STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **DTE ELECTRIC COMPANY** for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting authority.	))))))	Case No. U-17767

At the December 11, 2015 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Sally A. Talberg, Commissioner
Hon. Norman J. Saari, Commissioner

ORDER

I. HISTORY OF PROCEEDINGS

On December 19, 2014, DTE Electric Company (DTE Electric) filed an application seeking authority to increase its retail rates for the generation and distribution of electricity by $370 million effective as soon as possible in 2015, and for other forms of regulatory approvals including miscellaneous accounting authority. The rate increase sought in this proceeding is based on the company's projections for relevant items of investment, expenses, and revenues for a test year covering the 12-month period from July 1, 2015, to June 30, 2016. More specifically, DTE Electric explained that the rate increase is needed to recover costs associated with environmental compliance, capital investments in distribution and generation assets, capital structure costs

changes, operation and maintenance (O&M) expenses, and inflation. DTE Electric also reserved the right to self-implement a rate increase as permitted under MCL 460.6a(1).

DTE Electric averred that the company's sustainable and on-going Continuous Improvement (CI) efforts have allowed the company to control and, in some instances, reduce costs subsequent to approval of its previous rate case. Additionally, DTE Electric stressed that the Commission's approval of its application in Case No. U-17068 allowed the utility to delay this filing. DTE Electric also indicated that changes to its other post-employment benefits (OPEB) obligation has resulted in significantly lower post-employment benefit expenses starting in 2013. Nevertheless, DTE Electric maintained that its requested rate relief is necessary to allow the utility to continue to provide safe and reliable electric service to its customers. DTE Electric also contended that, absent a rate increase at this time, the company would be unable to recover its costs or earn a reasonable return on its investments.

DTE Electric explained that the starting point for determining its revenue deficiency was the data from the year ended December 31, 2013. According to DTE Electric, this historical data was then normalized and adjusted for known and measurable changes to arrive at the company's July 1, 2015, to June 30, 2016, projected test year. Among the items for which DTE Electric is seeking recovery are the investments related to the utility's acquisition of the Renaissance Power Plant (Renaissance plant) and the plan to purchase a 300 megawatt (MW) Michigan-based simple cycle natural gas-fired power plant. In addition, DTE Electric is seeking recovery of the initial costs of its investment in a new integrated customer billing system that it maintains will enhance customer experience (Customer 360). Other noteworthy expenditures mentioned in the application include costs associated with the utility's advanced metering infrastructure (AMI) and its efforts to complete the Combined Operating License Application (COLA) for an additional nuclear

generation unit at the site of its Fermi 2 nuclear generating plant. DTE Electric sought cost recovery of its variable compensation programs used to attract and retain employees. However, DTE Electric stated that it was not attempting to recover the variable compensation paid to the top five executives of its parent, DTE Energy Company (DTE Energy).

DTE Electric proposed in its application a return on equity (ROE) of 10.75% with an overall rate of return of 5.96% after-tax, which equates to 8.61% pre-tax. The utility explained that it would be relying upon a permanent capital structure of approximately 50% equity and 50% long-term debt. DTE Electric's projected rate base for the test year is $13.6 billion.

DTE Electric also requested accounting authority to implement certain practices, including an OPEB deferral mechanism that affects the expense projections, and authority to use Account 926, Employee Pensions and Benefits, for the cost of the company's supplemental retirement plan and its executive supplemental retirement plan, along with other requested accounting relief.

Consistent with its application in Case No. U-17689, DTE Electric proposed that its production cost allocation should be based on a 100% demand 4 coincident peak (CP) allocation (4CP 100-0-0). The company also proposed that its transmission cost allocation should be based on a 100% demand 12 CP allocation (12CP 100-0-0).

With regard to rate design issues, DTE Electric proposed a new primary rate class (Rate D11), which will replace the utility's existing Rates D6, D6.1, and D7. According to DTE Electric, Rate D11 will better align retail rates with system costs. The utility also proposed consolidation or elimination of certain residential rate schedules that are seldom used or redundant. Additionally, DTE Electric proposed modifications to its senior citizens rate offering, a new residential service special low-income pilot tariff, and modifications to the existing residential income assistance

service provision. Finally, DTE Electric is also proposing an expansion to its demand-side management program.

On January 29, 2015, Administrative Law Judge Sharon L. Feldman (ALJ) conducted a prehearing conference. Petitions to intervene filed by the Michigan Environmental Council (MEC), the Natural Resources Defense Council (NRDC), and the Sierra Club (together, MEC/NRDC/SC), The Kroger Company (Kroger), the Detroit Public Schools, the Association of Businesses Advocating Tariff Equity (ABATE), Energy Michigan, the Michigan Agri-Business Association, Local 223 of the Utility Workers Union of America, AFL-CIO, the Municipal Street Lighting Coalition (Municipal Coalition), Wal-Mart Stores East, LP, and Sam's East, Inc. (together, Wal-Mart), the Michigan Cable Telecommunications Association, the Michigan Department of the Attorney General (Attorney General), a group of residential customers referred to as the DTE Residential Customer Group (RCG), and individual intervenors Richard Meltzer, Paul F. Wilk, Dan Mazurek, and David Sheldon were granted by the ALJ. The Commission Staff (Staff) also participated. Thereafter, the ALJ established a schedule for the remainder of the proceeding. Additionally, several people made comments pursuant to Mich Admin Code, R 792.10413.

On April 10, 2015, the ALJ conducted a motion hearing for the purpose of resolving issues pertaining to a protective order sought by DTE Electric. A protective order was issued on April 10, 2015. On May 20, 2015, the ALJ granted intervention to the Environmental Law & Policy Center (ELPC), based on its uncontested April 28, 2015 petition.

On May 29, 2015, DTE Electric filed testimony and exhibits addressing the company's plan to self-implement a revenue increase of $230 million effective July 1, 2015. At the June 2, 2015 hearing on self-implementation, testimony was bound into the record without cross-examination.

Absent action by the Commission, on July 1, 2015, DTE Electric self-implemented a rate increase designed to produce additional annual retail electric revenues of $230 million above levels established by the October 20, 2011 order in Case No. U-16472 (October 20 order), on an equal percentage basis.

Evidentiary hearings were held from June 23 to July 6, 2015, where 53 witnesses appeared for cross-examination or had their testimony bound into the record by agreement of the parties. Timely initial and reply briefs were filed.

The ALJ issued a Proposal for Decision (PFD) on October 8, 2015. Exceptions to the PFD were filed by the RCG, Mr. Sheldon, the Staff, DTE Electric, the Attorney General, and ABATE on October 27, 2015. On October 28, 2015, the Staff filed amended exceptions to correct its revenue deficiency figure and Mr. Meltzer filed exceptions. Replies to the exceptions were filed by the Municipal Coalition on November 6, 2015, and by ABATE, the Attorney General, Kroger, the Staff, ELPC, DTE Electric, MEC/NRDC/SC, RCG, and Mr. Meltzer on November 9, 2015. The record consists of 2,596 pages of transcript and 231 exhibits received into evidence. Additionally, the ALJ took official notice of the Staff's final report filed in Case No. U-17000, and of DTE Electric's tariffs, which are available electronically on the Commission's website.

II. TEST YEAR

DTE Electric relies on a projected test year of July 1, 2015 to June 30, 2016, and states that, in presenting projections for this test year, the utility began with the 2013 historical test year, adjusted for known and measurable changes. No party objected to the test year. The ALJ recommended that the Commission adopt the proposed test year, and the Commission agrees.

III. RATE BASE

A. Net Plant

1. Non-nuclear Generation

Franklin E. Warren, Vice President in charge of Fossil Generation for DTE Electric, testified that the utility will prioritize the performance of the Monroe and Belle River plants, and will minimize future investments in the Trenton Channel, River Rouge, and St. Clair plants. He also testified that DTE Electric intends to acquire the Renaissance plant, a 732 MW natural-gas fired plant in Carson City, Michigan, and another gas-fired peaking plant. He testified that the largest non-nuclear investments are related to the installation of new environmental compliance equipment necessary for meeting the federal Mercury and Air Toxics Standards (MATS). These amounts include $256 million for the installation of flue gas desulphurization (FGD) and selective catalytic reduction (SCR) equipment at Monroe, and $239 million for the installation of activated carbon injection (ACI) and dry sorbent injection (DSI) equipment at the Belle River, Trenton Channel, St. Clair, and River Rouge plants. He testified that, without these expenditures, these latter four plants (3,000 MW in capacity) would not be able to operate after April 15, 2016, the final date for compliance with MATS. 4 Tr 214-229.

a. Mercury and Air Toxics Standards Compliance

Irene M. Dimitry, DTE Energy Corporate Services, LLC's Vice President for Business Planning and Development, testified regarding DTE Electric's strategy for complying with MATS. She testified that the utility considered three options with regard to the five plants facing this challenge: (1) installation of DSI and ACI equipment; (2) installation of scrubber or FGD equipment along with a method such as ACI or SCR for removing mercury; or (3) retirement of the unit and the purchase of replacement energy either through the market or the acquisition of a

new generating plant. 5 Tr 615-616. DTE Electric ultimately determined that the Monroe plant will comply with MATS through the installation of FGD and SCR technology; the St. Clair, Belle River, Trenton unit 9, and River Rouge plants will comply through installation of ACI/DSI; and Trenton units 7 and 8 will be retired. 5 Tr 616. Ms. Dimitry testified that the utility performed an economic analysis of the three options with respect to each plant, and that the ACI/DSI technology offered lower capital costs, the ability to keep the units running for now, and the flexibility to retire parts of the fleet in an orderly manner. 5 Tr 617-618. She testified that retiring these plants all at once could present profound reliability challenges.

MEC/NRDC/SC took issue with DTE Electric's plan to install ACI/DSI technology at St. Clair, Trenton, and River Rouge. They presented the testimony of George Evans, President of Evans Power Consulting, Paul Chernick, President of Resource Insight, Inc., and Dr. Ranajit Sahu, an independent consultant, to show that certain estimates, assumptions, and inputs into the economic analyses are not reliable.

Dr. Sahu testified that DTE Electric's estimates of its variable O&M costs, particularly with respect to the cost and quantity of sorbents to be used, are inconsistent and unreliable. He testified that powdered activated carbon (PAC), bromated PAC, and trona are the sorbents used in the ACI/DSI equipment, and that DTE Electric's estimates of the required quantities, going back to 2012, have been inconsistent. DTE Electric seeks recovery of sorbent costs in power supply cost recovery (PSCR) plan and reconciliation cases.[1] Dr. Sahu noted significant variation between the estimates the utility provided to the Michigan Department of Environmental Quality (MDEQ) in pursuing an air quality permit, and the estimates provided to the Commission in various PSCR

[1] For that reason, costs associated with the use of sorbents have been deleted from the O&M portion of this rate case.

plan cases. Exhibit MEC-29. Dr. Sahu opined that DTE Electric does not have a good grasp on the factors that influence sorbent usage.

Mr. Chernick took issue with certain assumptions used in the modeling of replacement power costs, and testified that DTE Electric did not make a convincing case for the cost-effectiveness of continued operation of the three disputed plants. He criticized the utility's net present value revenue requirements (NPVRR) model, arguing that it does not recover the full value of the retrofit. He recommended that the Commission not allow recovery in rates of the ACI/DSI installation costs, due to the issues of missing costs, inflated costs, and unsupported assumptions. 7 Tr 1724-1725.

The ALJ addressed several disputed issues regarding the economic analyses. MEC/NRDC/SC argued that DTE Electric's choices were biased by the use of estimated new plant costs that were unreasonable and higher than the costs used in its NPVRR analysis. The ALJ found that the high estimates (and the use of PROMOD for River Rouge) primarily affected the indication of the timing of new construction (under the retirement option), but were not unreasonable, stating that "the history of utility plant construction is fraught with tales of unanticipated delays and cost overruns. It is difficult to fault DTEE for assuming a longer time period for construction than it might have achieved." PFD, p. 47 (note omitted); *see also*, 5 Tr 644. The ALJ also rejected MEC/NRDC/SC's argument that DTE Electric should have considered alternatives, such as demand side options, to supplement or replace the new gas-fired generation in its retirement scenario. She found that neither Mr. Evans nor Mr. Chernick "provided illustrative parameters for these alternatives." PFD, p. 49. The ALJ noted the dispute between the parties regarding the commodity, energy, and capacity costs that went into the utility's economic analyses. She found that Mr. Chernick offered useful revised forecasts based on the inflation rates in the long-term

forecasts for market forwards, and that his revised capacity price forecasts were also reasonable; but she likewise found that DTE Electric established that the results were significantly different if coal prices were updated, as well as the other market costs. PFD, pp. 51-52. She also noted MEC/NRDC/SC's arguments that not all capital expenditures for ACI/DSI have been identified, and that electrostatic precipitators may be a source of additional costs.

Ultimately, the ALJ recommended no adjustments to the company's proposed capital expenditures in this cost category, thus recommending approval of DTE Electric's overall capital expenditures on MATS compliance for purposes of this rate case. However, she found that DTE Electric failed to adequately support the various estimates that it provided regarding its sorbent requirements at the three disputed plants. The ALJ cited Exhibit MEC-29, presented by Dr. Sahu, which shows the range of sorbent estimates presented in recent PSCR plan cases as compared to information submitted to the MDEQ. The ALJ found that the utility failed to present any explanation for the vastly different trona usage estimates reflected in that exhibit. She further found that the utility failed to explain the basis for the estimates included in Exhibit MEC-28, which was intended to show the quantities of sorbents that may be needed. The ALJ provided a chart in the PFD, at page 54, showing the varying estimates of sorbent costs from 2012 to 2016 for the disputed plants provided by DTE Electric, and found that the utility's rebuttal presentation "never offered any explanation for the wide variation in these cost estimates." PFD, p. 55. The ALJ found Dr. Sahu's cost estimates to be more reasonable and consistent with industry guidance. She noted that DTE Electric's Exhibit A-28 contains several spreadsheets "with no dates, no explanation for the purpose of the compilation, and nothing that would facilitate comparison with other DTEE estimates." PFD, p. 56.

The ALJ observed that DTE Electric's proposed capital expenditures for the ACI/DSI equipment installations at the three disputed plants are not large in comparison to its total proposed capital expenditures (approximately $180 million out of $3.6 billion over two-and-a-half years), and that the utility presented more analysis on this issue than it did for other proposed capital expenditures of comparable size. However, the ALJ found that DTE Electric did not establish that its estimates of the variable O&M costs, particularly the sorbent costs, are reasonable. The ALJ opined that the variable O&M cost estimate is a significant element of determining whether ACI/DSI technology is cost-effective, because, while the technology has relatively low capital costs, it has relatively high ongoing O&M costs. She found that DTE Electric did not explain why it had provided significantly different estimates in different cases, and to two different state agencies. The ALJ provided a chart, at page 64, showing the potential impact on the net present value of the benefits associated with the ACI/DSI option, and found that the investment is clearly uneconomic for River Rouge and two units at St. Clair. PFD, p. 64. Based on its failure to justify the economics of this technology installation, the ALJ recommended that the Commission "1) limit DTEE's variable O&M cost recovery, including its sorbent cost recovery, only to amounts it can show were included in its 2013 analysis for St. Clair units 1-4 and 6-7, and Trenton Channel 9, or included in its 2014 analysis for River Rouge units 2 and 3, adjusted for inflation; and 2) initiate an investigation to determine how DTEE has been making its estimates, and whether further action on the part of the Commission is warranted." PFD, p. 65.

In its exceptions, DTE Electric notes that the Staff provided testimony indicating that "DTE's selection of FGD, SCR, DSI and ACI to meet current regulatory requirements is reasonable and prudent," and argues that the ALJ's discussion of this issue is ultimately moot since there is no capital disallowance recommended. 8 Tr 2054. DTE Electric states its agreement with the ALJ's

findings on net plant. However, the utility argues that the ALJ erred in recommending limiting the recovery of variable O&M costs in future PSCR cases. The utility argues that, even with the ALJ's adjusted O&M costs, the alleged negative benefit for River Rouge is only $2.7 million, and for St. Clair units 6-7 is only $7.9 million, whereas there is still a positive $4.5 million net benefit for St. Clair units 1-4 and $33.5 million for Trenton unit 9; making the overall net benefit positive. DTE Electric further argues that the ALJ's recommendation to limit future PSCR recovery is contrary to 1982 PA 304, MCL 460.6j *et seq.* (Act 304), which governs PSCR plan and reconciliation proceedings. The company asserts that the reasonableness and prudence of decisions underlying a PSCR plan are reviewed in that proceeding, as are the costs in the reconciliation proceeding. MCL 460.6j(6), (12)-(15). DTE Electric also maintains that the ALJ failed to articulate a useful purpose for the proposed investigation. The company notes that the Commission dealt with projected sorbent costs in the May 14, 2015 order in Case No. U-17319, and contends that any investigation of sorbent costs should be conducted in the context of PSCR cases where actual cost recovery is sought.

Finally, DTE Electric avers that it presented extensive evidence showing that MEC/NRDC/SC's witnesses used biased assumptions in their analyses that had the effect of underestimating the benefits of ACI/DSI installation, and posits that these intervenors favor the early retirement of coal plants. The company notes that the Commission declined to issue a warning pursuant to MCL 460.6j(7) (Section 7 warning) with respect to sorbent expenses in the 2012 PSCR plan case. *See,* June 28, 2013 order in Case No. U-16892, pp. 30-31. DTE Electric argues that its own analyses showed an NPVRR of $54 million for the 2014-2035 period; and asserts that the sorbent estimates provided to the MDEQ were required to reflect the maximum

potential to emit. The company also points out that sorbent costs change over time, and that it was necessary to decide whether to install ACI/DSI in the 2013-2014 timeframe.

In reply, MEC/NRDC/SC note that in DTE Electric's 2013 and 2014 PSCR plan cases, the Commission indicated that it would decide issues related to the long-term capital investments associated with retrofits in a rate case, and declined to issue a Section 7 warning regarding the inclusion of sorbent use in the company's five-year plan. December 4, 2014 order in Case No. U-17097; May 14, 2015 order in Case No. U-17319. MEC/NRDC/SC urge the Commission to adopt the ALJ's finding that pollution control equipment installation at the River Rouge and St. Clair units 6 and 7 is uneconomical based on the varying estimates of sorbent costs and quantities provided by the company. MEC/NRDC/SC assert that the information provided to the MDEQ was not based upon the maximum potential to emit but rather on actual use derived from modeling, and that DTE Electric has overstated replacement generation cost estimates in its analyses and failed to consider alternative replacement energy sources. They contend that, given that the ALJ deferred to all of the company's other assumptions, her recommendations are actually extremely conservative and should be adopted. MEC/NRDC/SC also assert that the Midcontinent Independent System Operator, Inc., (MISO) forecast relied upon by the company is out of date and that the June 2015 forecast shows that regional surpluses will address any Zone 7 deficit through 2019. These intervenors urge the Commission to disallow all or a portion of the capital expenditures shown to be uneconomical.

MEC/NRDC/SC alternatively assert that the Commission should exercise its power in this rate case to decrease DTE Electric's base PSCR factor "to reflect the inflation-adjusted cap on variable O&M costs. The Commission should require a filing by DTE after the final order to determine

what that amount would be." MEC/NRDC/SC's replies to exceptions, p. 50; MCL 460.6j(18), (6). They further urge the Commission to commence the recommended investigation.

As noted by the ALJ, this is not the first case in which the Commission has been confronted with a dispute over DTE Electric's proposed environmental upgrades to aging coal plants, including the use of DSI/ACI as an alternative to retirement or other options. PFD, p. 60. The introduction of DSI/ACI as a compliance approach presents the potential to make a relatively low-cost capital investment to extend the life of plants until replacements can be implemented and thereby provide flexibility to retire plants in an orderly manner. PFD, p. 29; 4 Tr 617. In order to assess whether this compliance strategy is actually economical, however, both the capital costs and the O&M costs, most notably the sorbent expense, must be considered. In the December 4, 2014 order in Case No. U-17097, p. 11, the Commission stated that "contested issues regarding capital costs must be litigated in a rate case." The Commission further instructed that "a comprehensive justification of the proposed project and review of alternatives is needed to support recovery of any capital or operating costs of these investments." *Id.* Thereafter, the Commission's May 14, 2015 order in Case No. U-17319, p. 10, found that sorbent expense qualifies as a recoverable expense under the PSCR mechanism, but reinforced the Commission's desire to examine these issues in a holistic manner in the instant rate case:

> The Commission reiterates that the plan and forecast provisions of Act 304 refer to "existing sources of electric generation." MCL 460.6j(3); MCL 460.6j(4). As such, the inclusion of sorbents in a plan and forecast is appropriate. However, the Commission acknowledges that the costs of sorbents and associated capital investments are included in DTE Electric's pending rate case, Case No. U-17767, and it is preferable to examine both the operations and maintenance costs and capital costs for DSI and ACI in that proceeding. Adjustments can be made in future PSCR proceedings based on the Commission's determinations in the rate case.

As directed by the Commission in these previous PSCR cases, the ALJ reviewed the evidence and underlying analyses in a thorough and thoughtful manner. Based on the record, she found that at

certain levels of sorbent costs presented by MEC/NRDC/SC, and assuming that remaining capital balances are appropriate to be included in the NPVRR analyses, the DSI/ACI upgrades at River Rouge units 2 and 3 and St. Clair units 6 and 7 resulted in negative net present values over the study period.[2] Her proposed recourse was to cap the per-unit sorbent expense that DTE Electric can recover from customers. Specifically, she recommended setting the cost recovery cap based on DTE Electric's 2013 sorbent expense estimates for St. Clair and estimates from DTE Electric's 2014 analysis for River Rouge, with both adjusted for inflation. In reviewing this recommendation by the ALJ, the Commission assumes that this cap would be implemented in PSCR proceedings where the projected and actual sorbent costs would be examined relative to the cap, with any excess amounts disallowed. The ALJ also recommended an investigation into how DTE Electric has been estimating sorbent expense in order to determine whether additional action by the Commission is warranted.

The ALJ presented a compelling analysis of this issue. The Commission agrees with the ALJ that customers should be protected from bearing costs for environmental retrofit projects at individual units in cases where such retrofits do not provide economic benefits. Based on the ALJ's analysis that considered different sorbent cost estimates and other assumptions used by the parties, this is the concern for St. Clair units 6 and 7 and River Rouge units 2 and 3. That is, the ALJ found that the retrofit option is not cost effective for the units when the sorbent costs are within an expected range but above the levels referenced by the ALJ for purposes of setting her recommended cap. PFD, p. 64. Notwithstanding, the Commission is also mindful of several factors addressed in this proceeding, including: (1) the information on sorbent costs that was available in the 2013-2014 timeframe when DTE Electric decided to move forward with DSI/ACI;

[2] The Rouge plant shows a negative NPV even if the unamortized balance of environmental upgrades is excluded.

(2) the combined positive net present value for DTE Electric's overall strategy to comply with MATS at its various plants; (3) other benefits that may not be captured in the analysis such as the option value that these plants provide to both DTE Electric and its customers given the significant shift DTE Electric, Michigan, and the Midwest region are experiencing with respect to the generation portfolio; and (4) the fact that retiring an additional 1,000 MWs of generation in Michigan in 2016 does not appear feasible at this point given MISO requirements to have a minimum level of capacity in the lower peninsula of Michigan. Thus, there are practical constraints, timing issues, and other variables that complicate this matter.

Considering these factors, the Commission agrees with the ALJ that an adjustment to the proposed retrofit capital expenditures is not the best approach to address this issue. The Commission finds the ALJ's focus on O&M costs to be entirely appropriate as these costs appear to be a key driver of the net present value results as shown in this case. However, the Commission may not lawfully limit the recovery of sorbent costs in future PSCR proceedings by establishing a hard cap in this rate proceeding; those PSCR proceedings must follow the dictates of Act 304 and the evidence will be tested in those proceedings as required under MCL 460.6j. Even MEC/NRDC/SC seem to acknowledge this, where they state that "the Commission has ample authority to adopt the ALJ's recommendations, and if the Commission had any concerns about that authority it could adopt a partial disallowance of the capital expenditures as an alternative remedy." MEC/NRDC/SC's replies to exceptions, p. 2. In the PSCR cases, the company will be required to show that projected sorbent expenses are reasonable and prudent, and all actual reasonable and prudent expenses will be trued-up on reconciliation. While not agreeing to any cap here, the Commission certainly expects information on actual sorbent costs and refreshed net

present value analyses to inform future decisions in PSCR proceedings about cost recovery associated with these marginal units.

The Commission does not feel compelled at this point to initiate an investigation into DTE's process for developing sorbent expense estimates.

b. Other Fossil Generation Capital Adjustments

The Staff recommended three adjustments to non-nuclear generation capital expenditures included in rate base. Naomi Simpson, Public Utilities Engineer in the Electric Reliability Division of the Commission, testified that the Staff recommended reducing the utility's total projected environmental capital expenditure by $12.4 million (originally $22.4 million, but later updated) based on the results of an audit showing that the company spent less than it projected in 2014. 8 Tr 2051; PFD, p. 68. Ms. Simpson also testified that the Staff recommended reducing total projected environmental capital expenditures by an additional $33.7 million to exclude contingency expenditures, on the grounds that such expenses may not be incurred at all, or may be incurred in significantly reduced amounts. The Staff also argued that an additional $31.1 million should be deducted from capital expenditures to reflect the reduction in projected project costs presented by DTE Electric in Exhibit A-35. Finally, the Staff proposed that there should be a removal of projected test year costs of $800,000 for 2015 and $2,450,000 for the first six months of 2016 (for a total of $3,250,000) related to DTE Electric's Monroe dry ash conversion project, which has been undertaken in order to comply with new Resource Conservation and Recovery Act (RCRA) regulations.

The Attorney General recommended an adjustment to fossil generation capital expense projections of $7.7 million, based upon the difference between projected and actual 2014 capital expenditures. 9 Tr 2323-2324.

MEC/NRDC/SC argued that contingency expenses should be removed from environmental capital expenditure projections.

The ALJ found that there was no dispute that the environmental capital expense projections should be reduced by at least $31.1 million, because DTE Electric had lowered its own projections by that amount. The ALJ further found that Exhibit A-35 reflected the utility's most recent projections, and that DTE Electric's revised lower projections no longer contained the $33.7 million in contingencies, but rather only $4.1 million. The ALJ agreed with the Staff that the $4.1 million in contingency amounts should also be excluded. She further recommended adoption of the Staff's proposed $12.4 million reduction, based on a comparison to 2014.

The ALJ agreed with the Attorney General that the capital expense projections for fossil generation should also be reduced by $7.7 million, based on the difference between actual and projected 2014 "hydro and other" expenditures.

Finally, the ALJ agreed with the Staff that $3,250,000 should be removed from projected test year costs related to DTE Electric's Monroe dry ash conversion project. Thus, the ALJ recommended a total reduction of $58.5 million to fossil generation capital expense. PFD, p. 73.

In exceptions, DTE Electric argues that although the $31.1 million adjustment was agreed to by the parties, the remaining $27.5 million in adjustments recommended by the ALJ are in error. With regard to the reduction to environmental expenditures, DTE Electric contends that "it would be inappropriate to disallow cost recovery simply because the forecasted (in mid-2014) timing of expenditures did not turn out to be precisely accurate." DTE Electric's exceptions, p. 5. The company states:

> It is a significant undertaking to schedule outages in a manner to minimize customer and market impacts while at the same time supporting the work required on all eleven power generation units receiving ACI/DSI systems. Less ACI/DSI project work (and thus approximately $10 million less capital spending) was completed in 2014 than was

> originally forecasted due to outage timing and equipment availability. This amount should not be disallowed (4 T 259-62) because the ACI/DSI work will be completed by April 2016 which is within the projected test year.

Id., (note omitted). DTE Electric also argues that there is confusion over the $12.4 million in any case, because this amount has already been accounted for in the $31.1 million downward adjustment.

The company also objects to exclusion of the $4.1 million in contingency costs associated with environmental work, arguing that this work was not speculative, but was simply not fully defined.

DTE Electric objects to the disallowance of $7.7 million based on the Attorney General's argument that this also represents an underspent amount. DTE Electric contends that its proposal does not rely on speculation, and explains that this amount is related to the timing of spending on the Ludington plant unit upgrades that are occurring over a six-year time period.

Finally, DTE Electric also takes exception to the disallowance of $3.3 million of funding for the Monroe dry ash bottom project related to compliance with new RCRA regulations, arguing that Exhibit S-8.5 shows that the new rules, promulgated in December of 2014, have required the utility to undertake engineering studies which will be the basis for developing and implementing a compliance plan. DTE Electric contends that evaluation, design, and (potentially) construction costs will be incurred during the test year, and delay would compromise the utility's ability to remain in compliance.

In reply, the Attorney General argues that DTE Electric has tried to introduce confusion into this issue, and that the company provided no evidence showing that the ALJ erred in making the $12.4 million adjustment or the $7.7 million adjustment.

In their reply, MEC/NRDC/SC argue that contingency amounts may never be incurred, that the allowance of contingency projections removes the incentive to control costs, and that amounts reasonably incurred will be recovered in future proceedings. MEC/NRDC/SC further argue that the company failed to support the requested contingency amount, noting that when the contingency request was changed "the evidence supporting DTE's revisions was unclear and the sponsoring witness was unable to explain it – so the revised contingency amount was not supported by substantial evidence." MEC/NRDC/SC's replies to exceptions, p. 9.

In its reply, the Staff states that the $12.4 million adjustment and the $31.1 million adjustment are redundant, and that if both adjustments are made the Commission will be double counting. The Staff recommends that the Commission adopt the adjustment made by the company of $31.1 million. 4 Tr 261. The Staff further argues that the Commission should disallow the contingency costs of $4.1 million because they are speculative, and the $3.3 million in expenditures related to RCRA compliance because the company provided no details on what engineering and planning work needs to be done. The Staff contends that Exhibit S-8.5 is insufficient.

Based upon the Staff's reply, the Commission finds that the $12.4 million recommended adjustment is already included in the agreed-upon downward adjustment of $31.1 million made by the company.

The Commission agrees with the ALJ, the intervenors, and the Staff that the $4.1 million in air quality related contingency costs should be excluded, because, while contingency planning is an acceptable budgetary strategy, it is not appropriate for ratemaking. *See,* the November 19, 2015 order in Case No. U-17735. As the Staff correctly notes, contingency budgeting is speculative, and shifts all of the risk associated with that item onto ratepayers, allowing for a return of and on an investment that may never be made. Additionally, the Commission notes that the company

provided conflicting evidence on the purpose and amount of the contingency monies sought here. 4 Tr 267-270, 288-290. The Commission rejects the request to include these undefined and possibly unnecessary projections in capital expenditures.

The Commission, however, is not persuaded that the $7.7 million adjustment to "hydro and other" expenditures proposed by the Attorney General should be adopted. The fact that the utility underspent in a prior year does not, alone, prove that capital expenditures for the test year should be cut. Based on the record, the Commission is persuaded that unfinished projects may roll over into the test year, and rejects the Attorney General's proposed adjustment.

Finally, the Commission agrees with the company that it was prudent to undertake planning and engineering studies for the test year to ensure compliance with the new RCRA rules, and adopts $3.25 million for this cost category.

2. New Generating Plants

Ms. Dimitry testified that DTE Electric identified a need to purchase approximately 900 MW of capacity to meet its peak requirements, and that the utility planned to meet this need through the purchase of the Renaissance plant and a 300 MW gas-fired peaking plant. The Renaissance plant had a purchase price of $240 million, with $25 million in spare parts, included in the 2015 capital expense forecast. Ms. Dimitry testified that the transaction would close in the first quarter of 2015. No party challenged this acquisition. 8 Tr 2055-2056.

Ms. Dimitry further testified that DTE Electric would solicit bids for the additional peaking plant at a cost of approximately $100 million, with an additional $10 million for spare parts. 5 Tr 613. As a result of information gleaned from discovery propounded by the Staff, Ms. Simpson testified that DTE Electric had identified the qualifying bid to be a merchant plant owned by DTE Energy Services known as the East China power plant. 8 Tr 2059-2060; 9 Tr 2325-2326. DTE

Electric stated that it would purchase the plant for $68.2 million, plus $4.7 million in spare parts (for a total of $72.9 million), but that the exact purchase price would not be known until after the close. Exhibits S-13.1, S-13.2.

The Attorney General argued that the Commission should exclude the cost of the East China plant from rates for the projected test year, because this information (the discovery response) was received four days before testimony was due and there was no realistic opportunity for discovery regarding the elements of the acquisition, including the cost or the fact that it will be an affiliate transaction. The Attorney General argued that inclusion of these amounts would be premature. MEC/NRDC/SC agreed with the Attorney General that the request is untimely and has not been adequately reviewed.

The Staff supported recovery of the amounts associated with the East China plant, arguing that the price for the East China plant appears to be significantly below current market price on a dollars per kilowatt basis.

The ALJ found that the information provided to the Staff by the utility regarding price was only an estimate, and that the transaction had not closed. The ALJ also found that the utility had provided no evidence regarding any due diligence. The ALJ recommended that the projected expenses associated with the East China plant be excluded from rate base, because DTE Electric had not shown that it will incur this expense within the projected test year, and because this purchase from an affiliate has not been reviewed by the parties.

In exceptions, the Staff urges the Commission to allow expenses of $72.9 million in capital expenditures for the East China plant. The Staff contends that DTE Electric provided pricing information through discovery to the Staff, and the Staff introduced this discovery into evidence,

providing a sufficient basis for the Commission to act. 8 Tr 2060-2061; Exhibits S-13.1 and S-13.2.

DTE Electric also urges the Commission to approve this cost item on the basis of the evidence offered by the Staff. The company asks for a further addition of $2.8 million for "capital maintenance costs" for the test period ($1.1 million in 2015 and half of $3.3 million for half of 2016). The company argues that the record fully supports cost recovery in this case based on the evidence, and that no one disputes that the purchase price of the East China plant is advantageous and substantially less than what the company originally forecasted. The company contends that this purchase results in a reduction of $9 million in NPVRR for 2015-2020, and $98 million for 2015-2035. 8 Tr 2061; Exhibit S-13.2.

In reply, the Staff again recommends that $72.9 million be included in capital expenditures for the East China plant, but opposes the company's request for an additional $2.8 million for "capital maintenance costs" as described in DTE Electric's exceptions. The Staff contends that the company never explained how it plans to use "maintenance capital."

In their reply, MEC/NRDC/SC assert that the East China expense should be excluded because the parties were informed of the selection of this plant via the discovery response to the Staff on May 18, 2015, which was only four days before Staff and intervenor direct testimony was due. They argue that the request is untimely, that the price is only an estimate, and that the request may be made in a future rate proceeding. They further contend that there has been no time to investigate the fairness of the request for proposal (RFP) process, which may have favored an affiliate.

In his reply, the Attorney General contends that it was DTE Electric's obligation to place into evidence sufficient facts in support of this cost item in its initial application, and the company did not do so.

The Commission anticipates that the regulatory process should be nimble whenever possible to account for ever-changing conditions, including opportunities to purchase new generation. DTE Electric addressed in its application its plans to purchase another gas-fired generator. An estimate for the purchase was also included in the projected test year calculations and shown on Exhibit A-9, Schedule B6. There was no surprise here that DTE Electric was moving forward expeditiously to acquire a plant. After receiving additional detail on the price via discovery, the Staff's testimony addressed the purchase and supports the inclusion of $72.9 million. Further, the Commission notes that the Federal Energy Regulatory Commission (FERC) authorized the East China sale on July 16, 2015, pursuant to an application submitted by the parties on May 11, 2015. *DTE Electric Company and DTE East China, LLC, Order Authorizing Disposition of Jurisdictional Facilities and Acquisition of Existing Generation Facility,* 152 FERC ¶ 61,036 (2015). While the Attorney General and the ALJ would have preferred more detailed information being available sooner, the Commission finds that there is adequate support in the record for the reasonableness and need for the purchase as presented by DTE Electric and the Staff. Therefore, the Commission finds it is reasonable to include the capital investment in rate base at this time.

3. Nuclear Generation (Fermi 2)

The Attorney General argued that $4.4 million for 2015 and $2.1 million for the first half of 2016 (for a total of $6.5 million) included in DTE Electric's capital expenses for Fermi 2 should be excluded because they are essentially contingency amounts identified only as "emergent projects." The ALJ agreed, noting that contingency spending "is not consistent with the 'known

and measurable change' method DTEE claims it employed as the basis for its projected test year capital spending." PFD, p. 80.

In exceptions, DTE Electric argues that the ALJ erred in recommending this disallowance because the company "has a clear statutory right to use a fully-forecasted projected test year in requesting rate relief." DTE Electric's exceptions, p. 14. The company contends that emergent conditions usually surface following scheduled inspections during refueling outages, or from emerging regulations, stating that its cost needs for these projects are well-founded and undisputed. 6 Tr 1185-86, 1199-1205.[3]

In reply, the Attorney General contends that the Commission has previously rejected the argument that it must grant every projected cost item lest it be accused of violating the utility's statutory right to rely on projections. June 7, 2012 order in Case No. U-16794, pp. 12-13. The Attorney General also notes that the Commission has previously rejected contingency costs that lacked support on the record. October 20, 2011 order in Case No. U-16489, pp. 36-37.

As the Commission has previously stated and as acknowledged by the ALJ, contingency budgeting is not appropriate when setting rates. DTE Electric's witness testified that he was not certain that the contingency amounts would be spent. 6 Tr 1201-1202. That is the nature of contingency budgeting, which is an appropriate planning tool, but does not represent the type of cost that should be borne by ratepayers. As with the environmental and AMI (discussed below) cost categories, the Commission removes the contingency amounts associated with Fermi 2. If

[3] DTE Electric further notes that it proposed renaming the "Nuclear Decommissioning Surcharge" the "Nuclear Surcharge," and supported a net reduction of $4.765 million to the 2013 nuclear surcharge, to a proposed level of $32.318 million. 4 Tr 565, 6 Tr 1178-1179; Exhibit A-19, Schedule K2, line 5. The company asserts that the ALJ implicitly agreed with these uncontested matters, but for clarity requests that the Commission explicitly adopt these proposed changes. No party filed exceptions to the proposals, and the Commission adopts the new name and the reduced nuclear surcharge level.

these amounts are ultimately reasonably and prudently spent, the company may request recovery in a future rate case.

4. Electric Distribution System - Vegetation Management Capitalization

DTE Electric requested capitalization of a projected $45 million in annual expenses associated with its new enhanced vegetation management program (EVMP) beginning in 2015. Intended to last 10 years, DTE Electric describes the program as an expansion of clearing activities within the distribution right-of-way (ROW) to remove all vegetation that has the ability to grow into or overhang the power lines within five years, applicable to one-third of the annual target clearing area.

The Staff opposed capitalization treatment for the EVMP expenditures, on grounds that this program is simply expanded routine ROW maintenance and not part of the initial ROW development, such as the first clearing of an area.

The ALJ recommended that the Commission reject capitalization treatment for the EVMP expenses, agreeing with the Staff that this is part of an ongoing clearing effort. The ALJ opined that, if allowed, ratepayers could end up paying both rate base and depreciation expense for many years for the same recurring EVMP expense, and noted that the utility made no effort to match the time period over which benefits would be received to the time period over which customers would be paying the clearing costs through depreciation and return on rate base. PFD, p. 86.

In exceptions, DTE Electric argues that the Commission directed the utility to adopt an expanded vegetation management program to address trees, citing the May 2, and December 4, 2014 orders in Case No. U-17542. DTE Electric requests $49 million of O&M for continuing vegetation management, plus $45 million for the test year (as part of the expenditure of $45 million per year over ten years) for EVMP, with capitalization of the latter amount.

DTE Electric contends that the EVMP is not an O&M expense. The utility states that its historic vegetation management practice is to trim vegetation within a circle with a maximum 15 foot radius centered on the pole line at the height of the cross arm for the length of the circuit. The company notes that this might leave branches overhanging the poles and wires if those branches were outside the circle. By contrast, the company maintains, the EVMP program involves creating clear power corridors around the conductors and has been proven to significantly improve reliability. The utility argues that it has never performed clearing to the extent and depth of the proposed EVMP clearing. DTE Electric maintains that this will be the first clearing of these ROWs in this manner, and this program will extend the life of the electrical assets and reduce customer outage events. 4 Tr 395-396. The company estimates that at the end of ten years, it will show a 40% improvement to its system average interruption duration index (SAIDI) due to the EVMP, which is currently in the fourth quartile.[4] DTE Electric provided testimony explaining that the Uniform System of Accounts allows for these costs to receive capitalization treatment. 6 Tr 1070-1071.

In reply, the Attorney General argues that the EVMP should not be capitalized, and that the company failed to show that service reliability will be degraded by adopting the PFD. The Attorney General further asserts that the company provided no evidence to show that doubling its spending will bring any additional benefit to ratepayers.

In its reply, the Staff again argues against capitalization treatment for any EVMP amount that is allowed, noting that the first clearing of the existing ROW was completed years ago and "any further removal now is an O&M expense, even if it is executed in a new way." Staff's replies to exceptions, p. 5. The Staff states, "Once utilities demonstrate that they are responsible stewards of

[4] SAIDI represents the average outage duration for customers, and is calculated as the sum of all customer interruption durations divided by the total number of customers served.

the vegetation management funds they already receive, Staff may be more inclined to support additional funding. But now is not the time for the Commission to approve a large-scale program as a capital expenditure with no assurance that it will benefit ratepayers in kind over the long haul." Staff's replies to exceptions, p. 6. The Staff further urges the Commission to permit the program to be tested a bit longer, allowing DTE Electric to report back on reliability and spending, before it is fully funded.

As is discussed below, the Commission today approves a portion of the requested EVMP expense in O&M expense. However, the Commission is not persuaded that this cost category is appropriate for capitalization. The EVMP program is essentially untried on a large scale, and has the potential to encounter challenges, which could change the nature of the program. Additionally, the Commission is not presently convinced that this program is fundamentally different from enhanced clearing, the costs of which have never been capitalized. The EVMP effort is not a first clearing, because all of these ROWs have been cleared before, possibly multiple times. The Commission expects that DTE Electric will provide additional information about the efficacy of the EVMP program in future cases. Having rejected capitalization treatment, the amount of allowed expense is addressed under net operating income.

5. Corporate Staff Group

Theresa Uzenski, Manager of Regulatory Accounting for DTE Energy Corporate Services, LLC, testified regarding proposed capital expenditures for the Corporate Staff Group (CSG) within DTE Energy Corporate Services, LLC. She explained that CSG is a shared services organization that provides a variety of administrative and general (A&G) services including audit, accounting, finance, tax, treasury, corporation and governmental affairs, communications, corporate offices and services, human resources, information technology (IT), legal, regulatory

affairs, and customer services. She explained that capital expenditures incurred by CSG primarily relate to IT, physical infrastructure, and fleet, and are recorded by DTE Electric and allocated to other affiliates through a usage fee. 6 Tr 1043. Testifying regarding Schedule B6.5 of Exhibit A-9, Ms. Uzenski described capital expenditures for some of these programs as follows:

> Workplace Transformation, reflects strategic space planning costs to update DTE's headquarters, service centers and power plants. These renovations create energy efficient work spaces, facilitate more effective collaboration and problem solving, and provide flexibility to accommodate changing business needs. Line 12 reflects investments in buildings and land. Expenditures include the land on Michigan Avenue that expands our campus, helps revitalize our neighborhood, and provides enhanced safety and security; the renovation of the former Salvation Army building that will be used as a swing space to house DTE Energy employees during our workplace transformation initiative; and the development of a public space on Grand River as part of the Detroit Business Improvement Zone (BIZ) activities. BIZ is a coalition of local businesses that provides services to keep downtown Detroit clean, safe and beautiful.

6 Tr 1045.

The Attorney General took issue with the two expenditure categories known as the Workplace Transformation Initiative (WTI) and the Neighborhood Revitalization Initiative (NRI). Mr. Sebastian Coppola, an independent business consultant, testified on behalf of the Attorney General:

> The second project is the Neighborhood Revitalization Initiative. This project is in fact four projects: the Navitas House, Fed Park Place, Grand River Public Space and the Crime Deterrence Initiative. The Navitas House is an urban revitalization project and also functions as temporary offices for employees during the workplace transformation phase. The Fed Park Place is an office campus extension and neighborhood beautification project. The Grand River Public Space project is an additional expansion of the office campus area to transform the area into a public space for employees and neighbors. The Crime Deterrence Initiative is a vague security concept to reduce and prevent crime near the Company's headquarters building.

9 Tr 2329. The Attorney General argued that while these projects may be worthwhile, it is inappropriate to expect ratepayers to pay the full cost of implementing programs that are unconnected with the provision of utility service. The Attorney General contended that these

programs benefit DTE Electric's image, which in turn benefits shareholders; and that the Commission should allow only half of the proposed capital expenditure to be included in rate base.

In briefing, the Staff contended that expenditures for both WTI and NRI should be disallowed altogether for the test period, arguing that there is insufficient evidence on the record to show that these expenditures are just and reasonable or used and useful to ratepayers.

The ALJ agreed with the Staff, and recommended that the Commission exclude the projected costs for WTI and NRI from rate base. The ALJ rejected DTE Electric's argument that these costs support the provision of utility service, finding that a tangential relationship to the provision of utility service is not sufficient. The ALJ found that the utility had failed to show that the expenditures are reasonable and that the funds are not being used to enhance the value of the utility's real estate investments. She further observed that DTE Electric made no effort to justify the overall level of its proposed expenditures on these two programs. The ALJ stated that she could not adopt the Attorney General's proposal of cost sharing, due to the paucity of information supporting any of the costs on the record. The ALJ noted that DTE Electric will have an opportunity in its next rate case to justify the reasonableness and prudence of these expenditures.

In exceptions, DTE Electric argues that the record reflects that the company is prudently incurring costs "to update its headquarters, service centers and power plants, enhance safety and security for employees, and provide additional space to house Company employees." DTE Electric's exceptions, p. 29. While acknowledging that renovations were made to company headquarters in 2011, DTE Electric contends that the "Workforce [sic] Transformation Initiative was started in 2012, and is designed to address other needs and to upgrade different building spaces." *Id.*, p. 30. The company maintains that some building spaces must be brought up to code and into compliance with the Americans with Disabilities Act, and argues that there is no

alternative to complying with federal law and building codes. Moreover, the company contends that ratepayers do receive a benefit because these endeavors support the provision of utility service. The company notes that its campus footprint will be expanded, and that over 140 employees are using the Navitas House as swing space.

In reply, the Attorney General contends that the ALJ is correct in characterizing many of these plans as tenuous and having only a tangential relationship to utility service. He argues that the ALJ's recommendation ensures that when DTE Electric seeks these amounts in a future rate case there will be sufficient evidence on the record.

From 2012 through the end of the test year, DTE Electric requested $86,484,000 for WTI, and $27,329,000 for NRI. Exhibit A-9, Schedule B6.5. The Commission finds that a safe and relatively comfortable and efficient workplace is indeed part of providing utility service, but that neighborhood revitalization, while commendable, is not. Thus, the Commission approves the amount sought for WTI for inclusion in capital expenditures, but rejects the amount sought for NRI. Ms. Uzenski testified that the WTI money would be used to update the company's headquarters, service centers, and power plants. 6 Tr 1045. By contrast, the NRI funds are being used to invest in land along Michigan Avenue, revitalize the neighborhood, renovate the former Salvation Army building, and create a public space on Grand River that could be used for concerts and similar activities. 6 Tr 1045, 1085-1086. DTE Electric did not make a persuasive case that these are the type of costs that should be borne by ratepayers.

6. Customer 360

DTE Electric provided testimony indicating that its critical customer information systems have reached the end of their useful lives, and have become inefficient and expensive to maintain. These systems were implemented in 1994. 5 Tr 853. The company proposed a total of

approximately $93 million in capital expenditures through the projected test year for the Customer 360 project, which will implement new hardware and software designed to replace the old customer service system.

The Attorney General proposed that the utility be cautioned that future cost overruns in this category may not be allowed. The ALJ found it unnecessary to caution DTE Electric that its future expenditures must be reasonable and prudent, but recommended that the Commission require the utility to provide periodic reporting to the Staff regarding the project's costs and the progress of its implementation.

No party filed exceptions, and the Commission adopts the findings and recommendations of the ALJ. Within six months of the date of this order, DTE Electric shall file its first report on the project costs and the progress of implementation in this docket, and shall update that report every six months thereafter until the Customer 360 project is complete.

7. Advanced Metering Infrastructure

Robert E. Sitkauskas, General Manager of the Advance Metering Infrastructure Group at DTE Electric, testified that AMI installations are more than 50% complete and the company expects to be finished by 2017. DTE Electric requested that it be relieved of the obligation to present any further cost/benefit analyses to support the program.

The Staff recommended that approximately $1.5 million in projected AMI capital expenditures be excluded on grounds that they are contingency expenditures.

The Attorney General argued that the Commission should defer recovery of depreciation expense for any AMI investment in rate base until all of the benefits of the program are realized, based upon an approach taken by the Maryland Public Service Commission.

Mr. Sheldon requested that the Commission exclude AMI costs from rate base and revenue requirements; or, in the alternative, condition the continued allowance of these costs on implementation of an opt out program that is acceptable to customers.

The RCG objected to the use of a 30-year useful life for AMI hardware and software, and took issue with $49.4 million projected for the cost item "Contingency, Corporate Overheads, Other." The RCG also argued that the utility's cost/benefit analysis is unreliable.

The ALJ found that the proposed AMI costs should be included in rates, with the exception of the $1.5 million in contingency costs identified by the Staff. The ALJ noted that the Commission has evaluated the AMI program in numerous orders, and found that no party has identified any material changes in the costs or benefits such as to alter the Commission's prior rulings. She further noted that the Commission has previously rejected the Attorney General's request to defer these costs, observing that the Commission put ratepayer protections in place in the October 20 order. The ALJ recommended rejecting the RCG's criticisms, finding that the RCG had ignored the prior cases in which the elements and the structure of the cost/benefit analysis had been reviewed and approved by the Commission and the parties. The ALJ found that the utility should continue to provide cost/benefit analyses while the AMI program continues to be implemented.

In exceptions, DTE Electric argues that the ALJ erred in excluding the contingency costs. The company contends that the contingency costs will cover hardware, staff, and IT components, "each of which are areas with potential for cost overruns or unanticipated challenges to the implementation of the project." DTE Electric's exceptions, p. 33. The company asserts that its risk management team recommended the use of a 2% multiplier for all hardware and installation costs on a yearly basis as contingency costs.

In exceptions, the RCG and Mr. Sheldon object to authorization of the AMI program and allowance of the costs in rate base. In his exceptions, Mr. Sheldon argues that no party showed that the "issues of health and privacy do not, in fact, outweigh the alleged benefits of the program to utility customers," and there is no rational basis for funding the program. Mr. Sheldon's exceptions, p. 1. The RCG contends that "there has been no meaningful review of the reasonableness and prudence of this massive investment, and premature replacement of existing infrastructure and meters." RCG's exceptions, p. 2. The RCG argues that DTE Electric's cost/benefit analysis is not reliable because it does not compare the AMI program to the use of the equivalent investment in energy efficiency, customer education, strengthened building codes, renewable energy, or improved distribution; nor does it evaluate the benefit of delaying implementation or waiting for better technology. The RCG supports the Attorney General's proposals to stop the AMI program or to make adjustments to depreciation.

In exceptions, the Attorney General argues in favor of deferred recovery of the depreciation expense until the projected cost savings and other financial benefits exceed program costs, citing the example of Baltimore Gas and Electric which established a regulatory asset to defer recovery of AMI costs until the utility delivers a cost effective program. The Attorney General urges the Commission to reject the ALJ's assumption that the AMI program is reasonable.

In reply, the Staff continues to argue in favor of the exclusion of contingency amounts, because it is not reasonable for the utility to earn depreciation and a return on costs that may not be incurred. The Staff also urges the Commission to continue to require cost/benefit analyses until installation is completed.

In his reply, Mr. Meltzer contends that continued funding of the AMI program should be contingent upon DTE Electric "modifying its corporate policies and behavior in order to

accommodate customers who choose to decline installation of an AMI meter on their residence." Mr. Meltzer's replies to exceptions, p. 2.

In its reply, the RCG states that it supports the positions taken by the Attorney General and other individual intervenors to suspend the program or to change the depreciation treatment. The RCG contends that DTE Electric's large rate request is mostly a result of the cost of the AMI program. The RCG maintains that the cost/benefit study was self-serving and subjective, and has no nexus to the cost of service formula used for ratemaking. The RCG asserts that the cost/benefit analysis should have included consideration of alternative strategies such as phasing in AMI more slowly, or investing in renewable energy and energy efficiency instead. The RCG urges the Commission to exclude from rate base the remaining amount associated with meter scrapping, or give it the alternative depreciation treatment proposed by the Attorney General.

In its reply, DTE Electric alleges that the RCG filed comments that were not proper exceptions and lacked any reference to the evidence or the law. DTE Electric refers the Commission to the prior Commission and appellate court cases in which its AMI program has been upheld; and argues that the RCG re-asserts arguments that have been rejected, and repeats arguments that do not pertain to the instant case.

The Commission adopts the findings and recommendations of the ALJ. The approximately $51 million sought for this capital expenditure category is demonstrably not the major driver of the utility's claimed revenue deficiency. As the ALJ relates, the Commission has thoroughly vetted the underlying benefit/cost analyses, and the AMI program itself, and will not revisit those issues. *See,* December 23, 2008 order in Case No. U-15244; November 4, 2010 order in Case No. U-16191; October 17, 2013 order in Case No. U-15768; and October 20, 2011 and November 6, 2014 orders in Case No. U-16472. The AMI program is correctly characterized as a grid

modernization program that cannot be replaced by renewable energy or energy efficiency measures. The Commission finds that no party provided evidence showing that conditions have changed such that the current rate base and depreciation treatment of these expenses should be changed. DTE Electric shall continue to provide benefit/cost analyses as long as the program is still in the implementation phase. The Commission approves DTE Electric's proposed test year expenditure of $50.914 million for this cost category, minus the $1.5 million in contingency expenses identified by the Staff, for the reasons previously stated, *supra*, p. 18.

8. Interruptible Air Conditioning

While agreeing with the expenditures that DTE Electric proposed for upgrading the interruptible air conditioning (IAC) program, the Staff recommended that DTE Electric upgrade the program to include intelligent communicating thermostats (ICTs). The utility did not object to the recommendation, and the ALJ found that there was no dispute. The ALJ recommended that the Commission encourage the utility to keep the Staff informed of its ongoing efforts to evaluate ICTs and other options.

In its exceptions, the Staff indicates that it is not sure whether a dispute remains over this issue, stating that there is no dispute if DTE Electric is agreeing to incorporate ICTs into its IAC programs as current switches fail. The Staff contends that the $7.5 million spent on the IAC program over the test year should include this transition to ICTs.

In reply, DTE Electric states that it will use the requested $7.5 million to replace the existing one-way IAC switches with two-way zigbee switches, because this will stabilize the existing IAC program. DTE Electric states that it supports ICT technology "in conjunction with Dynamic Peak Pricing as a customer option for new programs moving forward," but argues that replacing the one-way switches with ICTs is not cost effective. DTE Electric's replies to exceptions, p. 13.

The Commission finds that it is appropriate to include the requested $7.5 million in capital expenditures to upgrade the switches and keep the existing IAC program going, while new technologies continue to evolve.

9. Construction Work in Progress

Wal-Mart objected to DTE Electric's request to include construction work in progress (CWIP) in rate base, arguing that CWIP should not be included in rate base because the assets have not yet been deemed used and useful. The ALJ recommended that the Commission reject Wal-Mart's proposal, finding that the Commission has long allowed utilities to include CWIP in rate base, going back to the May 10, 1976 order in Case No. U-4771, along with an allowance for funds used during construction (AFUDC) offset for longer term projects. The ALJ recommended that the Commission retain the traditional treatment of CWIP.

No party filed exceptions, and the Commission adopts the findings and recommendations of the ALJ.

B. Working Capital

1. Combined Operating License Application

Ms. Dimitry testified that DTE Electric is proposing to recover deferred COLA costs associated with obtaining a license for a possible Fermi 3 nuclear power plant of $101.9 million over a 20-year amortization period. The amortized portion of this expense is included in projected test year expenditures. The license was granted on May 15, 2015. Ms. Dimitry testified that DTE Electric has not decided whether to construct the plant, and may try to sell the license. She further testified that, in the meantime, the license is an asset that is transferable or may be held indefinitely and the utility should be allowed to earn a return on it.

The Attorney General objected to the amortization of any of these deferred costs on grounds that amortization would be premature.

The Staff supported DTE Electric's pursuit of the license and did not recommend any adjustments to the filed expenditure level, but proposed a 10-year amortization, with the unamortized balance to be excluded from rate base until the utility decides whether to proceed with construction. The Staff noted that in the October 20 order the Commission found that the license was not yet used and useful, and thus the unamortized balance should not be included in rate base. The Staff argued that this treatment would be consistent with the Commission's prior actions with regard to a cancelled nuclear project.

MEC/NRDC/SC also argued that the Commission should deny the request to recover the COLA costs in rate base because the license alone is not used and useful, and the company has made no decision on whether to build the plant. MEC/NRDC/SC argued that DTE Electric has the option to recover these funds through the certificate of need (CON) process. MCL 460.6s.

The ALJ recommended that the Commission reject the utility's request for current amortization and rate base treatment of these expenses, finding that the utility had not even provided a timeframe within which it would make a construction decision. The ALJ found that the Commission has already determined that further recovery of these costs is premature, citing to the October 20 order, pp. 71-72, where the Commission disallowed $6.7 million in COLA costs until the plant could be considered used and useful. She noted that the Commission cautioned DTE Electric that the inclusion of some COLA costs previously in working capital was not "an invitation to continue to project costs and make expenditures in large amounts without making progress toward constructing or deciding to construct a new plant." *Id.* The ALJ found it

appropriate to retain the traditional ratemaking approach and defer recovery until the utility builds the plant, unless DTE Electric chooses to use the CON process.

In exceptions, DTE Electric argues that the Commission should authorize it to include deferred and projected COLA expenditures in its working capital for the test period. DTE Electric notes that the Staff supported the company's continued pursuit of the license, and that the Staff found that the line items in the COLA spending are reasonable and prudent. 8 Tr 2126-2127. The company argues that the ALJ misread the Commission's prior decisions, noting that the Commission has approved these expenditures for inclusion in working capital in three cases. *See,* the December 23, 2008 order in Case No. U-15244, p. 10; January 11, 2010 order in Case No. U-15768, p. 16; and October 20 order, p. 72. DTE Electric again points out that the license is transferable, and may be maintained indefinitely. The company further argues that the situation is not analogous to a cancelled nuclear project, because the license continues to be a valuable asset.

In its exceptions, the Staff agrees with the ALJ's recommendation, but argues that, if the Commission chooses to allow the utility to recover these costs, it should adopt the 10-year amortization proposed by the Staff and defer rate base treatment until a decision on construction is made.

In reply, MEC/NRDC/SC argue that the costs should be deferred, as the ALJ recommended, because that comports with the traditional ratemaking approach. These intervenors also argue that the situation involving whether a portion of the investment in an abandoned project can be recovered is not analogous. MEC/NRDC/SC contend that the license provides no benefits today (though it might someday) and is simply a speculative investment.

In his reply, the Attorney General urges the Commission to agree with the ALJ.

In its reply to the Staff, DTE Electric reiterates that a cancelled nuclear project is not analogous to this situation and continues to argue for its proposal.

The Commission agrees with the ALJ and finds that the COLA costs should continue to be deferred. DTE Electric has provided no evidence showing that conditions have changed such that the Commission should alter its decision in the October 20 order to disallow additional costs until the plant could be considered used and useful. Having obtained the license, the company should not be incurring much in the way of additional costs until a decision regarding construction has been made. The Commission has been given no timeframe for the making of that decision. When it is made, this issue will be revisited.

2. Non-qualified Benefits

DTE Electric states that it has four employee benefit programs that are considered non-qualifying under Internal Revenue Code Sections 401(a) or 415(b): the supplemental retirement plan (SRP), the executive supplemental retirement plan (ESRP), the supplemental savings plan (SSP), and the (discontinued) deferred compensation plan (DCP). The utility seeks to include amounts associated with these four programs in both working capital and O&M. DTE Electric indicates that amounts attributable to incentive compensation have been removed from these expense projections. PFD, p. 122, note 241.

The Staff objected to providing rate recovery for the SRP and ESRP, citing the Commission's prior decisions rejecting these cost categories in Case Nos. U-15244 and U-15768. The Staff states that for these two programs, DTE Electric indicated that it projects $6.2 million in O&M expense, and $50.6 million total liability in working capital.

The ALJ found that the Commission has consistently excluded the SRP expenses (previously referred to as the SERP) and ESRP expenses from rates. December 23, 2008 order in Case

No. U-15244, p. 35; and October 20 order, pp. 66-67. On the other hand, the ALJ noted that the Commission has allowed DTE Electric to recover expenses associated with the SSP, based on the recommendation of the Staff. December 23, 2008 order in Case No. U-15244, p. 34. The ALJ recommended that the proposed expenses associated with the SSP and DCP be allowed in working capital, and that the Commission adopt the Staff's recommendation for exclusion of the SRP and ESRP from working capital.

In exceptions, DTE Electric acknowledges that the Commission has previously denied recovery of SRP and ESRP costs, and that the benefits provided under the ESRP are available to only a select group of employees. But, the utility argues, the SRP is different because it provides the same benefits as are provided to all other participants in the company's pension plans, thus there are no incremental costs. DTE Electric argues that the Commission should not rely on its prior orders, because there is no evidence on this record that these plans in any way encourage improved financial performance; rather, they are merely pension plans. In the case of the SRP, the company contends that it provides benefits identical to the pension benefits offered in the qualified pension plans. 6 Tr 1299, 1304. Finally, the company avers that its executive compensation is 14% less than the midpoint of its peer companies.

In reply, the Attorney General contends that DTE Electric is trying to chip away at the Commission's prior decisions, and urges the Commission to adopt the Staff's adjustments to the SRP and ESRP programs in accordance with the Commission's prior treatment of these expenses. The Attorney General states that the Commission has been very consistent in disallowing recovery of these costs, and asserts that the company made no attempt to show how non-qualified benefit plans directly benefit customers.

The Commission agrees with the ALJ and finds that, while the SSP and DCP expenses are appropriate for inclusion, the SRP and ESRP expense categories must be rejected. They are identical to the expense categories rejected in 2008 and 2011, and the Commission is unpersuaded that circumstances have changed such that it should deviate from the existing treatment of these categories.

3. Other Post-Employment Benefits

DTE Electric projected a negative OPEB expense of $46.1 million for the projected test year, and the Staff agreed with the utility. Brian Welke, Auditor in the Financial Analysis and Audit Division of the Commission, testified that the regulatory liability should accrue annually by the same amount until adjusted in DTE Electric's next rate case, and should be included in working capital.

The Attorney General opposed this proposal, arguing that without deferral treatment this amount would decrease the test year revenue requirement, and the negative OPEB cost should be reflected as an offset to O&M expenses.

The ALJ found DTE Electric's proposal to be reasonable and recommended that the Commission grant the deferral as proposed by the company and supported by the Staff.

In exceptions, the Staff states that it agrees with the company that the deferred OPEB expense should be the net expense, and not the $53.6 million initially identified.

In his exceptions, the Attorney General contends that the utility should not be allowed to defer $53.6 million in negative OPEB expense that could otherwise be used to reduce the current requested rate increase, and argues that this treatment is contrary to the treatment proposed by the Staff in Case No. U-17735 (Consumers Energy Company's most recent rate case).

In reply, DTE Electric avers that the Attorney General failed to cite to any legal or record authority for his proposal. The company claims that customers have already received a benefit from OPEB savings because those savings helped to delay the filing of this rate case. The company also maintains that the savings are temporary, and that a rate reduction should not be premised on a temporary credit.

The Commission agrees with the ALJ and the Staff and accepts the company's proposal for this cost category. The company is correct that the savings are temporary, and the Commission adopts DTE Electric's proposed OPEB expense.

In summary, the Commission finds that the following adjustments should be made to the company's updated case: (1) remove the $4.1 million environmental, $1.5 million AMI, and $6.5 million nuclear related contingency costs; (2) remove the requested $45 million of EVMP for capitalization treatment; (3) remove all expense associated with the NRI from 2012 through the test year; (4) remove COLA costs; and (5) adjust the cost of new generation to $72.9 million (from $110 million). This results in a rate base for the test period of $13,431,968,000.

IV. CAPITAL STRUCTURE AND RATE OF RETURN

DTE Electric requested a capital structure comprised of 50% equity and 50% debt for the test year, an ROE of 10.75%, and an overall rate of return of 5.87%. The Staff recommended the same capital structure, with an ROE of 10%, and an overall rate of return of 5.58%. The Attorney General recommended a capital structure of 48% equity and 52% debt, with an ROE of 9.75%, and an overall rate of return of 5.53%. ABATE recommended an ROE of 9.5%.

A. Capital Structure

DTE Electric, the Staff, and Kroger agreed to a 50/50 capital structure. DTE Electric provided evidence showing that, while a 51% debt ratio was used in its last electric rate case, the company's

debt ratio as of December 31, 2013 was 50%. The Attorney General proposed a 52% debt 48% equity ratio. DTE Electric countered that the company needs a capital structure with a strong equity ratio, in order to offset other risk and maintain access to capital at the lowest possible cost.

The ALJ agreed with the company and the Staff, and recommended that the Commission adopt the 50/50 debt to equity ratio as well as the undisputed capital structure balances proposed by the utility.

No party filed exceptions, and the Commission adopts the findings and recommendations of the ALJ.

B. Debt Cost

DTE Electric and the Staff agreed upon a long-term debt cost of 4.56% and a short-term debt cost of 1.434%, and the ALJ recommended their adoption. No party filed exceptions, and the Commission adopts the recommendation of the ALJ for long and short-term debt cost rates.

C. Return on Equity

The criteria for establishing a fair rate of return for public utilities is rooted in the language of the landmark United States Supreme Court cases *Bluefield Waterworks & Improvement Co v Public Service Comm of West Virginia*, 262 US 679; 43 S Ct 675; 67 L Ed 1176 (1923) and *Federal Power Comm v Hope Natural Gas Co*, 320 US 591; 64 S Ct 281; 88 L Ed 333 (1944). The Supreme Court has made clear that, in establishing a fair rate of return, consideration should be given to both investors and customers. The rate of return should not be so high as to place an unnecessary burden on ratepayers, yet should be high enough to ensure investor confidence in the financial soundness of the enterprise. Nevertheless, the determination of what is fair or reasonable, "is not subject to mathematical computation with scientific exactitude but depends upon a comprehensive examination of all factors involved, having in mind the objective sought to

be attained in its use." *Township of Meridian v City of East Lansing*, 342 Mich 734, 749; 71 NW2d 234 (1955). With these principles in mind, the Commission turns to the factors that form the basis for determining the rate of return for DTE Electric.

Four parties sponsored witnesses and submitted exhibits regarding ROE, and Wal-Mart presented a position. DTE Electric's cost of capital witness was Dr. Michael J. Vilbert, a Principle with The Brattle Group. Harshleen Sandhu, a Financial Analyst in the Financial Analysis and Audit Division of the Commission, presented the Staff's case. Sebastian Coppola testified on behalf of the Attorney General. Christopher C. Walters, a public utility consultant, testified on behalf of ABATE.

DTE Electric's currently applicable ROE was established in 2011 in Case No. U-16472 at 10.5%. The suggested ROEs presented by the witnesses in this case range from a low of 9.5% (ABATE) to a high of 10.75% (DTE Electric). The Attorney General proposed 9.75%, and the Staff supported 10.0%. The ALJ recommended an ROE of 10.0%.

DTE Electric

Dr. Vilbert testified in favor of an ROE of 10.75%. While his recommended range is 9.5% to 10.8%, he chose an ROE in the upper range because he states that DTE Electric has greater than average risk and the Michigan economic environment is challenging. Dr. Vilbert selected a proxy sample of 28 regulated electric utility companies. 7 Tr 1462-1465. To these he applied the Discounted Cash Flow (DCF) approach, the Capital Asset Pricing Model (CAPM), and the Empirical CAPM (ECAPM). He then combined the ROE estimates gleaned from these models with the market value capital structure information and costs of debt and preferred stock for each sample company to compute each company's overall cost of capital or what he called its after-tax weighted-average cost of capital (ATWACC). 7 Tr 1431-1432. DTE Electric states:

> This resulted in a sample average ATWACC for each cost of equity estimation method. He reported the cost of equity consistent with the sample's average estimated ATWACC as if the sample's average market-value capital structure had a 50% equity ratio, which is consistent with DTE Electric's requested capital structure in this case. The best estimate for the range for the cost of equity for an electric company of average business risk and a capital structure with a 50 percent equity ratio is 9.5% to 10.8%; however, DTE Electric has a higher risk than the average company in the electric sample because of economic conditions, as well as Company-specific reasons. Thus, Dr. Vilbert's recommended ROE of 10.75% is based on the financial risk inherent in a 50% equity ratio for DTE Electric, the sample ATWACC estimates, and the relative risk of DTE Electric compared to the sample (7 T 1434, 1456-57, 1468-71, 1487).

DTE Electric's initial brief, pp. 25-26. The utility argued that "The ATWACC is commonly referred to as the weighted-average cost of capital ("WACC") in financial textbooks, and is a fundamental method used by financial economists to measure the cost of capital. The ATWACC is important because it allows an 'apples to apples' comparison between the sample companies' cost of capital estimates and the cost of capital for DTE Electric by eliminating differences in financial risk due to differences in capital structure." *Id.*, p. 25, note 39.

In the CAPM analysis, Dr. Vilbert used the 3.4% yield on 10-year U.S. Treasury bonds forecasted to be in effect in September 2015 adjusted upward by 33 basis points as the risk-free interest rate. 7 Tr 1473. He also used market risk premiums (MRPs) of 6.5% and 7.5%.

Dr. Vilbert's CAPM analyses produced ROE estimates of 9.4% to 9.9%. His ECAPM analyses produced ROE estimates of 9.5% to 10.1% at a 0.5% sensitivity, and 9.8% to 10.4% at a 1.5% sensitivity. 7 Tr 1481-1482. He testified that the most reliable indicator is the second ECAPM scenario. His analysis using the DCF model produced ROE estimates of 10.8% for the single-stage model and 9.6% for the multi-stage model. 7 Tr 1485-1486.

Dr. Vilbert testified that investor confidence remains low and economic conditions have recently weakened, and there is an increase in the cost of capital for all risky investments. 7 Tr 1456-1457, 1508-1509. He stated that southeastern Michigan has a weak economy, and that DTE

Electric has an asymmetrical risk because it owns a nuclear power plant, resulting in a higher than average risk relative to the companies in his proxy group. 7 Tr 1470.

The Staff

The Staff recommended an ROE of 10.00%, the midpoint of its calculated range of 9.75% to 10.25%. 8 Tr 2008. Ms. Sandhu testified that she selected a proxy group of 10 companies, to which she applied the DCF, CAPM and risk premium approaches. 8 Tr 2011-2012. For the DCF analysis she applied an adjusted model known as the semi-annual compounding model. The Staff also averaged the book value growth rate and EPS growth rates from three different sources, in order to remove bias. This resulted in an ROE range of 7.51% to 10.25%. 8 Tr 2017. For the CAPM analysis, she looked at the 1958-2010 time period. The Staff noted that the Commission approved the use of this time period in the November 4, 2010 order in Case No. U-16191, pp. 25-27. For the proxy group, this resulted in an ROE range of 7.29% to 8.39%. 8 Tr 2020. The risk premium analysis yielded an ROE range from 7.71% for A-rated bonds, to 8.06% for BBB-rated bonds. 8 Tr 2020-2021. Ms. Sandhu observed that DTE Electric's credit ratings reflect that the utility is less risky than the proxy group as a whole. 8 Tr 2012.

The Attorney General

Mr. Coppola testified in favor of an ROE of 9.75%. 9 Tr 2339. Mr. Coppola applied the DCF, CAPM, and risk premium analyses, as well as considering current capital markets and any changes to the risk profile of DTE Energy. Mr. Coppola worked with the proxy group used by DTE Electric, but excluded DTE Energy from the proxy group, as well as seven other companies that, he testified, have market capitalization levels that are too low to be useful. The result of the DCF analysis yielded an ROE estimate of 8.44% for the proxy group. His result for the CAPM analysis is an ROE of 9.11%. His risk premium analysis yielded an ROE of 9.7%. Mr. Coppola

calculated a weighted ROE from the three methods using a 50% weight for the DCF analysis, and 25% for the other two, based on his belief that the DCF approach is more reliable than the CAPM and risk premium approaches. 9 Tr 2339-2354. Mr. Coppola opined that the ATWACC approach is an uncommon one.

Mr. Coppola testified that average ROEs approved by state regulatory commissions have steadily declined, from over 12.7% in 1990, to less than 10% for 2014, to 9.66% for the first quarter of 2015. Exhibits AG-18, AG-14.

ABATE

Mr. Walters testified in favor of an ROE of 9.5%. 9 Tr 2437. Mr. Walters undertook an analysis of state regulatory commissions (other than Virginia, which he excluded because that state uses ROE adders based upon the type of installation). He testified that this analysis shows that the average ROE was 10.34% for 2010; 9.8% for 2013; 9.76% for 2014; and 9.67% for the first quarter of 2015. 9 Tr 2420. He opined that DTE Electric's request is substantially overstated. Mr. Walters stated that Standard & Poor's (S&P), Fitch Ratings Inc., and Moody's Investors Service, Inc. (Moody's), have issued reports finding that the utility industry is stable. 9 Tr 2422-2423.

Mr. Walters testified that, since the time of DTE Electric's last rate case, the yield on A-rated utility bonds has decreased by 84 basis points, and the yield on Baa-rated utility bonds has decreased by 69 basis points. 9 Tr 2420. Mr. Walters further testified that the bond ratings for DTE Electric from S&P and Moody's are both two notches higher than the average bond rating assigned to the proxy group companies used by Dr. Vilbert. 9 Tr 2426. He opined that this indicates that DTE Electric has a lower overall investment risk compared to the proxy group. He

also testified that industry analyses describe a favorable regulatory environment in Michigan, offering low operational risk. 9 Tr 2426-2427.

Mr. Walters testified that the ATWACC increase proposed by Dr. Vilbert is devoid of merit. 9 Tr 2430-2434. He opined that the ATWACC approach: (1) does not produce clear and transparent objectives for management to use; (2) produces an overall rate of return which will change based on both changes to market value capital structure weights and based on changes to market capital costs; and (3) unnecessarily increases rates to produce an excessive ROE. 9 Tr 2433-2434. Mr. Walters stated that several other jurisdictions have rejected use of the ATWACC method, including California, Arizona, Ohio, and Wisconsin. He concluded that, after excluding the ATWACC adjustment, DTE Electric's ROE estimates fall in the range of 9.3% to 9.7%, which is consistent with other commissions throughout the United States. 9 Tr 2437.

Mr. Walters also opined that the Staff's recommended ROE of 10% is excessive. He testified that the Staff failed to accurately measure the average authorized returns for the 2013-2014 time period, and used stale data in analyzing the proxy group, which skewed the results higher, because more recent data reflects declining average ROEs.

Wal-Mart

Wal-Mart contended that DTE Electric's use of a future test year reduces regulatory lag for the utility, as does its request to include CWIP in rate base. Wal-Mart noted the national trend toward declining ROEs, and the fact that the economy has improved since 2011 when DTE Electric's ROE was last set. Wal-Mart contended that an ROE around 9.8% would be reasonable.

Proposal for Decision

Beginning with an analysis of the proxy groups, the ALJ found that the Staff's approach, which included defining an upper and lower size boundary for net plant ($5 billion to $25 billion

and exclusion of DTE Energy), provided a proxy group more comparable to DTE Electric in size than either Dr. Vilbert's or Mr. Coppola's proxy groups. That said, the ALJ did not recommend rejection of any of the modeling results, noting that the "comparability of the proxy groups to DTEE can be taken into account in evaluating the model results." PFD, p. 165. Noting that there is no single formula for setting an appropriate return, the ALJ also recommended rejecting various objections made by Dr. Vilbert to the Staff's and the Attorney General's assumptions in the DCF model regarding growth rates, including the fact that the Staff and the Attorney General used annualized dividend yields and growth rates rather than quarterly, the Staff's reliance on multiple sources of information regarding growth rate estimates, and the Attorney General's exclusion of the highest and lowest growth rate estimates. The ALJ found each of these inputs to be reasonable uses of the available information.

ABATE objected to Dr. Vilbert's reliance on the ECAPM model and his use of adjusted betas in that model. The ALJ agreed with ABATE and found that Dr. Vilbert had failed to justify his use of the ECAPM model with adjusted betas. The ALJ noted that Dr. Vilbert acknowledged that adjusted betas are based on empirical observations which are forward looking, whereas the ECAPM is backward looking. PFD, p. 168-169. She found that the empirical adjustments are not supported by theory and that Dr. Vilbert had not cited any peer-reviewed published paper concluding that adjusted betas should be used in an ECAPM model. The ALJ recommended that the Commission place no reliance on the ECAPM results.

DTE Electric challenged the Staff's use of Ibbotson data for the time period 1958 forward, maintaining that the Staff's ROE analysis was biased because the Staff did not use data dating back to 1926. The ALJ recommended rejecting this criticism, finding that use of the Ibbotson risk premium data for the time period 1958 forward "has been thoroughly vetted by the Commission

and used consistently by Staff, so that no further adjustment as called for by DTEE is appropriate," citing Case Nos. U-16191, U-10755, U-7298, and U-6923. PFD, p. 172.

ABATE and the Attorney General objected to the ATWACC adjustment, arguing that it simply reflects the high market value of utility stock relative to book value, and results in an inflated ROE. They contended that the ATWACC adjustment conflicts with the utility's efforts to maintain a particular capital structure and to control costs. The ALJ agreed with ABATE and the Attorney General, and recommended that the Commission reject the results produced by the ATWACC adjustment. The ALJ found that Mr. Coppola showed that market value equity ratios have increased significantly over the last six years, and no party refuted this testimony. She was also persuaded by Mr. Walter's testimony indicating that company and Commission efforts to maintain a balanced capital structure are eroded by this adjustment. The ALJ further found that Dr. Vilbert never addressed the basis for his debt cost assumptions, which will affect the resulting ROE using the ATWACC adjustment. The ALJ could find no reason why DTE Electric should have a market cost of debt assigned, for purposes of this adjustment, that is higher than the proxy group average. PFD, p. 178. The ALJ further found that Dr. Vilbert's embrace of the ATWACC adjustment actually constituted a rejection of the proxy group approach, where he testified that unless the company "has exactly the same capital structure as the average of a statistically large sample," an average will not produce an accurate cost of equity. 7 Tr 1536. The ALJ stated that the ATWACC adjustment has not been adopted by regulatory commissions in the U.S., and recommended that the Commission reject its use.

Finally, the ALJ examined ABATE and Wal-Mart's arguments that Dr. Vilbert's estimation of the risk associated with DTE Electric is inflated. Dr. Vilbert identified sources of risk, which include the lack of a decoupling mechanism, the Michigan and Detroit economies, the choice

program, capital spending needed for environmental compliance and new generation, and the fact that the utility operates a nuclear plant. DTE Electric contended that these factors render its business more risky than that of the proxy companies.

The ALJ agreed with the intervenors, finding that DTE Electric is not more risky than the proxy group companies. The ALJ noted that DTE Electric's bond ratings for secured and unsecured debt are consistent with or better than the proxy groups average, and that DTE Energy's stock has an adjusted beta of .75, which is the sample average for Dr. Vilbert's proxy group. She further noted that S&P characterized DTE Electric as lower risk than DTE Energy. The ALJ found that DTE Electric had not refuted evidence showing that nuclear generation and the lack of a decoupling mechanism do not increase the cost of capital. She further found that DTE Electric's book value capital structure is better than the proxy group average.

In sum, the ALJ recommended that the Commission reject the ECAPM and ATWACC adjustments, as well as the assertion that DTE Electric is riskier than the proxy group companies.

The ALJ also found that Ms. Sandhu, Mr. Coppola, and Mr. Walters provided credible evidence showing that, nationally, average authorized ROEs are at or below 10.0%. The ALJ recommended that the Commission adopt the Staff's proposed ROE of 10.0% as "reasonable and consistent with principles of gradualism and the Commission's previously stated concerns to ensure that DTEE has continued access to capital given the significant capital expenditures facing the company." PFD, pp. 192-193.

Exceptions and Replies

In exceptions, ABATE objects to the ALJ's recommended ROE as excessive. By citing to principles of gradualism, ABATE argues, the ALJ acknowledged that 10.0% is not supported by the modeling. Further, ABATE asserts that the ALJ failed to articulate a basis for the need for

gradualism, particularly in light of the fact that DTE Electric "has earned actual ROEs of at least 50 basis points in excess of its authorized ROEs since 2012." ABATE's exceptions, p. 2, and p. 6, note 14.

ABATE refers to the unrebutted testimony of Mr. Walters showing that average ROEs are declining nationally and are at least 15 basis points below the Staff's claimed average. ABATE contends that the Staff did not take the first quarter of 2015 into account and included stale data, including observations from 2009 and 2010. ABATE maintains that stale data will skew the average lower because ROEs have been steadily declining. ABATE argues that the ALJ's chart is at best confusing, and that she relied extensively on the evidence provided by Mr. Walters, but then invoked "gradualism" to adopt an excessive ROE.

In its exceptions, DTE Electric contends that its ROE should be set at 10.75% because it has greater than average risk. The company claims that the ALJ erred in rejecting use of the ATWACC, because she failed to recognize that capital structure affects financial risk, which in turn affects the estimated cost of equity. The company contends that the ATWACC adjustment allows for an apples-to-apples comparison.

With regard to the historic market risk premium used in the CAPM analysis, DTE Electric notes that the Commission has acknowledged that there is more than one acceptable way to calculate the historical risk premium, and argues that the issue is really a question of weight. With respect to the ECAPM analysis, the company contends that the ALJ's rejection of the adjusted betas amounts to disregarding observed reality. The company objects to what it considers the ALJ's failure to articulate what she considered unrealistic, while rejecting the empirical results. With regard to the DCF analysis, the company continues to advocate removing the book value growth rates from the Staff's average. Finally, the company contends that its relatively high risk

justifies a higher return, arguing that investors have been dramatically affected by the credit crisis. DTE Electric maintains that investor confidence is low, and investor risk aversion is high. The company also asserts that economic conditions have weakened since December 2014. The company posits that, in 2010, the Commission recognized that economic conditions in DTE Electric's service territory were uncertain and the company's risk environment was challenging. *See,* January 11, 2010 order in Case No. U-15768, pp. 20-21. The company further asserts that credit ratings are not intended to measure the risk of an equity investment, and should not be relied upon to show a lack of risk. DTE Electric states:

> In the current environment of low electric demand growth, DTE Electric's lack of a revenue decoupling mechanism or a fixed variable pricing policy places it at increased risk of under-recovering its cost of service relative to some companies in Dr. Vilbert's sample that benefit from such mechanisms (7 T 1466). Moreover, and in addition to ongoing uncertainty in the capital markets (7 T 1432-33, 1440-57), DTE Electric faces increased risk of under-recovery due to Michigan's economy, which is heavily dependent on the auto industry. DTE Electric's service territory is primarily in Southeastern Michigan including Detroit, which has a weak economy (7 T 1467). DTE Electric also requires significant capital expenditures to comply with environmental requirements, and has an asymmetrical risk (downside risk with no corresponding upside) due to owning a nuclear power plant (7 T 1468-71). Therefore, DTE Electric has a higher-than-average business risk relative to companies in Dr. Vilbert's sample (7 T 1470).

DTE Electric's exceptions, pp. 75-76 (note omitted).

In reply, the Staff argues that the company fails to back up its claim of greater than average risk, pointing out that DTE Electric presented no evidence comparing the state economies where the proxy group companies operate to Michigan, or the territories of proxy group utilities to DTE Electric's service territory. On the other hand, the Staff contends that it showed through a comparison of credit ratings that, other things being equal, the rating agencies consider DTE Electric as having a lower business risk than the proxy group companies.

With regard to the DCF analysis, the Staff contends that book value growth rates were just one factor used in the Staff's analysis, and that it is customary and practical to use earnings and

dividend growth rates from Value Line as one factor in the growth component. The Staff further maintains that reports by credit rating agencies should be taken into account, and argues that it would be unreasonable not to review the company's credit rating "in light of a proxy group of similarly situated utilities." Staff's replies to exceptions, p. 24.

In its replies, ABATE reiterates that average ROEs are declining, and argues that the ALJ correctly rejected the ATWACC adjustment, that DTE Electric failed to produce evidence showing an empirical basis for the use of adjusted betas in the ECAPM analysis, and that the utility's risk profile is consistent with or lower than the risk profiles of the proxy group companies. ABATE contends that DTE Electric has over-earned by at least 50 basis points from 2012 to 2014, thus undercutting its own argument that the Michigan economy is weak.

In its replies to ABATE, DTE Electric contends that the regulatory compact requires that rates reflect the cost of providing service plus a reasonable return, and that the ROE should be set at 10.75%. With respect to the allegation of over-earning, the company argues that past revenue cannot be used to impose confiscatory rates in the future. DTE Electric's replies to exceptions, p. 21. The company argues that its ROE should not be set based on what other states are doing, and repeats the rationales for its modeling inputs.

The Commission finds that an ROE of 10.3% will best achieve the goals of providing appropriate compensation for risk, ensuring the financial soundness of the business, and maintaining a strong ability to attract capital. With respect to the modeling results, the Commission has considered the many criticisms leveled on both sides, but does not find it necessary to reject any of the proffered data.

DTE Electric has an ambitious capital investment program, much of which is related to environmental and generation expenditures that are unavoidable and are saddled with time

requirements. The Commission observes that 10.3% is only slightly above the upper point of the Staff's recommended ROE range. Nationally, and in Michigan, ROEs have shown a steady decline, and the Attorney General is correct that Michigan's economy has stabilized; thus, the Commission finds that it is appropriate to reduce DTE Electric's ROE slightly. Unlike the 2010 order cited to by the company, economic conditions in DTE Electric's service territory have improved markedly, and access to credit is no longer an issue. For these reasons, and those cited by the ALJ, the Commission finds that the risk associated with DTE Electric has also decreased, and that an ROE of 10.3% appropriately reflects these changes.

D. Overall Rate of Return

The Commission adopts a 50/50 debt to equity capital structure, a long-term debt cost rate of 4.56%, an ROE of 10.3%, and an overall weighted cost of capital of 5.70%, as shown on the table below:

Description	Amount(000)	Ratio	Cost Rate	Weighted Cost
Short-Term Debt	$299,475	2.21%	1.43%	0.03%
Long-Term Debt	5,165,318	38.03%	4.56%	1.73%
Preferred Stock	-	0.00%	0.00%	0.00%
Common Equity	5,164,758	38.03%	10.30%	3.92%
Deferred Fed Income Tax	2,926,181	21.55%	0.00%	0.00%
JDITC Debt	12,885	0.09%	1.43%	0.00%
JDITC Equity	12,885	0.09%	10.30%	0.01%
Total	$13,581,502	100.00%		5.70%

V. ADJUSTED NET OPERATING INCOME

A. Sales Forecast and Revenue Projection

DTE Electric's proposed sales forecast anticipates an increase in sales of 0.4% through the projected test year, and an increase in sales of about 0.3% annually through 2024. The Staff provided its calculation of present and proposed revenue by rate schedule, and indicated that it accepted DTE Electric's revenue projections. The ALJ noted that no other party objected to, or addressed, the company's sales projections, and therefore recommended that the Commission adopt DTE Electric's proposed sales forecast.

No party filed exceptions on this issue, and the Commission adopts the findings and recommendations of the ALJ.

B. Fuel, Purchase and Interchange Expense

DTE Electric's witness, Kelly A. Holmes, Principal Financial Analyst – Regulatory Economics, provided testimony regarding the company's projected power supply expenses. She stated that DTE Electric is not requesting that the Commission reset the PSCR base cost, but instead that it retain the base factor of 33.39 mills per kilowatt-hour, including a loss factor of 6.8%, which was set by the Commission in Case No. U-15244. The Staff did not object, but presented an adjusted element of the O&M expense to provide consistency with the base factor. The ALJ recommended adopting DTE Electric's projected power supply expenses.

No party filed exceptions on this issue, and the Commission adopts the findings and recommendations of the ALJ.

C. Operations and Maintenance Expenses

DTE Electric projected $1.285 billion in O&M expenses for the 2015-2016 test year. The following issues were contested by the parties.

1. Inflation

In the PFD, the ALJ noted that for many expense categories, DTE Electric used "an inflation rate to project costs from the historical test year to the projected test year, a 30-month adjustment, based on an inflation forecast presented by DTE Electric's witness, Mr. Leuker." PFD, p. 195. The Staff and the Attorney General presented reduced inflation estimates and expense projections based on the company's Competitive and Affordable Rates Strategy (CARS) program. The ALJ stated:

> In light of the existence of DTEE's CARS program, Staff's recommended adjustment, and its abandonment of its initial inflation adjustment, this PFD is organized so that Staff's recommended CARS adjustment is discussed…below, following a review of the specific disputed expense categories. In the intervening sections, the presumption is that DTEE's inflationary projections are acceptable, subject to further adjustment, and Staff's inflation adjustment will not be discussed in the context of any of the specific categories. Likewise, Mr. Coppola's and Mr. Townsend's objections that inflationary projections mask potential savings due to efficiency or productivity and other potential cost reductions are considered as part of the discussion regarding whether or to what extent a CARS-based adjustment is appropriate.

Id., p. 198. The Commission addresses inflation in the CARS section below.

2. Steam Power Generation

According to DTE Electric, its steam power generation O&M expense is projected to be $321,498,000. The following issues were addressed by the Staff and the Attorney General.

a. Limestone and Trona

DTE Electric proposed to include limestone and trona expenses in its current PSCR plan costs, but included these same expenses in its projected O&M expenses in this case. In order to avoid double-counting, the Staff removed these costs from the projected test year expenses in this case. DTE Electric agreed, and no other party objected.

No party filed exceptions on this issue, and the Commission adopts the Staff's adjustment.

b. Other Generation Operations and Maintenance Expenses

DTE Electric proposed $169.7 million for maintenance costs at its steam generating units. The Attorney General disagreed, stating that the 2014 actual expenses of $150.9 million were more appropriate. The ALJ rejected the Attorney General's proposed disallowance, asserting that DTE Electric used both 2013 and 2014 actual expenses to arrive at its estimated costs.

No party filed exceptions on this issue, and the Commission adopts the findings and recommendations of the ALJ.

3. East China Plant

In its O&M expense projections, DTE Electric included $1.1 million for maintenance at the East China plant. When the Staff proposed that the capital expenditures for the plant should be reduced to $68.2 million, DTE Electric agreed, but requested that $2.8 million be added for capital maintenance costs. The only other party to address the East China plant O&M costs was the Attorney General, and he opposed the O&M expense for the same reasons he objected to including the East China plant capital costs in rate base.

The ALJ recommended that the Commission disallow the proposed expense because "it is not clear that DTEE has purchased this plant or when that purchase will be effective." PFD, p. 201.

For the same reasons in its exception set forth above, DTE Electric excepts to the ALJ's recommended disallowance of the East China plant O&M expenses. DTE Electric argues that "the record fully supports and Staff agrees, to cost recovery of the East China capital and O&M costs, subject to the adjustment of adding the $2.8 million of capital maintenance costs, on which Staff was silent." DTE Electric's exceptions, p. 80.

The Staff filed general exceptions regarding the East China plant, requesting that the Commission approve DTE Electric's expenses for the plant.

In its replies to exceptions, DTE Electric states that it agrees with the Staff and incorporates by reference the discussion set forth in its exceptions.

The Staff explains in its replies to exceptions that it supports DTE Electric's projected $1.1 million in O&M expenses for the East China plant, but opposes the company's request for an additional $2.8 million for capital maintenance costs. The Staff argues that, "There is scant evidence supporting this request." Staff's replies to exceptions, p. 12.

Although the Attorney General does not specifically address in his replies the company's proposed $1.1 million O&M expense, he states generally that the "Commission must adopt the ALJ's recommendation regarding the East China Plant." Attorney General's replies to exceptions, p. 4.

For the reasons set forth above in the New Generating Plants section of Rate Base, the Commission approves DTE Electric's $1.1 million in O&M expenses for the East China Plant, but rejects the company's proposed $2.8 million for capital maintenance costs. The Commission agrees with the Staff that the additional $2.8 million for capital maintenance costs was not sufficiently supported in the record.

4. Nuclear Power Generation

Wayne A. Colonnello, DTE Electric's Director of Nuclear Support, testified that the company projected $136.844 million in O&M expenses for Fermi 2. The Attorney General requested a $4.7 million reduction, asserting that 2013 actuals were higher than 2014, and that Mr. Colonnello's explanation for his upward adjustment was not credible. DTE Electric responded that the Attorney General's proposed disallowance is improper because it fails to consider "additional actual outage expenses charged to other appropriate FERC [Federal Energy Regulatory Commission] accounts." DTE Electric's reply brief, p. 55. The ALJ found that "Mr. Colonnello has satisfactorily explained

the difference in 2013 and 2014 refueling expense amounts," and that DTE Electric's projected O&M expenses for Fermi 2 were reasonable and prudent. PFD, p. 203.

No party filed exceptions on this issue, and the Commission adopts the findings and recommendations of the ALJ.

5. Electric Distribution

a. Enhanced Vegetation Management Program

As discussed in the Rate Base section above, DTE Electric requested $45 million in capital spending for its EVMP beginning in 2015, and continuing annually through 2025, for a total of $450 million over 10 years. Instead of a capital expense, the Staff proposed that the Commission treat DTE's EVMP as an O&M expense, and reduce the expense to one-fourth, or $11.25 million, because the plan lacked detail and DTE Electric failed to do a benefit-cost analysis. The Staff asserted that the $11.25 million would sufficiently fund a pilot EVMP, and requested that the Commission require data collection and reports to the Staff. If DTE Electric is able to demonstrate satisfactory performance and value through the pilot program, the Staff stated that it would likely support increased EVMP funding in future rate cases.

The Attorney General recommended that the Commission approve a $25 million disallowance for vegetation management. He stated that DTE Electric's proposed expense is nearly double that approved in Case No. U-16472, and that "It is difficult to go along with a doubling of expenditures on this program without a well defined plan and clear objectives to be achieved." 9 Tr 2294.

In reply, DTE Electric stated that it is gaining experience daily with the EVMP and the company "expects to see reductions in the length of time customers experience outages of up to 40%" and also expects "avoided annual restoration costs of up to $45 million by the time steady state of the EVMP program is reached." 4 Tr 397.

The ALJ agreed with the Staff that DTE Electric failed to provide sufficient evidentiary support for the benefits versus the costs or results of the EVMP. She stated that the Staff's testimony was persuasive, demonstrating that:

> the two examples cited by DTEE from 2008 and 2014 are not sufficient justification for the proposed $45 million annual and $450 million ten-year expenditure level. The 2014 example is too recent, and neither the 2008 nor the 2014 example was accompanied by any detail such as the length of the circuit, the number of customers served by that circuit, the history of storms or the history of other maintenance on that circuit.

PFD, p. 206. The ALJ observed that the presentation by Russell J. Pogats, DTE Electric's Director of Electrical Engineering in Distribution Operations, of Schedule X3 did not provide a benefit-cost analysis, did not explain the basis for the proposed savings or SAIDI, and did not compare the benefits of the EVMP to the benefits that would otherwise be obtained from DTE Electric's existing vegetation management program. The ALJ found the Staff's proposal to approve $11.25 million in EVMP O&M expense reasonable.

DTE Electric filed an exception, stating that it "explained and supported" its EVMP program, and that its "proposed spending level is designed to improve reliability, since vegetation management is the single largest driver of distribution system outages." DTE Electric's exceptions, pp. 80-81.

In its replies to exceptions, the Staff continues to recommend a $42.83 million reduction to the company's capital expenditures for the EVMP, offset by a $14.7 million increase to DTE Electric's O&M expenses for vegetation management. The Staff notes that the ALJ adopted its proposed adjustment, with an additional $2.6 million to account for inflation, and the Staff does not object. However, the Staff continues to assert that the EVMP should not be fully funded until DTE Electric shows that it is properly spending the money on vegetation management and the

EVMP is tested over a sufficient amount of time to demonstrate that the program offers benefits that traditional vegetation management does not.

The Staff also points out that DTE Electric removed $12.4 million from its traditional vegetation management program to account for the overlap in vegetation removal that will occur with the EVMP. Therefore, the Staff argues, "if the Commission adopts an amount higher than a quarter of DTE's proposed EVMP expense…, and if the Commission follows Staff's method by placing EVMP dollars into the O&M budget for vegetation management, the increase…should be multiplied by $12.4 [sic] and backed out of the vegetation O&M budget." Staff's replies to exceptions, p. 11. The Staff asserts that this is consistent with DTE Electric's approach and prevents duplicate funding for vegetation management practices. In the alternative, the Staff recommends adopting a tracker.

The Commission finds that if the goals of the EVMP are accomplished, reliability could be significantly improved. According to DTE Electric, the company's traditional tree-trimming practice "was to trim vegetation within a maximum 15 foot radius centered on the pole-line at the height of the crossarm for the entire length of the circuit," but "leave branches overhanging the poles and wire if those branches were outside the clearance circle and allow trees growing beneath the clearance circle to remain and continue growing upward." 4 Tr 392. By contrast, the EVMP focuses on three zones of a distribution circuit. In zone one, "all vegetation [is removed] within 15 feet of the pole-line from the ground to the sky - no overhang remains and no vegetation rooted within 15 feet of the pole-line remains. In zones two and three, EVMP removes all overhang and any vegetation with potential to grow to a height greater than 20 feet rooted within 15 feet of the pole-line," leaving a "rectangular canyon" around the lines. *Id.*, p. 393; 8 Tr 2094. DTE Electric

avers that the program could provide a reduction in the length of time customers experience outages of up to 40%.

However, the Commission also agrees with the Staff that without a benefit/cost analysis and a longer-term trial basis to demonstrate improved and sustained reliability, it is unreasonable to approve the entire EVMP expense. Therefore, the Commission finds it prudent to adopt the ALJ's recommendation of $11.25 million, as an O&M expense, to fund a pilot program. In addition, DTE Electric shall collect and report to the Staff data that measures the cost and reliability benefit compared to the benefit of DTE Electric's traditional vegetation management program. These reports shall be filed semi-annually in this docket until an order is issued in a subsequent rate case.

b. Traditional Vegetation Management

Along with its EVMP request, DTE Electric proposed $49 million for its traditional vegetation management program and $2 million for removal of hazardous trees outside the ROW. The company stated that its proposed expense for traditional vegetation management is based on 2013 spending and adjusted for inflation.

With reference to its proposed reduction to the company's EVMP, the Staff recommended that the traditional vegetation management expense be calculated using a five-year average of actual spending, adjusted for inflation, with an added $2 million for hazardous tree removal from outside the ROW.

The Attorney General requested a reduction to DTE Electric's proposed expense, asserting that the company has only spent about half of its proposed expense each year since 2008, that a doubling of the expenditures would not achieve a shorter tree-trimming cycle, and his proposed reduction will still allow the company to clear a commendable amount of miles. He recommended

that the Commission approve $50 million, "but allow DTE to split it between O&M and Capitalize as it is proposing or simply through O&M." Attorney General's initial brief, p. 12.

DTE Electric disputed the Staff's five-year calculation, arguing that it does not adequately consider the effects of inflation from year to year. In addition, the company argued that the Staff's proposed expense limits the number of miles DTE Electric would be able to clear and "will cause customers to experience significantly higher outage volumes (a 500% to 600% increase when compared to a five-year cycle), considerably increased customer restoration costs and dramatically declining customer satisfaction." 4 Tr 410. DTE Electric noted that it has consistently been in the fourth quartile for SAIDI, and accordingly, with the added expense, the company hopes to improve service for its customers.

The ALJ recommended that the Commission adopt the Staff's proposed expense with one adjustment. The ALJ agreed with Mr. Pogats that the Staff's proposal to use a five-year average failed to account for inflation during the entire period. However, the ALJ found Mr. Pogats' inflation calculation unpersuasive, and instead provided her own calculation, increasing the Staff's inflation-adjusted five-year average expense by $2,593,200 to fully account for inflation.

No party filed exceptions on this issue, and the Commission substantially adopts the findings and recommendations of the ALJ. Specifically, the Commission approves the Staff's five-year average of $49.9 million for DTE's vegetation management program, with an additional $2 million for hazardous tree removal and the $2.6 million inflation adjustment proposed by the ALJ. In addition, the Commission directs the company and the Staff to meet within 90 days of the date of this order to discuss future analysis of the ROW program.

c. Other Distribution Operations Expenses

According to Mr. Coppola, DTE Electric's "projected operating expense is $8.2 million less than the historical period, [but] this is the result of some unusually high expenses that were recorded in 2013 and a more accurate and recent comparison is the 2014 period." Attorney General's initial brief, p. 8. As a result, Mr. Coppola recommended that the proposed distribution operations expenses be reduced by $16.4 million, along with the $5.9 million of cost inflation from 2013 to 2014, for a total reduction of $22.3 million. *Id.*, p. 9.

DTE Electric asserted that Mr. Coppola inappropriately combines 2014 as the historical test year with adjustments made for 2013 as the historical test year. 4 Tr 408. In his testimony, Mr. Pogats explained that the higher 2013 expenses were the result of storm costs inadvertently recorded in multiple FERC accounts, and the company failed to identify the mistakes until recently. The company reiterated that Schedule X9 of Exhibit A-34 demonstrates the projected expenses using 2014 as the base.

The Attorney General disagreed, arguing:

> Mr. Pogats' adjustments to the 2014 [sic] as a historical test year are nothing more than stated adjustments with no justification other than a paragraph in rebuttal making the adjustments. (Tr 408.) Mr. Pogats' adjustments for vegetation management in 2014 is based on a new vegetation management program that wasn't in existence in 2013, and thus cannot support the adjustments since they involve different metrics discussed elsewhere in DTE's testimony.

Attorney General's initial brief, pp. 9-10. He claimed that Mr. Pogats admitted that the 2016 projected expense is $3 million higher than the company's analysis of the 2014 historical test year, and at a minimum, the ALJ should adopt the $3 million reduction as set forth by DTE Electric.

DTE Electric responded that the Attorney General's argument on this issue is meritless, and for reasons previously discussed, the company did not support any reduction. Regarding the Attorney General's alternately proposed $3 million reduction, the company stated, "The $3 million

is simply the result of a proper O&M determination if one were to use 2014 as the historical test year without misapplying 2013 adjustments, but it would still be improper to selectively use 2014 or any other year for purposes of this calculation instead of consistently using the 2013 historical test year." DTE Electric's reply brief, p. 60.

In her decision, the ALJ explained:

> While the Attorney General is correct that DTEE did not explain the basis for the erroneous accounting complicating the analysis of this expense category, this PFD concludes that Mr. Pogats did establish a reasonable basis for the company's projection, when the combined accounts are considered, and did establish that the "normalizing adjustments" DTEE made to 2013 are not applicable to 2014 actuals.

PFD, pp. 213-214. She recommended that the Commission reject the Attorney General's proposed reduction.

The Attorney General filed an exception, reiterating the same arguments set forth in his initial brief and reply brief. He stated that DTE Electric's explanation for the accounting mistake does not fully explain the error, and that the company's "new explanation should not be found to be reasonable since it failed to explain the basis for the earlier erroneous accounting analysis, thus calling into question the new explanation and the witnesses' credibility." Attorney General's exceptions, p. 8. Accordingly, the Attorney General requests that the Commission adopt his proposed $22.3 million reduction.

In its replies to exceptions, DTE Electric agrees with the ALJ's analysis and conclusion, and reiterates the arguments set forth in its initial brief, reply brief, and exceptions.

The Commission agrees with the ALJ that DTE Electric provided a reasonable and satisfactory explanation for its accounting error and the company's projected expenses. The Commission finds Mr. Pogats' testimony credible and concurs that "normalizing adjustments" are unnecessary when

starting with 2014 as the historical test year. *See*, 4 Tr 408. Therefore, the Commission declines to adopt the Attorney General's proposed adjustments.

6. Pension and Benefits

Jeffrey C. Wuepper, DTE Electric's Director of Compensation & Benefits, provided the company's projections for employee benefits and pension expenses. DTE Electric asserted that in its original filing, the company projected its pension expenses to be $137.1 million. However, after an update, the company requested that the pension expense be increased by $6.3 million.

The ALJ noted that no party disputed the company's projected pension expense. However, the ALJ found that "Mr. Wuepper… did not revise his testimony or his exhibit… and since he acknowledged the interrelationship between retirement assumptions and active employee costs…this PFD finds DTEE's request [for a $6.3 million increase to pension expense] unsubstantiated and inappropriate." PFD, p. 214, note 447.

In its exceptions, DTE Electric argues that the $6.3 million adjustment is "supported and appropriate, as even the PFD's discussion tacitly indicates by citing DTE Electric's evidence and Initial Brief." DTE Electric's exceptions, p. 82. DTE Electric states the ALJ's requirement of testimony or a revised exhibit is unnecessary because the record already contains sufficient evidence, specifically, Exhibit A-31, Schedule U-1. In addition, the company asserts that Exhibit A-36 shows the Staff's response to DTE Electric's discovery request, "wherein Staff witness Welke agreed that the updated pension costs reflected on Exhibit A-31, Schedule U-1 was an acceptable alternative to the Company's 2014 projection." *Id.*, p. 83.

The Staff states in its exceptions that it supports DTE Electric's $6.3 million adjustment.

In its replies to exceptions, DTE Electric incorporates by reference the discussion from pages 82-83 of its exceptions, and asserts that it is in agreement with the Staff's recommendation.

The Commission finds that the company's pension expense should be increased by $6.3 million. Agreeing with DTE Electric and the Staff, the Commission finds that there is sufficient evidentiary support in the record to support the $6.3 million increase.

Several parties contested OPEB, active employee health care, other benefit programs for active employees, the savings plan, non-qualified benefit plans, and the employee incentive compensation plans, which are addressed below.

a. Other Post-Retirement Employee Benefits

As discussed above, DTE Electric explained that its OPEB costs are expected to decrease from a negative $24.7 million in the historical test period to a negative $78.3 million in the projected test year. The company stated that the additional negative $53.6 million OPEB expense should not be included in the proposed revenue requirement, but instead, should be deferred as a regulatory liability. The Attorney General disagreed, and argued that the negative $53.6 million OPEB expense should be applied as a reduction to DTE Electric's revenue requirement.

Consistent with her decision in the Rate Base section of the PFD, the ALJ recommended that the Commission adopt DTE Electric's proposed accounting treatment for the negative OPEB expense.

On page 5 of his exceptions, the Attorney General asserts that "DTE has changed the treatment of the OPEB negative expense for its own benefit – prevent [sic] it from being used to reduce its current requested rate increase and reap its benefit in the future during the time between rate increases." In addition, the Attorney General argues that the proposed accounting treatment conflicts with the treatment proposed by the Staff of a similar negative OPEB expense in Consumers' most recent electric rate case. Consequently, the Attorney General requests that the

Commission reject the ALJ's recommendation and apply the negative OPEB expense to the revenue requirement.

DTE Electric replies that "The AG's exception mischaracterizes the Company, and is unsupported by any citation to the record or legal authority." DTE Electric's replies to exceptions, p. 15. DTE Electric reiterates that customers have already benefitted from the OPEB savings, the large negative OPEB amount is temporary, and it would not be prudent or reasonable to base a rate reduction on a non-recurring temporary credit. *Id.*, p. 16.

As discussed above, the Commission approves DTE Electric's proposed accounting treatment of the negative OPEB expense.

b. Active Employee Health Care

Regarding its health care costs for active employees, DTE Electric projected an increase of 6.5% in 2014, and 7.5% annually for 2015 and 2016. The Attorney General proposed using an inflation rate of 3%, asserting that based on actual cost changes, 3% is a much more reasonable level of increase. Thus, he recommended that the active employee health care expense be reduced by $10 million.

DTE Electric responded that the Attorney General incorrectly applied the 3% inflation rate. Mr. Wuepper stated:

> Since retiree healthcare costs are separately recognized within Other Post-Employment Benefits (OPEB), the actual payments related to retirees are properly excluded from the Active Healthcare Costs. Thus, AG Witness Coppola has applied the lower 3% healthcare escalation rate to the Healthcare, Dental and Vision costs, which include the retiree payments, without also adjusting the subtraction for the lower escalation rates, as reflected on lines 11 through 17 of Exhibit A-33, Schedule W-4. By reducing the escalations for all healthcare costs while not reducing the escalations in the Actual Retiree Benefits Payments, AG Witness is understating the Company's projected Active Healthcare cost.

6 Tr 1306.

On page 216 of the PFD, the ALJ determined that DTE Electric's "use of the higher inflation rates is reasonable, based on an actuarial analysis, and the potential for DTEE to keep costs in line with lower inflation rates" would be discussed further in section 10 of the PFD.

No party filed exceptions on this issue, and the Commission adopts the findings and recommendations of the ALJ.

c. Employee Savings Plan

The Attorney General disputed DTE Electric's projected wage increase of 4.2% for 2014 and 4.65% for 2015 and 2016. In his opinion, the company's proposed wage increase "seem[s] excessive during a period of economic stagnation and lower household incomes experienced by Michigan residents," and instead recommended a 2% increase, which aligns with "the historical wage increase during the past three years." Attorney General's initial brief, p. 29.

In response, DTE Electric asserted that the Attorney General's proposal is unsupported and unreasonable. DTE Electric argued that its wage increase projections were calculated by its consultant, Aon Hewitt, that the company's projections are more reliable than the Attorney General's, and that they should be adopted by the ALJ.

The ALJ stated, "Consistent with the discussion above, this PFD recommends that the Commission accept DTEE's cost projections for this category." PFD, p. 216.

The Attorney General filed an exception, stating that the company's "own analysis, provided in discovery and discussed in the Attorney General's direct testimony, provide a much lower inflation increase for projecting employee savings plan expenses. Accordingly, DTE Electric did not satisfy its burden of proving the reasonableness of a higher inflation rate." Attorney General's exceptions, p. 9.

In its replies to exceptions, DTE Electric reiterates the arguments set forth in its initial and reply briefs, and requested that the Commission approve the ALJ's recommendation.

The Commission agrees with the ALJ, and accepts DTE Electric's employee savings plan expense projections. The Commission finds that the company provided sufficient evidence through Mr. Wuepper's testimony, the inflation projections provided by Aon Hewitt, and Exhibit A-10, Schedule C5.9, page 1.

d. Non-qualified Benefit Plans

DTE Electric's Exhibit A-10, Schedule C5.9 provides the projected costs for the company's non-qualified benefit programs. As discussed above, the Commission disallowed $6.2 million for DTE Electric's SRP and ESRP expenses. Although the Attorney General recommended excluding all non-qualified benefit expenses for a total of $8.1 million, the ALJ determined that "Consistent with prior orders, and in the absence of any new information, this PFD finds that those costs may be included in the projected benefit costs." PFD, p. 217.

DTE Electric filed the only exception, expressing support for the ALJ's recommendation. In his replies to exceptions, the Attorney General reiterates the arguments set forth in his initial brief, requesting that the Commission disallow recovery of non-qualified benefit plans.

The Commission finds the ALJ's conclusion persuasive, and rejects the Attorney General's proposed reduction.

e. Incentive Compensation

For its executives and non-represented employees, DTE Electric proposed the Annual Incentive Plan (AIP) and the Rewarding Employees Plan (REP), short-term incentive compensation programs, and the Long Term Incentive Plan (LTIP), requesting approximately $39 million to fund these programs. In his testimony, "Mr. Wuepper provided a detailed description of

the design and mechanics of these plans, including the metrics used to track Company performance, the method for setting Company performance level targets, and the conditions for payment of incentive compensation (6 T 1264-71; Exhibit A-20, Schedules L1, L2, L3 and L4)." DTE Electric's initial brief, p. 98. DTE Electric asserted that it is the company's policy to offer total compensation, including incentive compensation that is competitive with its peer groups. *Id.*, p. 99.

According to DTE Electric, the AIP applies to officer-level employees and directors. Mr. Wuepper testified that the "defined measures and weightings in this plan pertain to financial performance (50%), customer satisfaction (18%), employee engagement (16%) and operating excellence (16%)." 6 Tr 1264. He provided a detailed explanation of the AIP operating metrics, including customer satisfaction, employee engagement, and operating excellence, customized for the specific business units. *See*, 6 Tr 1265-1267. The financial measures for the AIP are based on the operating earnings and cash flow of DTE Electric's and DTE Energy's earnings per share. *See*, 6 Tr 1265. DTE Electric asserted that a target is set for each measure for which a normal payout will be earned. However, the company stated that performance less than the target, but above a minimum threshold, will result in a payout of between 25% of target and target. Performance of up to the maximum leads to a payout of up to 175% of the target. *Id.*

Mr. Wuepper testified that the REP is identical to the AIP:

> except that the maximum performance payout is 150% of Target. In addition, the weightings of the measures related to the Gallup survey of employee engagement and the NSC [National Safety Council] Barometer survey are eliminated in recognition that the Company's leadership is responsible for providing an environment of high employee engagement and a culture that values employee safety. The weightings of the measures for Customer Satisfaction Improvement Program and Fossil Power Plant Reliability are each increased by 2% and the OSHA [Occupational Safety and Health Administration] Recordable Incident Rate measure is increased by 6%, to reflect the direct impact employees can have on such measures.

6 Tr 1268. All non-represented employees may participate in the REP.

DTE Electric contended that the LTIP "provides the opportunity for certain individuals to receive retention oriented or performance based rewards delivered via shares of DTE Energy common stock, either through restricted shares or performance shares, which are based on the achievement of multiyear performance objectives." 6 Tr 1269. Mr. Wuepper testified that 30% of the value of awards is through restricted shares and 70% through grants of performance shares for executives, whereas 100% of the awards to non-executives are through performance shares. *Id.*, pp. 1269-1270. He described the performance share measures, stating that the predominate measure (60%) is based on the total return to DTE Energy shareholders compared to a group of peer companies over the next three years. *See*, 6 Tr 1270. LTIP is available to "all executives, directors and managers as well as an additional 10% of non-represented employees that are eligible for discretionary awards." *Id.*, p. 1251.

DTE Electric argued that the Commission may approve the AIP, REP, and LTIP based on the test provided by the Indiana Utility Regulatory Commission, and the criteria set forth in the October 20 order. To show that the benefits of the incentive compensation programs exceed the costs, Mr. Wuepper sponsored a benefit-cost analysis in Schedule L5 of Exhibit A-20, demonstrating benefits of $143.1 million compared to $39 million in program costs. He also described the benefits of the financial metrics, such as O&M savings from a motivated workforce and avoided interest costs, and the benefits of the operating metrics, including reduced call volume and complaints, reduced absenteeism, increased productivity and safety, and reduced outage minutes. *See*, 6 Tr 1276-1282.

The Staff stated that in prior orders, the Commission disallowed all incentive compensation expenses because they are based on financial criteria, such as company earnings and cash flow,

and because the plans primarily benefit shareholders, not ratepayers. Accordingly, in the immediate case, the Staff recommended 100% exclusion of DTE Electric's incentive compensation costs "because several of the plan's metrics relate to achievement of financial goals." Staff's initial brief, p. 47. In addition, Mr. Welke noted that "A significant portion of the projected net benefit, $81 million, is related to meeting 'threshold,' 'target' or 'maximum' performance levels in 'Electric Distribution System Reliability,'" but this metric "has not been achieved in the past." 8 Tr 1955. In conclusion, the Staff found the benefits set forth by DTE Electric to be "illusory," and that ratepayers should not pay for incentive compensation plans that "largely benefit shareholders." Staff's initial brief, p. 48.

The Attorney General also opposed the incentive compensation expenses. In his opinion:

> half of the incentive payout at target level for both the AIP and REP relates to the Company and its parent, DTE Energy, achieving net income, earnings per share and cash flow goals. (Tr 2037.) Although the Company claimed that these goals somehow benefit the customers, Mr. Coppola explained that there was no direct relationship to customer benefits. (Tr 2307.) The goals are in place to maximize profit and increase cash flow to pay dividends to shareholders.

Attorney General's initial brief, p. 23. And as for the LTIP, the Attorney General argued, the plan is "strictly designed to induce management to create shareholder value." *Id.*, p. 24.

While Energy Michigan did not advocate for or against DTE Electric's incentive compensation plans, it recommended several modifications to the proposed expenses. Energy Michigan expressed concern that the incentive compensation plans fail to link performance metrics to customer benefits, and the plans fail to separate distribution service benefits from power supply service benefits. In the event the Commission approves the incentive compensation plans, Energy Michigan requested that the plans be structured so as to ensure that they correctly reflect true cost-of-service principles.

The ALJ recommended that the Commission continue to exclude the incentive compensation expenses for several reasons. First, the ALJ stated that "the program expenditures are all contingent on performance meeting the target levels," and the company has failed to meet reliability targets in 2013 and 2014. PFD, p. 223. Also, for the AIP and the REP, there is "uncertainty about the amount of the potential payout" to individuals. *Id.*, p. 224. Second, after reviewing the financial and operational metrics of the plans, the ALJ determined that the benefits do not outweigh the costs. Third, citing the Attorney General's argument against the LTIP, the ALJ found that DTE Electric "has not shown that the metrics are consistent with the ratepayers' interests." *Id.*, p. 228.

In its exceptions, DTE Electric reiterates the arguments presented in its initial and reply briefs. Regarding the claim that the company failed to achieve its target performance on Electric Distribution System Reliability in 2013 and 2014, DTE Electric asserts that:

> (1) DTE Electric exceeded the target in 2012; (2) the Company sets performance goals that reflect year-over-year improvements, so there is considerable stretch built into each successive year's goal, and (3) actual Electric Distribution System Reliability performance varies significantly from year to year, based primarily on the number and severity of storms in the Company's service area (6 T 1290). Moreover, even if the Company fails to meet this particular target performance, customers would still receive a net benefit if the Company achieved target performance on all other metrics. It would be patently unreasonable to completely disallow all incentive compensation cost recovery based simply on the absence of certainty that the Company will achieve one ever-increasing goal, where customers still realize a net benefit from the Company's achievement of other goals (6 T 1291, 1294-95).

DTE Electric's exceptions, p. 88 (notes omitted). In response to the ALJ's determination that there is uncertainty regarding the amount of payout to individuals, the company argues that there is no evidence on the record to assess the impact of any individual performance adjustments, and therefore, the ALJ's conclusion is unfounded. DTE Electric restates that the customer benefits of the incentive compensation plans outweigh the costs.

In his replies to exceptions, the Attorney General reiterates the arguments presented in his initial brief and reply brief, and recommended that the Commission adopt the ALJ's conclusion.

Over the past 10 years, the Commission has rejected DTE Electric's proposed incentive compensation expenses because the company failed to demonstrate that the costs to ratepayers correspond with the benefits. However, in the immediate case, the Commission finds that DTE Electric provided convincing evidence that the operating **(**non-financial**)** measures for the AIP and REP provide appreciable benefits to customers, and meet the standard set forth in the April 28, 2005 order in Case No. U-13898 (April 28 order) and the December 23, 2008 order in Case No. U-15244 (December 23 order). *See*, 6 Tr 1256-1284. According to DTE Electric, the benefits to ratepayers of its operating measures in the AIP and REP are customer satisfaction, employee engagement, and operating excellence. *See*, 6 Tr 1265-1268. Mr. Wuepper gave extensive testimony, stating:

> The Company has performed a comprehensive analysis of the customer benefits that would be derived from the achievement of the financial and operating metrics included in the Company's short and long-term incentive plans relative to their costs. This analysis, as reflected on Exhibit A-20, Schedule L5, demonstrates that the expected aggregate benefits will significantly exceed the costs of these programs. While certain individual measures, such as customer satisfaction and certain safety related objectives provide benefits that defy precise quantification; there should be little serious dispute as to the qualitative value of such metrics. Indeed, the Company is well aware of the frustration experienced by customers when outstanding issues are not promptly resolved, even though the value of the elimination of that customer frustration is not readily estimated. The inability to precisely quantify the customer benefit in no way diminishes its value. Further, the greatest benefits achieved through improved safety performance are the avoided injuries or property damage made possible through an increased emphasis on safe work habits and conditions.

6 Tr 1275. The Commission concludes that the benefits of the operating measures are commensurate with the cost to ratepayers, and as a result, approves the portion of the short-term incentive compensation plans attributable only to the operating measures of customer satisfaction,

employee engagement, and operating excellence, for a total of $14.487 million. In regards to the financial measures of the short-term incentive compensation plans, the Commission finds that there is insufficient evidence to conclude at this time that the benefits to ratepayers are significant and therefore, they are not approved in this proceeding.

Similarly, regarding the LTIP, the Commission finds that the company failed to demonstrate that the benefits to ratepayers are commensurate with the costs. The LTIP is tied too closely to company earnings and cash flow measurements that overwhelmingly benefit shareholders. The Commission notes that under the proposed LTIP, certain individuals would receive restricted shares or performance shares. In reference to the performance shares measures, Mr. Wuepper stated:

> These measures reflect the long-term financial performance of DTE Energy that is intended to motivate employees of the individual operating companies, such as DTE Electric, to keep in mind the role of their own contributions to the overall success of DTE. Accordingly, the predominate measure (60%) is the total return to DTE Energy shareholders (i.e., capital appreciation and dividends) relative to a group of peer companies over the next three years…. An additional 20% is based on the balance sheet health of DTE Energy as measured by the Funds from Operations (FFO) to Debt ratio…. The third measure that contributes 20% to the weighting is the actual DTE Electric Average Return on Equity for 2014 through 2016.

6 Tr 1270-1271. Consequently, the Commission finds that DTE Electric's LTIP does not meet the criteria set forth in the April 28 and December 23 orders and may not be approved.

Finally, it should be noted that Energy Michigan did not file exceptions or replies, and therefore the Commission declines to address its proposed changes to DTE Electric's incentive compensation plans.

7. Corporate Staff Group

DTE Electric proposed $165.4 million for corporate services, a decrease of $3.4 million from the adjusted 2013 historical test year, which was the result of an accounting change. DTE Electric

noted that the accounting reduction was offset by several cost increases, one of which was a $5 million projected increase in IT costs.

The Attorney General requested that the $5 million IT expense increase be rejected, stating that the costs were "vague," and that there was "no firm plan" for the IT expenses. 9 Tr 2303.

The ALJ determined that "DTEE has not established that it has a plan for the incremental $5 million expenditure above its normalized and inflation-adjusted projection for the test year, and recommends that Mr. Coppola's adjustment be adopted." PFD, p. 230.

DTE Electric filed an exception, reiterating the arguments set forth in its reply brief.

In his replies to exceptions, the Attorney General repeats the arguments set forth in his initial brief, requesting that the Commission disallow the $5 million IT expense.

The Commission finds that DTE Electric provided sufficient detail and support for its proposed IT expenses. During Ms. Uzenski's testimony, she stated:

> The forecasted increase on line 13, column (j) is due to the structural change in the way software technology is packaged, purchased, and deployed. The pace of change in computing and data technology, hardware and applications is causing a shift to leasing technology support instead of purchasing it. For example, we are planning to use more cloud-based solutions for applications such as Microsoft Office and e-mail. These applications are designed for web deployment where users share processing power and space that is managed by the vendor. Most often these programs are leased as part of a pay-as-you-go subscription model instead of purchasing user licenses.

6 Tr 1039-1040. In the Commission's opinion, cloud-based technology is a present-day, proven, and sensible IT solution. And, in the interest of providing customers with safe, reliable, punctual, and quality service, the Commission finds it reasonable to provide DTE Electric with sufficient funds to update its software to prevent it from becoming obsolete. Therefore, the Commission rejects the Attorney General's proposed $5 million adjustment.

8. Uncollectibles Expense

DTE Electric projected a $52.8 million uncollectibles expense based on 2013 expense levels. The Staff recommended two alternative methods to project the uncollectibles expense. The first method applied the three-year average percentage of net writeoffs to forecasted revenues, resulting in a projected $56.6 million uncollectibles expense. The Staff admitted that the method is not perfect, but that it "mitigates [the] potential for forecasting error and high period-over-period volatility." Staff's initial brief, p. 45. Regarding the second method, the Staff proposed using DTE Electric's actual 2014 uncollectibles expense of $49.5 million; or, the Staff indicated, it would also be acceptable to use the more recent projection of $42 million that was provided to the company's shareholders.

The Attorney General reviewed DTE Electric's projected uncollectibles accounts and found that over the last three years, there has been a decline of approximately $35 million. He noted that DTE Electric projected that its uncollectibles expense for 2015 will be $42.7 million, and for 2016, $40.9 million, resulting in an average of $41.8 million. Mr. Coppola testified that "the $41.8 million uncollectible expense level is more representative of the amount that will likely occur in the projected test year than the $52.8 million that the Company has projected in this rate case filing." 9 Tr 2301. The Attorney General objected to the Staff's three-year average method, stating that "Such an approach is only appropriate when uncollectible expense has been rather stable from year to year," and in this case there has been a dramatic downward trend, and therefore, the Staff's approach would be "grossly inaccurate." *Id.*, p. 2302. However, he agreed with the Staff's alternative suggestion of using the $42 million projection provided to shareholders, asserting that it matches Mr. Coppola's recommendation.

DTE Electric accepted the Staff's higher projection of $56.6 million, but did not advocate for the Staff's method.

The ALJ recommended that the Commission approve DTE Electric's 2014 actual uncollectible expense of $49.5 million, agreeing with the Staff that "this approach is consistent with the approach DTEE used in its rate filing, but with updated information." PFD, p. 232. She noted that Renee M. Tomina, DTE Electric's Director-Revenue Management & Protection, testified that the company is working to reduce its uncollectibles expense with an increased use of technology, and because the economy seems to be improving, "it is appropriate to use the most recent annual value." *Id.*, p. 233. The ALJ rejected the Staff's three-year average method, stating that the company opposed the methodology and "the Attorney General has identified a significant concern with the use of the three-year average, that it masks trends." *Id.*

On page 98 of its exceptions, DTE Electric objects to the ALJ's recommendation, stating that "uncollectible expense levels can be extremely volatile" and the Attorney General's "suggestion" that there may be a downward trend, "is not enough to support a decision by the Commission." The company asserts that the Staff's proposed $56.6 million expense is more appropriate in this time of volatility, and should therefore be adopted.

ABATE replies that it "supports DTE's proposal because of its consistency with cost of service principles, the NARUC [National Association of Regulatory Utility Commissioners] Electric Utility Cost Allocation Manual, and the decision of the Commission, Case No. U-17689, cited in the PFD." ABATE's replies to exceptions, p. 9 (note omitted).

The Commission finds the PFD well-reasoned, and adopts the ALJ's recommended uncollectibles expense of $49.5 million.

9. Injuries and Damages

DTE Electric and the Staff each projected an injuries and damages expense consistent with the five-year average method approved in Case Nos. U-15244, U-15768, and U-16472. DTE Electric projected $20.3 million for the test year, and the Staff calculated $20.622 million for the expense. Subsequently, DTE Electric adopted the Staff's proposed expense. The Staff later acknowledged that its calculation contained a double-counting error, but because the proposed expenses were so similar, the Staff ultimately recommended that the ALJ approve $20.622 million for the expense.

Noting that the Staff's calculation included a double-counting error and that DTE Electric's projected expense was calculated using the Commission-approved five-year average method, the ALJ recommended that the Commission approve the company's proposed $20.3 million expense.

On page 99 of its exceptions, DTE Electric states that the Staff "supported its projection of $20.6 million (Staff reply brief, p 13) and DTE Electric agreed. There is no basis for the PFD's suggestion that DTE Electric was somehow required to argue against its initial projection (PFD, p 234)." Therefore, DTE Electric requests that the Commission approve $20.622 million for its injuries and damages O&M expense.

The Staff asserts in its exceptions that it "is maintaining the position that it took in its reply brief," and is recommending that the Commission approve $20.622 million, which is the "Staff's proposed expense after removing the amount it double counted." Staff's exceptions, p. 8. The Staff notes that DTE Electric accepted this adjustment.

In its replies to exceptions, DTE Electric incorporates by reference the discussion on page 99 of its exceptions, and states that it agrees with the Staff's recommendation.

The Commission agrees with the Staff and DTE Electric and adopts the Staff's proposed injuries and damages expense of $20.622 million.

10. Competitive and Affordable Rates Strategy

During the course of an audit, the Staff identified approximately $78 million in projected O&M cost reductions that were presented to DTE Electric's investors, but were not incorporated in the company's rate filing. *See*, 8 Tr 1956-1957. The Staff believes the cost reductions are most likely achievable, but only recommended a $59 million adjustment.

DTE Electric objected, arguing that the "Staff never should have considered any CARS reduction in the first place." DTE Electric's reply brief, p. 108. Ms. Uzenski stated that the $59 million was a target for all of 2016, which was split into three parts: (1) $22 million for DTE Electric's updated capitalization policies; (2) $20 million for "aspirational cost reductions;" and (3) $17 million for inflation. 6 Tr 1063. In addition, Ms. Uzenski testified that "implicit in the CARS targets is the assumption that operating savings will offset inflation." *Id.* DTE Electric argued that if the Commission were to approve a CARS reduction and the Staff's separately proposed $15 million inflation adjustment, the inflation-based reduction would be double-counted.

Although Ms. Uzenski acknowledged that O&M projections for the net income forecasts are less than the O&M expenses presented in the company's rate filing, she explained that the discrepancy involves $30 million for projection methodology differences; $11 million for generation-related expenses for limestone and trona to be recovered through the PSCR; $20 million for CARS, excluding the effects of inflation; $23 million for decreased inflation (including $17 million for CARS); and a $6 million offset for miscellaneous increases. In the event the Commission approves a cost reduction associated with CARS, Ms. Uzenski stated that "a reasonable amount is $14 million to reflect the $20 million of CARS targets that were not included already in the case, offset by $6 million of other increases in budgets noted above." 6 Tr 1064.

The Attorney General and Kroger each presented arguments regarding inflation. The Attorney General requested that the Commission set rates to "challenge the Company to significantly modify its existing cost structure and help it achieve its CARS objective." 9 Tr 2291. He recommended that the Commission reject inflation adjustments that are above historical cost levels, and consider his adjustments to specific expense categories. Neal Townsend, Principle at Energy Strategies, LLC, testified on behalf of Kroger that he disagreed with how DTE Electric applied a generic inflation factor to its labor and non-labor O&M expenses, and recommended a $24 million reduction to non-labor inflation projections.

The ALJ found the Staff's proposed CARS cost reduction "well-supported and reasonable." PFD, p. 237. The ALJ explained that:

> DTEE's presentation of alternative projections to its investors and to its Board of Directors while this case was pending undermines its claim that its expense projections are based on known and measurable changes, since it is clearly no longer supporting these projections. Staff's adjustment is a reasonable reflection of the uncertainty in DTEE's costs projections.

Id., pp. 237-238. And, regarding the Attorney General's and Kroger's proposed changes to inflation, the ALJ stated:

> The Attorney General's arguments regarding the individual expense categories have been evaluated in the various sections above, and while his concerns regarding DTEE's projections for those categories may be covered by the CARS targets, Staff's approach of a single adjustment seems preferable to provide the flexibility as Staff argues. While this adjustment also does not directly adopt Kroger's recommendation, it is consistent with the idea that inflationary pressures are often offset by productivity increases.

Id., p. 237. Finally, the ALJ noted that DTE Electric's request for additional vegetation management expense was separately addressed in the PFD and she was unable to find a connection between the proposal to capitalize EVMP spending and the appropriate amount of CARS savings to include in the case. *Id.*, p. 238.

In its exceptions, DTE Electric states that the company "continues to support its projections. The CARS targets are aspirations – not projections – and may not be achievable. Furthermore, DTE Electric's position already reflected the impact from updated capitalization policies totaling $22.4 million that were a part of the CARS targets." DTE Electric's exceptions, p. 101. And, in response to the ALJ's comments regarding the relationship between capitalized EVMP spending and CARS, the company argues that if DTE Electric's request to capitalize EVMP is rejected, any funds approved for EVMP will be shifted to O&M; correspondingly, if CARS cost reductions are also approved, it will "provide far less funding than DTE Electric requests, resulting in overall inadequate funding for vegetation management." *Id.*, p. 100. As a result, DTE Electric requested that the Commission reject any O&M reductions based on CARS targets.

The Commission agrees with the Staff that the cost reduction associated with the company's CARS program "is a laudable goal, and the cost savings should be passed onto ratepayers." Staff's initial brief, p. 49. However, the Commission declines to adopt the full $78 million reduction presented by DTE Electric to its investors, or the $59 million reduction proposed by the Staff. Instead, the Commission finds that a $20 million reduction is reasonable. DTE Electric acknowledged that $20 million of CARS targets were not included in the case.

In the event a CARS reduction was approved, the company requested that the reduction be offset for consistency by $6 million for other increases in budgets. The Commission notes that DTE Electric failed to provide any detail explaining what constitutes "other increases in budgets." As a result, the Commission finds that it cannot approve the $6 million offset.

In addition, as pointed out by DTE Electric, "CARS targets also implicitly assume that operating savings will offset inflation." DTE Electric's initial brief, p. 113. However, the $20 million CARS cost reduction approved by the Commission does not include inflation. The

Commission finds the Staff's proposed $15.1 million inflation adjustment well-supported and reasonable. *See*, 8 Tr 2007.

D. Depreciation and Amortization Expense

1. Combined Operating Licensing Application

The issue of whether to defer DTE Electric's COLA costs over a 20-year amortization period, and the Staff's request for a 10-year amortization period was addressed in the Working Capital section of Rate Base above. The ALJ recommended that "COLA expenses continue to be deferred, consistent with the Commission's most recent order on this topic," and she "does not recommend any amortization expense for the COLA licensing." PFD, p. 238.

For the reasons set forth above, the Commission adopts the findings and conclusions of the ALJ.

2. Advanced Metering Infrastructure

As discussed above in the AMI section of Rate Base, the Attorney General requested that the Commission defer recovery of depreciation expense for AMI because the benefits are uncertain. In the ALJ's opinion, the Commission should reject his request because the Commission created applicable ratepayer protections in the October 20 order.

For the reasons set forth above, the Commission adopts the findings and conclusions of the ALJ.

3. Detroit Corporate Tax

DTE Electric noted that the City of Detroit increased its corporate tax rate to 2%, effective January 1, 2012, and the company requested permission to amortize deferred tax balances. According to Mary Lewis, DTE Electric's Director of Tax Operations and Assistant Tax Officer:

> The MPSC has historically accepted the establishment of income tax regulatory assets or liabilities for the impacts of the re-measurement of deferred taxes due to

> tax law changes, and the related amortization of these regulatory assets or liabilities. Therefore, the Company recorded the impact of the rate change in Miscellaneous Deferred Debits. I have included in Municipal Income tax expense an annual amortization of $0.5 million of the Miscellaneous Deferred Debit for the City of Detroit tax rate change.

6 Tr 1339. In addition, DTE Electric is seeking Commission approval for "full normalization ratemaking for the law change over a period reasonably related to the reversal of the underlying book tax basis differences consistent with the February 15, 2012 order in Case No. U-16864." *Id.*, pp. 1339-1340.

The RCG objected to DTE Electric's request to amortize $12.7 million associated with the City of Detroit's January 1, 2012 increase in the municipal income tax rate, stating that:

> [T]he tax change occurred effective January 1, 2012, and DTE did not at that time (or previously) file a special accounting case, or otherwise seek the advance approval of the Commission. DTE also apparently did not obtain approval of this expense item in a past DTE rate case contemporaneous with or in advance of the tax rate change.

RCG's initial brief, p. 58. In the RCG's opinion, DTE Electric's request constitutes retroactive ratemaking pursuant to *Michigan Bell Telephone Co v Michigan Public Service Comm'n*, 315 Mich 533 (1946), and *Michigan Bell Telephone Co v Mich Public Service Comm'n*, 85 Mich App 163 (1978).

In response, DTE Electric disagreed that its proposal constitutes retroactive ratemaking.

The ALJ determined that "DTEE's tax deferral was appropriate based on the authority granted in the Commission's February 8, 1993 order in Case No. U-10083, which appears to have provided such general authority, although neither of the parties discuss this case in their briefs." PFD, p. 240. The ALJ found that DTE Electric is not engaging in retroactive ratemaking and recommended that the Commission grant the company's request.

In its exceptions, the RCG reiterates the arguments set forth in its brief, and states that the ALJ's recommendation on this issue is inconsistent with her rejection of other accounting, investment, and cost requests by DTE Electric. Additionally, the RCG argues that the ALJ failed to "really explain how the Commission's February 15, 2012 order in Case U-16864, or the Commission's February 8, 1993 order in Case U-10083, provides specific authorization for the retroactive ratemaking proposed by DTE here." RCG's exceptions, p. 45.

DTE Electric replies that "the prohibition against retro-active ratemaking does not apply in this context." DTE Electric's replies to exceptions, p. 53. The company explains that retroactive ratemaking occurs when the Commission sets a reasonable rate in its legislative role, but then later, in its quasi-judicial role, finds that the utility violated the law because it charged that rate. *Id.*; *see*, *Michigan Bell Telephone Co*, 315 Mich at 549. Because DTE Electric did not make this type of request, and the PFD did not make such a recommendation, the company asserts that the RCG's position should be rejected for lack of merit and relevance.

The Commission disagrees that DTE Electric's accounting request constitutes retroactive ratemaking. As set forth by DTE Electric, the Commission finds that the prohibition against retroactive ratemaking does not apply in this circumstance. In addition, the Commission agrees with the ALJ and DTE Electric that the company's request complies with accounting treatment set forth in the Commission's February 8, 1993 order in Case No. U-10083, and February 15, 2012 order in Case No. U-16864. Therefore, the Commission approves DTE Electric's accounting request as related to the City of Detroit's corporate tax.

4. Plug-in Electric Vehicle

DTE Electric requested to amortize its deferred electric plug-in vehicle expenses over five years. The ALJ stated that no party opposed the request and recommended that the company's request be granted.

No party filed exceptions on this issue, and the Commission adopts the findings and recommendations of the ALJ.

E. Allowance for Funds Used During Construction

The ALJ noted that no party objected to DTE Electric's accounting for AFUDC, and therefore recommended that "the Commission calculate AFUDC consistent with the CWIP balances and rate of return it adopts in setting final rates in this case." PFD, p. 241.

No party filed exceptions on this issue, and the Commission adopts the findings and recommendations of the ALJ.

F. General Taxes

The Staff recommended that DTE Electric's property tax calculation be revised to reflect the Renaissance Zone designation associated with the company's Renaissance power plant acquisition, which would reduce DTE Electric's property tax projection by $800,000. DTE Electric agreed.

No party filed exceptions on this issue, and the Commission adopts the Staff's recommendation.

G. Adjusted Net Operating Income Summary

In summary, the Commission finds that DTE Electric's projected NOI for the 2015-2016 test year is $619,913,367.

VI. OTHER REVENUE RELATED ISSUES

A. Nuclear Surcharge

In its initial brief, DTE Electric proposed a net reduction of $4.8 million to the nuclear surcharge, which includes funding for decommissioning Fermi 2 as well as costs for site security and radiation protection, reducing the surcharge to a proposed level of $32.3 million. This is a separate surcharge that appears on customer bills, and that affects neither current nor future base rates. There was testimony that the proposed surcharge reduction is driven by DTE Electric's proposal to reduce the Fermi 2 end-of-life decommissioning portion of the surcharge from approximately $13 million per year to $2.9 million per year on a total electric basis. 6 Tr 1177-1178; Exhibit A-19, Schedule K1. The Staff reviewed the latest report on the adequacy of the existing annual provision for nuclear plant decommissioning and concluded that the proposed surcharge reduction appears reasonable. 8 Tr 2023. Thus, the Staff agreed with DTE Electric's recommendation.

ABATE requested that the site security and radiation protection components of the nuclear surcharge remain in base rates because these components relate solely to Fermi 2 as an ongoing expense and placing them in the surcharge unfairly burdens choice customers with this expense. ABATE's initial brief, p. 3.

The ALJ concluded that ABATE's proposal should be rejected because DTE Electric never proposed a change in the nature of the surcharge other than a name change. The ALJ concurred with DTE Electric that site security and radiation protection were included in a single surcharge in Case No. U-14399, and that those expenses were removed from rates several years ago. Thus, the ALJ rejected ABATE's proposal and adopted DTE Electric's proposed surcharge reduction. PFD, p. 244.

ABATE took exception to the ALJ's rejection of its proposal, in part arguing that the PFD fails to acknowledge that leaving the site security and radiation protection costs in the nuclear surcharge unfairly imposes these costs on choice customers who derive no economic benefit from the payments they make for those expenses. According to ABATE, DTE Electric did not refute this fact. ABATE further argues that prior Commission orders are not binding precedent. According to ABATE, this shows that the Commission's prior treatment of the site security and radiation protection expenses does not permit the Commission to ignore ABATE's testimony regarding the inequity of leaving those expenses in the surcharge as opposed to base rates. ABATE argues that the Commission may consider the inequity to choice customers of requiring these customers to pay 80% of the total nuclear surcharge for expenses for which they derive zero economic benefit. In addition, ABATE argues that these expenses should be moved into base rates to prevent choice customers from paying this subsidy for those DTE Electric customers who do benefit from Fermi 2.

DTE Electric replies that both the PFD and the Commission have rejected ABATE's proposal to remove the site security and radiation components of the nuclear surcharge and to include them in base rates and there is no basis to revisit the issue at this time just because a party continues to disagree with the decision.

Having considered the parties' arguments, the evidentiary record, and the PFD, the Commission agrees with the ALJ's recommendation and rejects ABATE's proposal to remove the site security and radiation protection components from the nuclear surcharge assessed to all customers and to place those costs in rate base. The Commission has a long-standing policy that nuclear decommissioning charges should be paid by all customers. *See*, December 22, 2005 order in Case No. U-14399 (December 22 order); January 14, 1998 order in Case No. U-11290; and

December 16, 1999 order in Case No. U-11662. Likewise, although the legal doctrines of res judicata and collateral estoppel do not apply to the Commission's legislative ratemaking function in a strict sense, there is no new evidence or evidence of changed circumstances that requires the Commission to reconsider its previous determination of this issue at this time. *See, Pennwalt v Pub Serv Comm'n*, 166 Mich App 1, 9; 420 NW2d 156 (1988).

B. Advanced Metering Infrastructure Tariff and Charges

The RCG, Mr. Meltzer, Mr. Sheldon, and the Attorney General contend that the AMI opt-out program should either be eliminated or altered based on the following numerous grounds. The RCG argues: (1) the Commission lacks authority to approve an opt-out tariff; (2) the utility's implementation of opt-out deprives customers of advance notice and consent; (3) the opt-out program violates customers' constitutionally-protected privacy rights, (4) the opt-out charges lack evidence supporting the continued recovery of those costs, (5) the opt-out charges are duplicative and penalize customers who choose to opt out, and (6) the Commission should revise the tariff that grants utility employees reasonable access to the customers' premises. Mr. Sheldon and Mr. Meltzer raise the following arguments: (1) the utility's existing data security policy that addresses the use of data received from AMI meters is inadequate; and (2) the health concerns surrounding the implementation of transmitting and non-transmitting AMI meters have not been properly addressed. In addition, Mr. Sheldon argues that the Commission should extend opt-out to commercial customers. Last, Mr. Meltzer further argues that opt-out customers who live in apartment complexes or condominiums do not receive the benefits of opting out. Finally, Mr. Meltzer and the Attorney General request that the Commission allow opt-out customers to retain their analog meters. These issues and the RCG's proposal that the Commission require DTE Electric to adopt an opt-in approach are discussed *ad seriatim*.

1. Authority to Approve Opt-Out Tariff

The RCG argued that the Commission lacks the authority to approve an opt-out tariff for DTE Electric. DTE Electric and the Staff argued that the Commission does have the authority to approve the utility's opt-out tariff based on existing case law. *In re Application of Detroit Edison Company To Implement Opt Out Program*, unpublished opinion per curiam of the Court of Appeals, issued February 19, 2015 (Docket Nos. 316728 and 316781). The ALJ disagreed with the RCG, noting the Michigan Court of Appeals already rejected this argument in a similar lawsuit involving a different utility. *Attorney General v MPSC*, unpublished opinion per curiam of the Court of Appeals, issued April 30, 2015 (Docket Nos. 317434, 317456) (April 30 opinion). The ALJ surmised that the Commission would likely be expected to follow the Court's holding regarding management prerogative as the "law of the case." PFD, p. 260 citing *Lenawee County v Wagley*, 301 Mich App 134, 149-150 (2013).

The RCG takes exception to the PFD's conclusion that the Commission has the authority to impose opt-out surcharges on customers. The Commission disagrees with the RCG on this point. This authority comes from the Commission's general ratemaking authority set forth in MCL 460.6(1). Thus, the Commission rejects this argument.

2. Advance Notice and Consent

The PFD rejected the RCG's argument that DTE Electric failed to provide customers with notice of the AMI meter installations and opt-out options because there was no evidentiary support for this claim in the record. The ALJ also found no merit to the RCG's claim that a customer's refusal of a smart meter justifies the immediate shut off of service without notice. The ALJ concluded that, because customers are not being deprived of notice and, because they have an

opportunity to file a complaint with the Commission, there are no due process issues that DTE Electric's implementation of the opt-out program raises.

The RCG takes exception to the PFD's rejection of its arguments that the AMI program and opt-out tariff deprive customers of advance notice and consent. The RCG argues it is undisputed that the utility is terminating service to customers who refuse to accept the installation of a smart meter. The RCG further alleges that the utility has implemented its AMI program so that "hundreds of transmitting smart meters are strung together in a 'party-line' fashion" resulting in the transmission of data being forwarded from one customer's meter to another's at up to 400-500 locations before the data is transmitted in bulk to DTE Electric's downtown Detroit data receiving infrastructure. The RCG claims that customers are unaware that this is happening and further contends that the health, safety, and privacy impacts of this aggregated data transmitting system have not been addressed. The RCG further argues that the lack of advance notice and consent violates due process principles of the United States and Michigan Constitutions.

With respect to the RCG's arguments that DTE Electric's AMI program and related opt-out option deprive customers of advance notice and consent, the Commission disagrees. There was evidence that the utility's customers agree to specific conditions of service when they become a customer and that this consent allows the utility to install metering equipment required to provide service. 5 Tr 742. Customers may elect to opt out at any time for any reason, and when this happens, the AMI meter is installed with the radio in the off position. As of October 31, 2014, DTE Electric had approximately 3,900 customers who had elected to opt out. *Id*. Instead of utility service being shut off, the company changes a customer's analog meter to a non-transmitting AMI meter. 5 Tr 825. This testimony suggests that customers are informed of the option to opt out of AMI in advance of a change in metering equipment. Further, the requisite AMI and opt-out

notification was an issue that the Commission addressed in Case No. U-17053, both in the initial case proceeding and on rehearing. On rehearing in that case, the Commission was asked to consider the adequacy of the utility's letter that provided customers advanced notice of the planned AMI meter installation and the customer's option of opting out as well as the cost to opt out. The Commission granted rehearing to make sure that customers receive adequate notification pursuant to the notification procedures approved in that case. Accordingly, the Commission disagrees that DTE Electric's customers are being deprived of advance notice and consent in violation of Due Process.

3. Constitutional Challenges to the Opt-Out Program

Regarding the RCG's constitutional challenges alleging the deprivation of privacy rights, the ALJ observed that the Court of Appeals expressly rejected the argument that the AMI program violates customers' rights under the Fourth Amendment of the United States Constitution. *In re Application of Detroit Edison Company To Implement Opt Out Program*, *supra*. The ALJ further agreed with DTE Electric's argument that the Commission and the utility have established significant data privacy protections that preclude the use of data collected from a customer for non-utility purposes without that customer's express consent.

The RCG takes exception arguing that the PFD does not adequately address its argument that the Commission's tariffs authorizing AMI and opt-out fees deprive customers of their privacy rights under the Fourth and Fourteenth Amendment of the United States Constitution, and under Art 1, § 11 of the Michigan Constitution. The RCG argues that the Commission's approval of the opt-out tariff and the AMI program constitutes the requisite state action necessary to assert a constitutional violation. The RCG further contends that the tariffs and funding of the program invade a customer's reasonable expectation of privacy. In addition, the RCG asserts that the

Commission lacks the jurisdiction to waive individual customers' Fourth Amendment constitutional rights.

DTE Electric replies that this argument lacks merit, citing a Court of Appeals case where the Court held that the appellants failed to show that installation of either a transmitting or non-transmitting AMI meter constitutes a search or that DTE Electric acts as an agent of the government.

Regarding the RCG's claims that Commission approval of AMI and the opt-out program invade a customer's "reasonable expectation of privacy" in violation of the Fourth Amendment, the Commission already considered and rejected this argument in Case No. U-17735. There, the Commission determined that mere approval of an opt-out tariff is not state action. *See*, the Commission's November 19, 2015 order in Case No. U-17735, citing *Jackson v Metro Edison Co*, 419 US 345, 357; 95 S Ct 449; 42 L Ed 2d 477 (1974). In Case No. U-17735, the Commission also relied on binding Court of Appeals precedent, *In Detroit Edison v Stenman*, ___ Mich App ___; ___ NW2d ___ (2015) (Docket No. 32103) in concluding that the installation of smart meters does not constitute governmental action. Thus, for the reasons already expressed in the Commission's November 19, 2015 order in Case No. U-17735, the Commission concludes that the RCG has failed to establish a Fourth Amendment violation. Further, because neither the installation of smart meters nor the administration of the opt-out tariff violates an individual's Fourth Amendment rights, the RCG's argument that the Commission lacks the jurisdiction to waive an individual's Fourth Amendment rights is rejected.

4. Evidentiary Support for Continued Opt-Out Charges

Regarding the current opt-out program, the ALJ concluded that there is no basis in the record for the Commission to eliminate or revise the opt-out fees. The ALJ rejected the RCG's

arguments that the utility failed to provide updated cost support for those fees and that the opt-out charges are punitive. The ALJ also recommended adopting the Staff's proposal that the Commission should wait until installation of all AMI meters is complete before revising the opt-out charge because the total number of utility customers opting out is unknown at this time. The ALJ recommended that the Commission require the utility to file an update to the charge either in its next rate case or six months after the completion of the AMI meter deployment, whichever happens first.

The RCG takes exception to the PFD's recommendation that the existing opt-out initial and monthly surcharges should be continued arguing there is no specific cost support or a formal cost of service study presented in this rate case to support the continuation of those surcharges. The RCG further asserts that it presented convincing support from which the Commission can conclude that those surcharges should be reduced to zero. The RCG argues that the utility's past cost estimates applicable to opt out customers are based on unnecessarily inflated self-serving assumptions, such as monthly manual meter reading costs that ignore the existence of other permissible methods of meter reading at reduced cost.

DTE Electric did not address this specific exception in its replies, other than to point out that it has already obtained approval for its opt-out program from the Commission and that the Commission's order approving the program in Case No. U-17053 was affirmed by the Court of Appeals. Thus, the utility views approval of its existing program, and the Commission's rejection of all related challenges to that program that were first brought up in Case No. U-17053, to be a matter of settled law. DTE Electric also points out that it is not seeking to change the program or its surcharges. Thus, it is apparent that the utility views additional cost support for the program as unnecessary at this time.

The Staff replies that the Commission should reject this argument because DTE Electric has not proposed any changes to its opt-out charges in the instant case and those charges were adequately supported when the Commission approved them in Case No. U-17053. The Staff also supports the PFD's recommendation that the Commission should not revise the charges now, but should adopt the Staff's proposal that requires the utility to file an application for review of the charges either in its next rate case, or six months after the installation of the AMI meters is complete, whichever comes first.

The Commission agrees with the RCG that no new formal cost of service study (COSS) or other cost support was introduced in this rate case to justify the current opt-out program charges. This fact is not disputed. However, the Commission also agrees with DTE Electric and the Staff that ample cost support was presented regarding the approved charges in Case No. U-17053. According to *Pennwalt Corp v Public Serv Comm*, *supra* at 9, the Commission may rely on that evidence and the Commission's previous determinations regarding those surcharges in this case in the absence of new evidence or evidence of a change of circumstances that would necessitate a reconsideration. It is worth noting that Case No. U-17053 was a contested case proceeding that met the requirements of the Michigan Administrative Procedures Act of 1969, MCL 24.201, *et seq*. (APA), and satisfied due process concerns such as notice and an opportunity to be heard. Many utility customers intervened in Case No. U-17053 and the RCG could also have intervened. Further, the fact that the Court of Appeals affirmed the Commission's approval of DTE Electric's opt-out program and charges further assures the Commission that its decision in Case No. U-17053 is supported by competent, material, and substantial evidence on the whole record. Here, in the absence of new evidence or evidence of a change of circumstances, the Commission concludes that the current opt-out charges are appropriate and supported by the record evidence supplied in

Case No. U-17053. The Commission also agrees with the PFD and adopts the Staff's proposal recommending a review of the utility's opt-out charges in either its next rate case or six months after the completion of AMI meter installation, whichever occurs first.

Another reason that the RCG argues the opt-out costs should be reduced to zero is the fact that they comprise a very small portion of the revenues that make up the utility's total revenue requirement. In addition, the RCG points out that DTE Electric failed to reveal its incremental cost of compiling and calculating the costs DTE Electric charges to opt-out customers.

Because there is no new evidence that compels the Commission to take a second look at the appropriateness of the opt-out charges it approved in Case No U-17053, the Commission rejects the RCG's proposal that the opt-out charges should be reduced to zero. Although the RCG is correct when it points out that the amount of revenue the utility receives from the opt-out charges is small in comparison to the company's total revenue requirement, this fact alone does not convince the Commission that charges designed to cover the costs of opting out should be waived altogether. As discussed in Case No. U-17053, those charges were designed to cover costs associated with disabling the transmitting feature on the AMI meter, as well as to cover the costs associated with manually reading the meter on a monthly basis. Reducing the charges to zero would be tantamount to either making the utility shoulder those costs or allowing it to pass those costs on to all customers regardless of whether they opt out of AMI. Having already determined the costs are reasonable and prudent, there is no evidence in this case that supports either denying recovery of those costs or imposing them on those who may not incur them.

The RCG further criticizes the validity of the opt-out fees by arguing that the fees were determined at the beginning of AMI deployment when valid actual cost data did not exist. The RCG argues that DTE Electric and the Staff may not rely on past practice to support the

continuation of the fees because the APA requires evidentiary support for the surcharges in the form of "competent, material, and substantial evidence." The RCG disagrees with the utility's claims that the opt-out fees are "settled law in Michigan." Further, the RCG contends that relying on past practice does not comport with contested case procedure requiring public notice and a hearing and ignores the fact that ratemaking involves prospective legislative determinations not subject to the principles of collateral estoppel and res judicata.

Although not dispositive, the Commission has, in the past, taken the position that a party may not merely criticize calculations of costs or forecasts as being based on outdated information and expect that the Commission will replace the costs with an alternate calculation or formula it derives on its own. For example, in Case No. U-16191, an intervenor criticized a utility's sales forecast as outdated but neglected to provide the Commission with an updated forecast. In that case, left with no other options, the Commission relied on the only sales forecast provided. *See*, November 4, 2010 order in Case No. U-16191, pp. 59-60. Here, the RCG has criticized the calculation of opt-out fees as based on invalid or non-existent cost data. Yet, the RCG offers no alternative. The RCG was free to hire an expert and perform its own formal COSS with respect to these surcharges but neglected to do so. Further, the Court of Appeals specifically determined that the Commission's approval of the existing opt-out surcharges is based on competent, material, and substantial evidence when it affirmed the approval those costs in *In re Application of Detroit Edison Co To Implement Opt Out Program, supra*. For these reasons, the Commission rejects the RCG's arguments criticizing the calculation of the opt-out charges or the evidentiary support for those charges.

5. Opt-Out Charges Are Duplicative and a Penalty

Regarding the RCG's argument that opt-out customers are unfairly charged for both the cost of opting-out and for the costs of the AMI program, the ALJ disagreed, referencing testimony that the opt-out charges include credits that reflect the avoided costs of the AMI program.

The RCG takes exception to the PFD's rejection of its argument, claiming that the surcharge is duplicative because opt-out customers are paying for AMI in their rates while paying a surcharge to opt out of AMI. The RCG argues that there was no cost support regarding the credits to the opt-out fees that reflect the avoided costs of the AMI program. Further, the RCG insists that opt-out customers are subsidizing the costs of the entire AMI program.

With respect to the RCG's claim that the opt-out charges are duplicative, the Commission disagrees. The RCG has failed to present any evidence supporting this assertion. Moreover, in Case No. U-17053, the Commission approved the current opt-out surcharges which include a credit that ensures opt-out customers are not also paying for the AMI program. Because the costs associated with opting out and the amount of the credit opt-out customers receive to avoid funding the AMI program were already vetted in Case No. U-17053, the Commission concludes that this argument lacks merit. Further, although the RCG is correct that no cost support was introduced in this case regarding the AMI credits included in the calculation of the current opt-out fees, this fact is not dispositive and does not require the Commission to waive or reduce the already approved and affirmed AMI opt-out charges.

The RCG further claims that the primary purpose for the opt-out fees is to discourage customers from opting out and asserting their constitutional rights to refuse to consent to the intrusive data collection technology at their homes. The RCG urges the Commission to eliminate

opt-out fees altogether because they appear designed to impose penalties on opt-out customers rather than to cover legitimate or supportable costs attributable to opt-out customers.

DTE Electric replies that the opt-out charges are not a penalty, but rather a voluntary cost-based charge. The utility explains those costs include the resulting costs of having the AMI meter's transmitter turned off and the meter read manually by meter readers to avoid forcing the customers who do not opt out to subsidize those costs. The company further argues that the opt-out charges include credits reflecting the avoided costs of the AMI program, so that those who opt out are not paying for costs associated with AMI.

Because the charges are cost-based, the Commission disagrees with the RCG's position that they are punitive in nature and are designed to discourage customers from opting out.

6. Revisions to Access Tariff

In response to the RCG's request that the Commission revise the tariff provision that grants DTE Electric employees reasonable access to customer's premises, the ALJ disagreed, pointing out that this tariff language has been in place since 1975 and noting that the RCG's revision to that language would not alter the utility's rights under the Commission's rules. No party took exception to the PFD's recommendations on this issue. Because the Commission finds the ALJ's conclusion reasonable, the Commission adopts the PFD's recommendation and rejects the RCG's request.

7. Data Privacy

Regarding Mr. Sheldon's argument that the utility's existing privacy policy is vague and unenforceable because the definition of "primary purpose" gives the utility too much discretion, the ALJ found that Mr. Sheldon failed to properly develop this argument. As to Mr. Sheldon's assertion that the non-transmitting meters fail to address customer privacy concerns, the ALJ

similarly found that the privacy protections in place limit the use of protected information from non-transmitting meters as well. *Id*., p. 264.

In response to Mr. Meltzer's argument that data breaches are common, the ALJ determined that there is no showing from the evidentiary record in this case that the security concerns rise to the level of concern required for financial information. *Id*.; Meltzer's initial brief, pp. 17-18. The ALJ cited utility testimony indicating that DTE Electric is using the AMI meters to collect hourly meter reads rather than the full range of detailed information that the meter is capable of collecting, unless a customer requests more detailed information or is on a rate that requires more detail. The ALJ further indicated that the utility has a cyber-security group that works to keep data secure. PFD, p. 264.

The RCG takes exception, arguing that the PFD erroneously failed to recognize that the Commission may not lawfully rely on its determinations in Case Nos. U-17000 and U-17102 as its orders in those cases were not binding. Further, Mr. Meltzer takes exception, arguing that the Commission should direct the utility to communicate the health and privacy reasons that exist that might convince a customer to opt out.

DTE Electric replies that there are no outstanding privacy issues regarding AMI. The company argues that it takes securing customer data privacy very seriously and complies with the commission-approved tariff that describes the framework for customer data privacy practices and policies that resulted from the Commission's October 17, 2013 order in Case No. U-17102.

The Commission agrees with and adopts the PFD's conclusions regarding the data privacy arguments presented in this case. The Commission is satisfied that the utility's data security policy adequately addresses any data privacy concerns a customer may have. In fact, the Commission created a separate docket in Case No. U-17102 to address just those concerns and

established guidelines that a utility must follow in order to ensure data security. Further, no evidence has been presented in this case that convinces the Commission that the privacy of a DTE Electric customer who accepts installation of an AMI meter is at risk. Likewise, as noted above, the Commission has never taken the position that a utility's use of AMI meters threatens public health. Accordingly, the Commission rejects Mr. Meltzer's request that the Commission require DTE Electric to communicate the health and privacy reasons that exist for opting out of AMI.

Regarding the RCG's argument that the Commission may not lawfully rely on its determinations in Case Nos. U-17000 and U-17102, the Commission rejects this argument and points out that the Court of Appeals held otherwise in *In re Application of Detroit Edison Co To Implement Opt Out Program, supra.* There, the Court held that the Commission may rely on its determinations in Case No. U-17000 and further concluded that any attempt to revisit the issues addressed in Case No. U-17000 would constitute an unlawful collateral attack, citing *Kosch v Kosch*, 233 Mich App 346, 353; 592 NW2d 434 (1999).

8. Health

The ALJ next considered the health concerns raised by Mr. Sheldon and Mr. Meltzer. The ALJ pointed out that the primary health concern involves the radiofrequency (RF) electromagnetic radiation that smart meters emit. DTE Electric and the Staff both argued that the Commission, in Case No. U-17000, adopted the Staff report that addressed health concerns surrounding AMI meters, concluding that such concerns were insignificant. The ALJ found the Commission may rely on its determinations in that case. Regarding intervenor arguments that express health concerns over the use of the non-transmitting meters, the ALJ opined that there is no evidence that the non-transmitting meters DTE Electric is installing have caused health problems. The ALJ

further concluded that there is no evidentiary support in this record that would require the Commission to reconsider its prior decision to approve DTE Electric's opt-out tariff.

Mr. Meltzer takes exception to the PFD's conclusion that the Commission may rely on its determinations in Case No. U-17000. Regarding the Federal Communications Commission's (FCC's) findings that smart meters are safe technology, Mr. Meltzer identifies expert testimony indicating that FCC standards are "grossly inadequate." 10 Tr 2521. Mr. Meltzer argues that the Environmental Protection Agency has expressed concern that the current FCC guidelines do not directly address postulated non-thermal effects from chronic exposure to radio frequency (RF) energy. Mr. Meltzer further relies on a major research paper from Harvard University in arguing that the FCC is dominated by the industries it regulates. Mr. Meltzer further asserts that the Staff report the Commission relied upon in Case No. U-17000 was "unbalanced and biased" citing studies from research facilities beholden to the electric industry and placing great emphasis on the FCC standards. He also criticizes the report because it does not include an author's name and further contends that the citations Dr. Carpenter presented were ignored. Thus, Mr. Meltzer argues that the Commission's final decision should consider providing a public forum that permits the introduction of health and data security evidence.

The RCG argues that the PFD erroneously failed to recognize that the Commission may not lawfully rely on its determinations in Case Nos. U-17000 and U-17102 as its orders in those cases were not binding. The RCG also criticizes the Staff report that the Commission adopted in Case No. U-17000 because it was not authored or sponsored by experts in the field of health or safety as required by case law, and further argues that the PFD erroneously rejects the health, safety and privacy concerns raised in this case.

DTE Electric replies that, in Case No. U-17000 the Commission addressed health and safety concerns and agreed with the Staff's conclusions in its June 29, 2012 report in Case No. U-17000, including the conclusion that smart meters represent a safe technology. The utility further points out that customers who are concerned about the safety of RF emissions from smart meters may opt out of the AMI program. DTE Electric also argues that the Court of Appeals rejected health, privacy and Fourth Amendment arguments regarding AMI in a binding precedential decision and urges the Commission to follow that precedent in this case. DTE Electric's replies, p. 53, citing *Stenman*, *supra*. The RCG, on the other hand, replies that it agrees with Mr. Meltzer and Mr. Sheldon that the Commission has failed to implement proper hearings to ensure that health, safety, and privacy matters relating to the AMI program are adequately addressed.

The Commission rejects the RCG's and Mr. Meltzer's argument that this is the appropriate forum to revisit the health and safety determinations it already made in Case No. U-17000. The Court of Appeals, in affirming the Commission's approval of the opt-out program and charges in Case No. U-17053, expressly stated that parties may not seek to revisit health and safety issues that were the subject of the Commission's orders in Case No. U-17000. *In re Application of Detroit Edison Company To Implement Opt Out Program*, *supra*. According to the Court, the time to address the health and safety aspects of AMI has passed and parties may not collaterally attack the Commission's decisions in Case No. U-17000. *Id*. Therefore, the Commission rejects Mr. Meltzer's argument that it should reconsider the health and safety concerns surrounding AMI.

9. Extending Opt-Out Program to Commercial Customers

The ALJ next rejected Mr. Sheldon's argument that commercial customers should also be given the option of opting-out of the program concluding there is no basis for revising the Commission's earlier determination that there was insufficient evidence that commercial

customers wanted an opt-out program. No party took exception to the PFD's recommendation regarding this issue. Because the Commission finds the ALJ's conclusion reasonable, it adopts the PFD's recommendation and rejects this argument.

10. Waiver of Opt-Out Charges for Apartment or Condominium Residents

Mr. Meltzer argued that opt-out customers who live in apartment or condominium complexes where dozens of meters are clustered together will not receive the benefit of opting out for which they are being charged. He further argued that this is particularly relevant for residents who have medical conditions such as radio frequency sensitivity that motivate them to opt out. Mr. Meltzer further took issue with the fact that the utility has failed to fully inform customers about why a customer may choose to opt out, failing to provide a "balanced view" that addresses customer concerns about health and privacy and instead providing a "myth-busting" page on the utility's website aimed toward quelling those concerns. Mr. Meltzer's initial brief, p. 15. The PFD did not address these issues and the ALJ made no specific recommendations regarding these concerns.

Mr. