

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of DTE GAS
COMPANY for authority to increase its rates,
amend its rate schedules and rules governing
the distribution and supply of natural gas,
and for miscellaneous accounting authority

MPSC Case No. U-21291

Attorney General's
Replies to Exceptions to the Proposal for Decision

Dana Nessel
Attorney General

Joel B. King (P81270)
Assistant Attorney General
Michigan Dep't of Attorney General
525 W. Ottawa Street
P. O. Box 30755
Lansing, MI 48909
(517) 335-7627
KingJ38@michigan.gov

October 7, 2024

TABLE OF CONTENTS

Introduction	1
Arguments.....	1
I. INTRODUCTION	2
II. DISCUSSION: PFD CALCULATION INCONSISTENCIES	3
III. SPECIFIC DTE EXCEPTIONS	3
A. Revenue Deficiency	3
B. Rate Base – Capital Expenditures	4
C. Rate Base – Gas IT Spending	8
D. Rate Base – Large Capital Projects.....	10
E. Infrastructure Recovery Mechanism	11
IV. CAPITAL STRUCTURE AND RATE OF RETURN	12
A. Test Year Capital Structure	12
B. Return on Common Equity	14
C. Long-Term Debt Balance	15
V. ADJUSTED NET OPERATING INCOME.....	16
A. THROUGHPUT.....	16
B. MIDSTREAM REVENUE.....	19
C. OTHER OPERATING REVENUE – HOME PROTECTION PLUS APPLIANCE SERVICE PROGRAM	20
D. OPERATING AND MAINTENANCE EXPENSES	20
Relief Requested.....	31

Introduction

On September 4, 2024, Administrative Law Judge (ALJ) Jonathan F. Thoits issued his proposal for decision (PFD) in this case. In the PFD, Judge Thoits provided that replies to exceptions to the PFD must be filed on or before October 7, 2024. Accordingly, Attorney General Dana Nessel (“Attorney General” or “AG”), by and through Assistant Attorney General Joel B. King, files the instant replies.

The Attorney General’s decision not to address certain issues in these replies to exceptions is not a waiver of those issues. All of the Attorney General’s briefs, testimony, exhibits, and her exceptions should be considered in evaluating her positions on the issues appearing in this case.

In her exceptions to the PFD, the AG provided exceptions to issues on which the ALJ disagreed with the AG’s position. Conversely, these replies predominantly address issues on which the ALJ agreed with the AG, but another party took exception to the PFD. Therefore, for topics where the AG does not provide specific or extensive reply, but the ALJ agreed with her in the PFD, she continues to rely upon all her filed materials in this case as well as the ALJ’s analysis and recommendation in the PFD.

Arguments

While examining the Attorney General’s substantive arguments and objections, the Commission should consider that DTE Gas bears the burden of proof to demonstrate that its proposals are just and reasonable.¹ The Attorney General

¹ See Attorney General Initial Brief, pp. 4-6.

reiterates that, given the nature of the burden of proof, the Commission may reject even uncontradicted evidence.² The Attorney General replies to the following issues raised in other parties' exceptions.

Replies to DTE Gas's Exceptions

I. INTRODUCTION

In its introduction section, DTE makes the following statement,

... the overall revenue recommendation of the PFD is concerningly low and consists of recommendations that are based on incorrect calculations, inapplicable analyses, foundations that do not exist in the evidentiary record as required by the Michigan Administrative Procedures Act (APA) and, conversely, conclusions that evidence does not exist in the record when in fact it does.³

The AG replies here briefly to state that she disagrees with the content and the sentiment of this statement. Framing a recommendation to increase DTE Gas's annual revenues by an incredible \$87 million as "concerningly low" is insulting to the Company's customers who are going to be asked to bear any increase in costs. DTE Gas consistently outearns its authorized ROE, has long had an ROE that is clearly inflated as compared to the actual level of risk faced by the Company, and consistently comes before the Commission asking for more and more money based on utility-friendly, "projected" test years. For the great weight of the PFD, which was well over 400 pages, the ALJ spent considerable time and effort analyzing DTE's projections and identifying the myriad shortcomings in what DTE filed. Accordingly,

² *Woodin v Durfee*, 46 Mich 424, 427; 9 NW 457 (1881); *Accord, Yonkus v McKay*, 186 Mich 203, 211; 152 NW 1031 (1915); *Cuttle v Concordia Mut Fire Ins Co*, 295 Mich 514, 519; 295 NW 246 (1940).

³ DTE Gas Exceptions, p. 1.

the Commission should adopt the great weight of the PFD, save for what the AG identified in her exceptions, and reject DTE's sentiment to the contrary.

II. DISCUSSION: PFD CALCULATION INCONSISTENCIES

Before getting into specific exceptions, DTE states that there appear to be “numerous inconsistencies between the amounts in the PFD Appendices and the recommendations made in the narrative of the PFD.”⁴ In her review of the PFD, the AG did not specifically compare all disallowances recommended in the body of the PFD with what is presented in the detailed appendices. Accordingly, she replies briefly here to note that she does not have any specific reason to doubt or disagree with DTE's assertion that the actual revenue deficiency recommended by the totality of the PFD is closer to \$87 million.

