Edison, at SCPP and BRPP, PSCR customers will receive a reduction in annual working capital expense through the sale, at market price, of a portion of the company's coal inventory to its affiliated fuels companies. The

affiliated fuels companies will treat the coal with REF adder and then resell the treated coal to Detroit Edison. The cost of the REF adder will be offset by a corresponding savings in PSCR emissions allowance expense, resulting in a net cost of zero or less to PSCR customers. At MPP, Detroit Edison receives a coal fee rate from the affiliated fuels company, reducing the cost of every ton of coal treated with REF adder that is consumed, which translates into a credit for the company's PSCR customers.

In response to the ALJ's finding that Detroit Edison did not provide any of the actual contracts between the company and its affiliated fuels companies for consideration, the Commission agrees with Detroit Edison that Act 304 only requires a description of all relevant major contracts, but does not require admission of the actual contracts. In addition, the Commission agrees with Detroit Edison and the Staff that the company's eligibility for the tax credits and the potential for the affiliated fuels companies to profit from the REF project is irrelevant to an Act 304 proceeding. As explained by Detroit Edison, Act 304 does not permit "the Commission to include third party expenses or revenues related to coal or any other fuel supply into Act 304 review and ratemaking." Detroit Edison's replies to exceptions, p. 27. As a result, the Commission may not consider whether the tax credits may be used to offset fuel costs.

The Commission disagrees with the Attorney General that REF costs should be treated as O&M costs. As explained by Detroit Edison, MCL 460.6j(13)(d) refers to "fuel movement that occurs after the utility receives the fuel at the power plant." Detroit Edison's replies to exceptions, p. 21. The Commission finds that all of the coal processing costs take place before the coal is delivered to the company.

Based on the evidence presented in Exhibits A-21 and A-23, the Commission finds that the REF project complies with the Code of Conduct. There is structural separation between the

company and its affiliated fuels companies; they do not engage in joint advertising, marketing, or other promotional activities related to the provision of the fuels processing service; and there is no preferential treatment for or subsidization of the affiliated fuels companies by Detroit Edison.

The Commission finds that Detroit Edison has complied with Section III.C of the Code of Conduct. As discussed previously, the record supports that Detroit Edison purchases coal from a third party at market price, then sells the coal at the same market price to its affiliated fuels companies. The cost of the coal for the affiliated fuels companies is Detroit Edison's booked cost, or its fully allocated embedded cost. Therefore, both the market cost and the fully allocated embedded cost are the same in this case. Because neither the market price nor the fully allocated embedded cost is higher than the other, compensation to Detroit Edison by the affiliated fuels companies complies with Section III.C of the Code of Conduct.

When the affiliates resell the treated coal to Detroit Edison, it is for the same market price the affiliated fuels companies paid to the company (or in this case, the fully allocated embedded cost), plus the cost of REF adder. The price of the treated coal is offset by a corresponding savings in PSCR emissions allowance expense, resulting in zero cost for the treated coal. Under Section III.C of the Code of Conduct, compensation to the affiliated fuels companies by Detroit Edison for the treated coal must be the lower of market price or 10% over fully allocated embedded cost. Because market price and the fully allocated embedded cost are the same in this case, the Commission finds that market price is lower than 10% over the fully allocated embedded cost. By paying the affiliated fuels companies market price for the treated coal, Detroit Edison has complied with Section III.C of the Code of Conduct.

The Commission agrees with Detroit Edison that the company did not violate the pre-sale notification requirements of the Guidelines with the sale of its coal inventory. As stated by Detroit

Edison, the pre-sale notification requirement was intended to provide the Commission with notice of intent to sell significant utility plant property, and not the routine sales involved here. The Commission finds that Detroit Edison's sale of its coal inventory is not utility plant property, but is part of the utility's day-to-day business.

Based on the testimony and evidence provided by Detroit Edison, the Commission finds credible Detroit Edison's claim that it investigated REF arrangements with the two other licensees, CERT and A.J. Gallagher, but that DTEES offered Detroit Edison the best deal. Detroit Edison provided substantial testimony about the price of REF adder at other licensees' facilities and provided ample evidence that Detroit Edison's customers would have paid more had the company contracted with these other companies.

The Commission declines to adopt the ALJ's recommendation to open a separate docket to further examine the REF project and the company's long-term emission control strategy at this time. The Commission directs Detroit Edison to continue to update the Staff regarding the status of the REF project and to disclose every coal sale to its affiliates in its annual Affiliate Transaction Compliance report in Case No. U-13502.

Finally, the Commission rejects MCAAA's claim that Detroit Edison failed to provide adequate evidence to support inclusion of the 2012 spent nuclear fuel. The Commission has repeatedly recognized that the company's SNF disposal expenses are required by federal law. MCAAA's arguments regarding SNF fees have been raised and rejected by the Commission on numerous occasions, and the Commission's orders have been affirmed by the Court of Appeals.

THEREFORE, IT IS ORDERED that:

A. DTE Electric Company, f/k/a The Detroit Edison Company's, application for a power supply cost recovery plan for 2012 metered jurisdictional electric sales, five-year forecast, transfer price for renewable energy, and Reduced Emission Fuel project is approved.

B. DTE Electric Company, f/k/a The Detroit Edison Company is authorized to implement a 2012 levelized monthly power supply cost recovery billing factor of 4.18 mills per kilowatt-hour.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

____
John D. Quackenbush, Chairman

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Orjiakor N. Isiogu, Commissioner

____
Greg R. White, Commissioner

By its action of June 28, 2013.

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Mary Jo Kunkle, Executive Secretary