III. SPECIFIC DTE EXCEPTIONS

RATE BASE

A. Revenue Deficiency

In its exceptions, DTE argues that it has a \$262.4 million revenue deficiency.⁵ For all of the reasons laid out in the Attorney General's initial brief, reply brief, exceptions to the PFD, and in the replies to exceptions below, as well as the analysis contained in the PFD, the Company's argument for such an enormous revenue deficiency is incorrect. The Attorney General replies to DTE's exception and requests that the Commission find that DTE Gas has a revenue deficiency of no more than the

⁴ DTE Gas Exceptions, p. 3.

⁵ DTE Gas Exceptions, p. 5.

\$87 million identified in the PFD, and further adjusted as laid out in the AG's exceptions.

B. Rate Base – Capital Expenditures

In its preamble on capital expenditures, DTE responds to the AG's discussion on DTE's rapidly increasing costs, arguing that it is "important to note that the Company has not had a rate increase in three years – during some of the highest inflationary periods in recent decades."⁶ This is a clear attempt to mislead and it is disingenuous of DTE to intimate that it did not file rate cases for several years out of some sort of altruistic instinct.

Exhibit A-1, Schedule A1, shows that in the 2022 historical test year the Company had a revenue sufficiency, or excess revenue, of \$35.8 million under current rates, *despite* the high inflationary periods DTE claims. Exhibit A-1, Schedule 1, Schedule A2, pages 1 and 4, show that in 2021 and 2022 the Company earned an ROE at near or above the authorized rate of 9.9%. This information indicates that the reason the Company "delayed" filing a rate case is because existing rates were providing sufficient, and even excess, revenues to cover any increases in costs from inflation and otherwise.

LDAR Notice of Proposed Rulemaking

In exceptions, DTE disagrees with the ALJ's proposed disallowance of Leak Detection and Repair (LDAR) capital expenditures.⁷ After a recap of the parties' filed

⁶ DTE Gas Exceptions, p. 6.

⁷ DTE Gas Exceptions, pp. 9-10.

testimony, DTE argues that the notice of proposed rulemaking (NOPR), while not yet final, is “expected to go into effect during the projected test period,” and that the “PFD is incorrect that neither the Company nor Staff “offer any reason” for why recovery of \$6 million in LDAR capital expenditures relating to the purchase of Picarro units should be treated differently from other LDAR capital expenditures.”⁸

DTE provides nothing new in exceptions, and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As DTE admits right at the beginning of this exception, the NOPR is not final yet. In a world of projected test years, it is inappropriate to add further uncertainty into the mix by speculating on when a rule might be finalized. Even when the rule *is* finalized, which again is unclear, it is unknown how soon thereafter the Company will be required to fully comply with the requirements within the new rule.

Additionally, DTE’s argument that the purchase of Picarro units should be treated differently from other LDAR capital expenditures is unconvincing. Its exceptions simply repeat its direct testimony, which was addressed and properly rejected by the ALJ, as evidenced by the ALJ’s inclusion in the PFD of the exact quotations DTE puts in its exceptions. DTE’s attempts to position these units as somehow more “crucial” to its ability to adhere to as-yet undecided LDAR mandates in the future are not supported on the record or in fact. As the ALJ correctly points out, there is no reason “why the Picaaro expenditures to be made in anticipation of

⁸ DTE Gas Exceptions, p. 9.

future LDAR mandates should be allowed while other LDAR expenditures similarly to made in anticipation of the same LDAR mandates are not.”⁹

Accordingly, the Commission should reject DTE’s exception on this issue and adopt the ALJ’s recommendation.

System Reliability

In exceptions, DTE disagrees with the ALJ’s proposed disallowance of certain system reliability capital expenditures.¹⁰ After a recap of the parties’ filed testimony, DTE argues that the Company “demonstrated that the projects that the AG proposes for disallowance are sufficiently developed.”¹¹ DTE goes on to state that the AG sets an “arbitrary and subjective standard for rate recovery of capital projects.” The Company argues that the AG insists that “projects be at a certain stage of development or receive specific approvals,” and by doing so, “the AG ignores the relevant and applicable standard for inclusion in rate recovery: reasonableness and prudence.” None of this speculation is accurate.

Nowhere has the AG argued that there is some prescriptive stage of development that a project need be at, or specific approvals that a project need, before those costs become recoverable. DTE is merely trying to distract from its well-known penchant for putting half-developed, unsupported projects into its requested rate base in rate cases, under cover of its “projected test year” method. Allowing recovery

⁹ PFD p. 25.

¹⁰ DTE Gas Exceptions, pp. 10-11.

¹¹ DTE Gas Exceptions, p. 10.

for such undefined requests leads directly to unnecessary, inflated costs and expensive alterations down the road as the scope of a project inevitably changes.

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, the projects have not even made it through the engineering phase yet and inclusion of costs in this rate case are clearly premature.

Accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

Gas Storage Plant

In exceptions, DTE disagrees with the ALJ's proposed disallowance of certain gas storage plant capital expenditures.¹² After a recap of the parties' filed testimony, DTE argues that the Company "provided ample evidence explaining the complexity of the construction activities for gas storage and compression capital expenditures."¹³ The premise of its argument, like much of its exceptions, is that it provided specific enough information in its filing, such that it should be entitled to recovery. The Company also takes issue with the PFD's identification of certain other information that DTE should have provided to support its claims, arguing that it "is improper for the PFD to speculate on the type of information that should have been provided...."¹⁴

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As recognized

¹² DTE Gas Exceptions, pp. 12-13.

¹³ DTE Gas Exceptions, p. 12.

¹⁴ DTE Gas Exceptions, p. 12.

by the ALJ, DTE failed to provide sufficient information on this topic to support its requests. DTE's argument that it is improper for an ALJ to identify something that should have been provided in a utility's filing is incorrect and is a clear example of DTE attempting to shift the burden of proof onto Staff and intervenors. The gist of this argument is that if Staff and intervenors do not catch an issue with a rate case filing, then it is improper for the ALJ to point that out if he/she sees it. The unfortunate reality is that due to the voluminous filings DTE puts forth and the extremely compressed timeframe in which review is available and decisions are made, intervenors do not have sufficient time or resources to comb through the entirety of a filing, identify, request, and receive feedback on where *the Company* has failed to support its case, and then list each remaining shortcoming and identify all proper disallowances where support is still lacking. It is therefore proper and indeed necessary for an ALJ and the Commission to also examine DTE's filing and disallow cost recovery where the Company has failed to meet its burden.¹⁵

Accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

C. Rate Base – Gas IT Spending

In exceptions, DTE disagrees with the ALJ's proposed disallowance of certain gas IT capital expenditures.¹⁶ After a recap of the parties' filed testimony, DTE

¹⁵ Given the nature of the burden of proof, the Commission may reject even uncontradicted evidence. *Woodin v Durfee*, 46 Mich 424, 427; 9 NW 457 (1881). *Accord*, *Yonkus v McKay*, 186 Mich 203, 211; 152 NW 1031 (1915), and *Cuttle v Concordia Mut Fire Ins Co*, 295 Mich 514,519; 295 NW 246 (1940).

¹⁶ DTE Gas Exceptions, pp. 13-14.

argues that the Company provided ample evidence on the record to support the level of investment it plans to make for gas IT capital expenditures, calling its process to develop its estimates “robust and rigorous.”¹⁷

DTE’s exceptions provide nothing new and its arguments were fully rebutted by the Staff in its briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, DTE’s rhetoric on these issues should be ignored. DTE cannot simply claim that all of its processes for developing *estimates* are “robust,” “rigorous,” or [fill in other buzzword for “intensive”], without providing ample detail to back up those assertions. Again, this is the continual problem with using a fully projected test year – DTE’s incentive is to push half-developed, unclear projects and spending, based on nebulous claims and estimates that are difficult to parse, because by their very nature they are simply projections. In this case the ALJ properly recognized that DTE’s process for projecting Gas IT spending fails to rise to the level of reasonable and prudent, given the nature of these estimated costs, and that disallowance is consistent with how the Commission has treated similar costs in the past.

Accordingly, the Commission should reject DTE’s exception on this issue and adopt the ALJ’s recommendation.

¹⁷ DTE Gas Exceptions, p. 13.

D. Rate Base – Large Capital Projects

Fort Street Main Replacement

In exceptions, DTE disagrees with the ALJ's proposed disallowance of certain capital expenditures related to the Fort Street Main Replacement.¹⁸ After a recap of the parties' filed testimony, DTE argues that the ALJ "ignored" critical parts of DTE's testimony and that the PFD is inconsistent with the record. DTE also argues that the AG's testimony is "contradictory."¹⁹

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. First, the ALJ is clear that he fully considered DTE's rebuttal.²⁰ Additionally, it is unclear what part of the AG's testimony DTE considers "contradictory." The entirety of the disallowance identified by the AG's witness is projected by DTE to occur during its projected test year, and as noted, is "unlikely to be spent." There is no contradiction in the AG's testimony and the ALJ correctly analyzed this issue and properly recommends a disallowance based on incomplete information. Allowing recovery of these types of costs, at this point in the development arc, would be an abuse of the projected test year.

Accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

Traverse City/Alpena Reinforcement Project

¹⁸ DTE Gas Exceptions, pp. 15-16.

¹⁹ DTE Gas Exceptions, pp. 15-16.

²⁰ PFD pp. 49-50.

In exceptions, DTE disagrees with the ALJ's proposed disallowance of certain capital expenditures related to the Traverse City/Alpena Reinforcement Project (TCARP).²¹ After a recap of the PFD and before a recap of its own filed testimony, DTE argues that the Company offered sufficient explanation for certain cost increases and that the PFD "simply misses, or entirely disregards, record evidence in forming a recommendation."²²

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, DTE failed to provide a reasonable, empirically supported rationale for why a delay would cause costs to skyrocket, especially when no additional work was taking place and when no additional personnel were hired.²³ The AG appreciates the ALJ's recognition of the burden that DTE needs to meet for cost recovery, and the willingness to hold DTE to that burden.

Accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

E. Infrastructure Recovery Mechanism

Cathodic Protection Costs

In exceptions, DTE disagrees with the ALJ's framing of his recommendation regarding cathodic protection costs as a proposed "disallowance."²⁴ DTE argues that

²¹ DTE Gas Exceptions, pp. 15-16.

²² DTE Gas Exceptions, p. 16.

²³ PFD pp. 71-72.

²⁴ DTE Gas Exceptions, p. 17.

the ALJ's recommendation amounts to a "determination regarding how such costs will be recovered" and that the PFD's underlying calculations did not correctly account for the change. Ultimately, DTE argues that the Commission should adopt the corrected amounts that it included in Section I of its exceptions.²⁵

DTE's Section I indicates that this would be a \$372,000 impact to its calculation of revenue deficiency.²⁶ Based on the brief discussion and recommendation included in its exceptions, DTE appears (with its caveats) to agree with the PFD's analysis and resolution of this issue. To the extent that aligns with the AG's testimony and recommendation,²⁷ she is in agreement.

IV. CAPITAL STRUCTURE AND RATE OF RETURN

A. Test Year Capital Structure

In exceptions, DTE disagrees with the ALJ's recognition that it is far past time DTE Gas was at a balanced, 50-50 capital structure.²⁸ After a recap of its testimony and the PFD, DTE argues that the PFD "incorrectly assumes that a "balanced capital structure" must be an exact and even 50/50 split between debt and equity" and that "movement toward a "more balanced" capital structure should appropriately be taken in steps rather than all at once."²⁹ DTE then walks through past Commission orders on the topic and argues that the Company's financial risk and credit metrics will somehow be harmed by a 50-50 capital structure.

²⁵ DTE Gas Exceptions, p. 17.

²⁶ DTE Gas Exceptions, p. 4.

²⁷ Attorney General Initial Brief, p. 34.

²⁸ DTE Gas Exceptions, pp. 21-24.

²⁹ DTE Gas Exceptions, pp. 21-22.

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, this continued intransigence by DTE, including its clear unwillingness to abide by the terms of the U-20642 settlement, is at this point nothing short of inane. Continuing to allow DTE to peddle these fictions surrounding capital structure serves only to enrich gas utility shareholders at the expense of ratepayers.

In its exceptions, DTE's walk back through past Commission orders does not have the effect the Company is hoping. Rather than supporting its arguments, this look at past rate cases underscores the lengths DTE has gone to to avoid a balanced capital structure, despite vast opposition and its own assertions that the Company 'would move that direction.' The ALJ did an excellent job of laying out the issues³⁰ and the Commission should not be swayed by more attempts at sleight of hand here in DTE's exceptions.

The parties have been through this for years now and it is clear that an unbalanced capital structure is more costly to ratepayers and that DTE Energy is able to construct DTE Gas's capital structure as it sees fit. It is equally clear that DTE Gas will not, of its own volition, move to a balanced capital structure, instead coming up with increasingly inventive and far-fetched reasons for why it should not do so. It is past time for the Commission to set DTE Gas's capital structure to 50-50.

³⁰ PFD pp. 124-31.

Accordingly, the Commission should reject DTE's exception on this issue, adopt the ALJ's recommendation, and stop allowing DTE to flaunt the Commission's directives.

B. Return on Common Equity

In exceptions, DTE disagrees with the ALJ's analysis and recommendation that DTE's ROE be set at 9.40%, alleging numerous flaws with the ALJ's calculations.³¹ After a recap of the PFD, DTE argues that the PFD's "recommendation is unsupported and is significantly lower than the recommendations of four of the five parties that provided expert witness testimony on this issue." Further, the Company argues that the "ROE does not comport with the evidence in the case, and no party has provided sufficient evidence or justification that DTE Gas should be penalized with such an ROE."³²

The Attorney General appreciates the ALJ's careful and meticulous consideration of this issue and the clear conclusion that DTE and its shareholders have long enjoyed inflated ROEs. DTE's protestations that the ALJ's recommendation is unsupported is belied by the *almost 100 pages* of well-crafted, thoughtful analysis put forth in the PFD. Indeed, the ALJ's careful unraveling of the ROE discussion and legality of what DTE is actually requesting is a breath of fresh air on a topic that has become too rote over the last number of years.

³¹ DTE Gas Exceptions, pp. 24-28.

³² DTE Gas Exceptions, p. 24.

Additionally, there is ample evidence on the record for an ROE of 9.40% (and, as the ALJ points out, an even lower ROE) – DTE’s argument that the “ROE does not comport with the evidence in the case” is not a reflection of the veracity of that statement but instead a reflection that DTE does not like the recommendation. Finally, DTE’s statement that it should not be “penalized” with such an ROE is a nifty bit of rhetoric. DTE has long “penalized” its customers with egregiously inflated ROEs, some of the highest in the nation, to the direct benefit of its shareholders. As the ALJ correctly points out, there is simply no reason that a business with a captive customer base and correspondingly little risk, should be earning the level of return that DTE has been.

The AG also brings attention to the disbelief DTE espouses at a recommendation for a “50-basis point reduction” to its ROE, all while DTE itself is arguing for a 35-basis point *increase*. Accordingly, DTE’s argument that the ALJ has inappropriately eschewed gradualism (which the ALJ accurately points out is a concept for which there is no legal basis³³) should be rejected.

Accordingly, the Commission should reject DTE’s exception on this issue and adopt the ALJ’s recommendation and set DTE’s ROE at 9.40%.

C. Long-Term Debt Balance

In exceptions, DTE disagrees with the ALJ’s recommendation that the Commission adopt the AG’s long-term debt balance for purposes of this case.³⁴ DTE’s

³³ PFD pp. 225-26.

³⁴ DTE Gas Exceptions, pp. 28-29.

argument is based on its contention that the Commission should adopt its desired capital structure and ROE, and therefore adopt its corresponding long term debt balance and overall rate of return.

As noted above, the AG agrees with the ALJ's proposed capital structure and ROE, and his recognition that the AG's long term debt balance should be adopted. Accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation and set DTE's long-term debt balance at \$2.749 billion.

V. ADJUSTED NET OPERATING INCOME

In exceptions, DTE argues against the ALJ's recommended Net Operating Income of \$311,133,000 in the projected test year.³⁵ For the reasons laid out in her testimony and briefing, that of Staff and other intervenors, and found in the PFD, the AG recommends that the Commission reject DTE's recommended Net Operating Income and adopt the PFD's recommendation, save for where it differs from the AG's exceptions.

Below, the AG addresses various exceptions DTE raises to the PFD's recommendations for adjusted net operating income.

A. THROUGHPUT

Sales Forecast

In exceptions, DTE disagrees with the ALJ's analysis and recommendation regarding DTE's underestimation of gas sales volumes for residential and commercial

³⁵ DTE Gas Exceptions, p. 29.

customers for the test year.³⁶ After a recap of the PFD, DTE argues that the PFD misses the mark and is incorrect, because it “adopts the AG’s flawed and contradictory analysis.”³⁷

DTE’s exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. Pertinently, the AG’s analysis is neither flawed nor contradictory. DTE’s exceptions solely repeat its testimony, which was directly refuted in the AG’s briefing. Specifically, the AG addressed DTE’s contentions about inappropriate date usage, laying out that “[a]lthough the pandemic had a temporary effect on customer usage from 2020 to 2022, by using the change in usage from 2018 to 2023, Mr. Coppola *bypassed those years in between and his result is not skewed by the customer usage changes during the pandemic years of 2020 to 2022.*”³⁸ The AG also continues to point out that the two to three year period of gas usage favored by the Company is more susceptible to temporary customer usage variations than the five-year period used by Mr. Coppola. The entirety of the AG’s discussion on this is helpful and the ALJ was correct in his reliance upon and recommended adoption of that discussion.³⁹

Accordingly, the Commission should reject DTE’s exception on this issue and adopt the ALJ’s recommendation.

³⁶ DTE Gas Exceptions, pp. 29-32.

³⁷ DTE Gas Exceptions, p. 32.

³⁸ Attorney General Initial Brief, p. 79. Emphasis added.

³⁹ Attorney General Initial Brief, pp. 73-81.

End-Use Transportation

In exceptions, DTE disagrees with the ALJ's analysis and recommendation regarding DTE's End-Use Transportation (EUT) volumes projections.⁴⁰ After a recap of testimony, DTE argues that the PFD's proposal to calculate EUT power generating volumes using an updated five-year average should be rejected.⁴¹

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, the AG's "updated five-year average of gas deliveries should be used, as that average is based on the most recent historical information. DTE is misleading by attempting to rely on the Commission's prior order in case No. U-20940; in that case, the issue was whether a five-year or a three-year average was preferred, not as DTE implies here whether an "as-filed" five-year average is preferred over a five-year average using the latest information."⁴²

Contrary to DTE's accusations, the AG did not "selectively update the time period that best suited [her] position."⁴³ The AG put forth the most reasonable, prudent time period based on all of the available data provided by DTE.⁴⁴ After a thorough review, the ALJ agreed.

Accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

⁴⁰ DTE Gas Exceptions, pp. 33-34.

⁴¹ DTE Gas Exceptions, p. 34.

⁴² PFD p. 248.

⁴³ DTE Gas Exceptions, p. 34.

⁴⁴ Attorney General Initial Brief, pp. 81-84.

B. MIDSTREAM REVENUE

In exceptions, DTE partially disagrees with the ALJ's analysis⁴⁵ and recommendation regarding Midstream Revenue projections.⁴⁶ After a recap of testimony, DTE argues that the PFD erred in its finding regarding the calculation of Exchange services revenue.⁴⁷ Specifically, DTE argues that the PFD inappropriately adopted the AG's methodology, which the Company calls "shifting" and "inappropriately mixed."⁴⁸

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, "it is more reliable to use the most recent information which excludes an anomalous year (2020)."⁴⁹ As pointed out in the AG's briefing, DTE's own witnesses agreed that the gas markets were affected in 2020 such as to have an effect on Exchange Services revenue that year.⁵⁰

Accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

⁴⁵ As laid out in her exceptions to the PFD, the AG recommends that the Commission reject the ALJ's approach to calculating Off-System Transportation and adopt her proposal.

⁴⁶ DTE Gas Exceptions, pp. 34-36.

⁴⁷ DTE Gas Exceptions, p. 35.

⁴⁸ DTE Gas Exceptions, pp. 35-36.

⁴⁹ PFD p. 255.

⁵⁰ Attorney General Initial Brief, p. 86.

C. OTHER OPERATING REVENUE – HOME PROTECTION PLUS APPLIANCE SERVICE PROGRAM

In exceptions, DTE disagrees with the ALJ's analysis and recommendation regarding the Company's Home Protection Plus (HPP) Appliance Service Program.⁵¹ Specifically, DTE argues that its test year projections for these costs are more reliable than those of the AG.

DTE's exceptions provide nothing new, simply repeat one page of its testimony, and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, DTE's presentation is devoid of any reasonable rationale for not using the most recent available data to project these costs.⁵² Importantly, and unaddressed by DTE, over at least the last three cases DTE's forecasts have fallen short of actuals in every case, demonstrating that DTE has an inclination to understate the forecasted revenue and operating income of the appliance service program.

Accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

D. OPERATING AND MAINTENANCE EXPENSES

2023 O&M Expense Reductions

In exceptions, DTE disagrees with the ALJ's analysis and recommendation regarding certain disallowances related to 2023 O&M Expense Reductions.⁵³

⁵¹ DTE Gas Exceptions, pp. 36-37.

⁵² PFD p. 257.

⁵³ DTE Gas Exceptions, pp. 38-39.

Specifically, DTE argues against the PFD's proposed disallowance of \$17,379,000 as related to the significant cost savings that DTE did not include in its projected test year O&M expense.

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, recognizing the known and measurable cost savings that DTE undertook is appropriate in formulating projected test year expenses.⁵⁴ If DTE is going to file rate cases using projected test years, then it cannot choose to only include increased costs, without the increased savings that it touts in other areas of its business.

Accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

Inflation

In exceptions, DTE disagrees with the ALJ's analysis and recommendation regarding the appropriate inflation rates to use for certain costs.⁵⁵ Specifically, DTE argues that it fully supported its calculations and that the PFD fails to consider the Company's rebuttal testimony revising the Company's inflation rates.⁵⁶

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As recognized

⁵⁴ PFD p. 268.

⁵⁵ DTE Gas Exceptions, pp. 40-41.

⁵⁶ DTE Gas Exceptions, p. 41.

by the ALJ, the AG's analysis and recommendation on this topic has been consistently accepted and adopted by the Commission.⁵⁷

Accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

Transmission Integrity Management Program

In exceptions, DTE disagrees with the ALJ's analysis and recommendation regarding the Company's Transmission Integrity Management Program (TIMP).⁵⁸ Specifically, DTE "disagrees because regulations require operators to assess pipelines generally every seven years...."⁵⁹

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, use of historical costs is most appropriate in this instance, as they "provide insight as to appropriate future expenditures."⁶⁰ The ALJ also correctly pointed out the AG's testimony on steadily declining pipeline costs over the last number of years, and the fact that DTE has been running this program sufficiently long so as to have enough information for comparison purposes.

Accordingly, DTE's discussion about factors causing expenses to shift significantly from year to year should be disregarded and the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

⁵⁷ PFD p. 266.

⁵⁸ DTE Gas Exceptions, pp. 42-44.

⁵⁹ DTE Gas Exceptions, p. 42.

⁶⁰ PFD p. 272.

Leak Detection and Repair

In exceptions, DTE disagrees with the ALJ's analysis and recommendation regarding the Company's LDAR O&M costs.⁶¹ Specifically, DTE "takes exception to the PFD's disallowance of approximately \$10.3 million in LDAR O&M expenses but does not dispute the alternative recommendation that the Commission approve a regulatory deferral mechanism for recovery of these costs."⁶²

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG and Staff in their briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, recovery of LDAR O&M expenditures would be premature at this time, because it is still unknown when the new federal rule will be issued or how soon thereafter the Company will be required to fully comply with the requirements within the new rule.⁶³

The Attorney General also continues to argue that a deferral mechanism is not fully supported in the materials DTE has presented in this filing, such that it should be included in this case. In order to consider a deferral mechanism for these costs, DTE should actually know what the new rule is, use that information to develop the associated costs, and have a comprehensive plan for the costs. Short of that, the AG continues to argue that a deferral mechanism is premature as well.

Accordingly, the Commission should reject DTE's exception on the issue of LDAR O&M costs and adopt the ALJ's recommendation, but reject the ALJ's

⁶¹ DTE Gas Exceptions, pp. 36-37.

⁶² DTE Gas Exceptions, pp. 43-44.

⁶³ PFD p. 276.

recommendation that a deferral mechanism for recovery of these costs be approved at this time.

Employee Benefits Expenses

Active Healthcare Costs

In exceptions, DTE disagrees with the ALJ's analysis and recommendation regarding the Company's projections for its Active Healthcare expenses for the projected test year.⁶⁴ Specifically, DTE states that it takes exception because "the propriety of adopting either the constant dollar adjustment or the use of historical escalations is wholly lacking."⁶⁵ The Attorney General is unclear on what that means or how DTE thinks it supports its position. The AG certainly agrees that the propriety of adopting the constant dollar adjustment is wholly lacking.

The gist of DTE's argument seems to be that the Company feels that the record demonstrates that its requests are reasonable. In that regard, DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG and Staff in their briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, use of the constant dollar adjustment has consistently been rejected by the Commission.⁶⁶

Accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

Employee Compensation

⁶⁴ DTE Gas Exceptions, pp. 48-50.

⁶⁵ DTE Gas Exceptions, p. 48.

⁶⁶ PFD pp. 289-90.

In exceptions, DTE disagrees with the ALJ's analysis and recommendation regarding the Company's recovery of incentive compensation for operational metrics.⁶⁷ Specifically, DTE argues that the "PFD's analysis on this point fails to account for DTE Gas's arguments outlining the flaws in the AG's approach, which were as present in the U-20940 case as they are in this case. Put simply, there appears to be a misunderstanding in how the operational incentive program works."⁶⁸

There is no misunderstanding and the ALJ clearly considered the entire record on this issue. DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, the Commission has been consistent recently in its treatment of these costs, and there is no reason to diverge in this case.⁶⁹ Staff, intervenors, the ALJ, and the Commission are all well-aware of how DTE's incentive compensation program is structured, and DTE's preferred calculation methodologies. Again, those methodologies are far too skewed toward shareholder interests than the interests of the customers who actually pay the bills, and accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

Uncollectible Expense

In exceptions, DTE disagrees with the ALJ's analysis and recommendation regarding the Company's Uncollectible Expense calculations.⁷⁰ Specifically, DTE

⁶⁷ DTE Gas Exceptions, pp. 50-51.

⁶⁸ DTE Gas Exceptions, p. 50.

⁶⁹ PFD pp. 299-300.

⁷⁰ DTE Gas Exceptions, pp. 51-53.

argues that “the use of present rates equates to the use of stale rates,” and that “[i]t would be more reasonable to use a simple percent increase or other similar proxy to achieve a revenue that more closely matches the revenue that will be used in final, approved rates....”⁷¹

DTE’s exceptions provide nothing new and its arguments were fully rebutted by the AG and Staff in their briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, DTE’s projected uncollectible expense is inflated.⁷² This is another instance of DTE attempting to game the use of a projected test year in its favor.

The ALJ did not ignore the record on this issue and accordingly, the Commission should reject DTE’s exception on this issue and adopt the AG’s recommendation as laid out in her briefing.⁷³

Lost and Unaccounted for and Company Use Gas; Gas In Kind

In exceptions, DTE disagrees with the ALJ’s analysis and recommendation regarding the Company’s projections for Company Use (CU) gas and lost and unaccounted for (LAUF) gas.⁷⁴ Specifically, DTE argues that “the PFD does not explain why it is “reasonable” to expect lower LAUF volumes in the coming years” and that the ALJ failed to address DTE’s argument that if LAUF is adjusted, Gas-in-Kind (GIK) revenue must also be adjusted.⁷⁵

⁷¹ DTE Gas Exceptions, p. 52.

⁷² PFD p. 305.

⁷³ Attorney General Initial Brief, pp. 94-95.

⁷⁴ DTE Gas Exceptions, pp. 53-54.

⁷⁵ DTE Gas Exceptions, p. 54

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, it is reasonable to expect progressively lower LAUF gas volumes in the coming years.⁷⁶ Part of this is because gas costs have declined substantially since DTE made its original projections, and part of it is because of DTE's aggressive, very public, net zero declarations. DTE should not be able to garner goodwill by making public declarations, but then turn around and argue in its filings that the reductions may not be significant enough to have an effect on LAUF gas.

Accordingly, the ALJ's analyses and insights on this issue are correct and the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

AFUDC

In exceptions, DTE disagrees with the ALJ's analysis and recommendation regarding the Company's AFUDC/construction work in progress (CWIP) capital expenditures related to the Fort Street Main Replacement project.⁷⁷ Specifically, DTE argues that the Commission should approve the inclusion of the Fort Street Main Replacement Project and therefore the corresponding AFUDC amounts should be retained.⁷⁸

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As recognized

⁷⁶ PFD p. 309.

⁷⁷ DTE Gas Exceptions, pp. 54-55.

⁷⁸ DTE Gas Exceptions, p. 55.

by the ALJ, inclusion of the Fort Street Main Replacement Project is premature and therefore, an adjustment should be made to the related AFUDC (for a project that will not be in service before the end of the test year).⁷⁹ This was directly addressed in the AG's testimony and initial brief, and the AG's proposed adjustment to AFUDC is *not* in error.⁸⁰ Mr. Coppola removed the AFUDC adjustment DTE had made in its rate case filing, meaning DTE is not Company is not disadvantaged by the capital expenditures disallowance as it claims in exceptions.⁸¹

Accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

Other Issues

Responsibly Sourced Gas

In exceptions, DTE disagrees with the ALJ's analysis and recommendation regarding the Company's Responsibly Sourced Gas (RSG) proposals.⁸² Specifically, DTE argues that the Company provided sufficient support for its RSG proposals and then repeats its testimony.⁸³

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG and other parties in their briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, DTE's presentation fails to provide the empirical support that its RSG proposal will actually reduce emissions, by how much, or provide

⁷⁹ PFD p. 312.

⁸⁰ Attorney General Initial Brief, pp. 128-29.

⁸¹ Ex. AG-66, p. 3.

⁸² DTE Gas Exceptions, pp. 58-60.

⁸³ DTE Gas Exceptions, pp. 59-60.

any benefit-cost analysis for customer dollars spent.⁸⁴ The industry is too nascent and evolving to approve DTE's requests at this point.

Accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation.

Proposed Monthly Customer Charges

In exceptions, DTE partially disagrees with the ALJ's analysis and recommendation regarding the Company's requests to increase its monthly customer charges.⁸⁵ Specifically, DTE continues to argue that its residential customer charge should be increased to \$17.60, for the reasons laid out in its testimony.⁸⁶

DTE's exceptions provide nothing new and its arguments were fully rebutted by the AG in her briefing and fully addressed by the ALJ in the PFD. As recognized by the ALJ, DTE's method for calculating a residential customer charge would include costs that are inappropriate for inclusion in the customer charge.⁸⁷ Additionally, the AG continues to argue that increases to the monthly customer charge are one of the most noticeable things on a customer's bill. For a residential customer, DTE's proposed increase would create an annual increase of almost \$50, a significant increase for many smaller households who use less gas than the average customer, as well as low-income households. Additionally, increasing a set customer

⁸⁴ PFD pp. 379-80.

⁸⁵ DTE Gas Exceptions, pp. 62-64.

⁸⁶ DTE Gas Exceptions, pp. 63-64.

⁸⁷ PFD p. 361.

charge does not provide any incentive for customers to decrease gas usage, as it is a fixed charge.

Accordingly, the Commission should reject DTE's exception on this issue and adopt the AG's recommendation to keep the residential monthly charge at \$13.50.

Revenue Deficiency Summary

In exceptions, DTE disagrees with the ALJ's analysis and conclusions that led to a recommended revenue deficiency of approximately \$87 million.⁸⁸ DTE argued that the calculation is in error and that it has a revenue deficiency of \$262,407,000. For the reasons laid out in all of her filings, as well as the lengthy and well-reasoned PFD, the Commission should find that DTE has a revenue deficiency of no more than \$87 million, and adjusted downward as appropriate based on the exceptions laid out by the Attorney General, Staff, and other intervenors.

Accordingly, the Commission should reject DTE's exception on this issue and adopt the ALJ's recommendation, along with the changes as laid out in the AG's exceptions.

⁸⁸ DTE Gas Exceptions, p. 64.

Relief Requested

The Attorney General respectfully requests that the Commission issue an order consistent with the positions set forth in these replies to exceptions, as well as the Attorney General's exceptions, initial brief, and reply brief and the great weight of the PFD.

Respectfully submitted,

Dana Nessel
Attorney General

Joel B. King (P81270)
Assistant Attorney General
Michigan Dep't of Attorney General
525 W. Ottawa Street
P. O. Box 30755
Lansing, MI 48909
(517) 335-7627
KingJ38@michigan.gov

October 7, 2024

PROOF OF SERVICE - U-21291

The undersigned certifies that a copy of the *Attorney General's Replies to Exceptions to the PFD* was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 7th day of October 2024.

Joel B. King

DTE Gas Company:

Carlton Watson
Paula Johnson-Bacon
Andrea Hayden
Breanne Reitzel
Mark Madden
Carlton.watson@dteenergy.com
Paula.bacon@dteenergy.com
Andrea.hayden@dteenergy.com
Breanne.reitzel@dteenergy.com
Mark.madden@dteenergy.com
mpscfilings@dteenergy.com

ALJ:

Hon. Jonathan Thoits
thoitsj@michigan.gov

MPSC Staff:

Lori Mayabb
Monica Stephens
Michael Orris
Heather Durian
Anna Stirling
mayabbl@michigan.gov
Stephensm11@michigan.gov
orrism@michigan.gov
durianh@michigan.gov
stirlinga1@michigan.gov

Attorney General:

Joel King
kingj38@michigan.gov
ag-enra-spec-lit@michigan.gov

Sebastian Coppola
sebcopeppola@corp.lytics.com

MEC/CUB/SC:

Christopher Bzdok
Holly Hillyer
Nihal Shrinath
Breanna Thomas
chris@tropospherelegal.com
holly@tropospherelegal.com
nihal.shrinath@sierraclub.org
breanna@tropospherelegal.com

Soulardarity:

Amanda Urban
Mark Templeton
Jacob Schuhardt
D. Samuel Heppell
t-9aurba@lawclinic.uchicago.edu
templeton@uchicago.edu
jschuhardt@uchicago.edu
madisonswilson@uchicago.edu
heppell@uchicago.edu
aclc_mpsc@lawclinic.uchicago.edu

ELPC:

Shubha Harris

Daniel Abrams

Shubha.m.harris@gmail.com

dabrams@elpc.org

City of Ann Arbor:

Valerie Brader

Valerie Jackson

valerie@rivenoaklaw.com

vjackson@a2gov.org

Billerud Americas Corporation:

Timothy Lundgren

Justin Ooms

tlundgren@potomaclaw.com

jooms@potomaclaw.com

SC/ABATE:

Stephen Campbell

Michael Pattwell

scampbell@clarkhill.com

mpattwell@clarkhill.com

Dearborn Industrial Generation:

Sean Gallagher

sgallagher@fraserlawfirm.com

Ecology Center/Vote

Solar/UCS/ELPC:

Nicholas Wallace

Brad Cebulko

nwallace@elpc.org

cebenergyconsulting@gmail.com

RESA/MPLP:

Jennifer Heston

jheston@fraserlawfirm.com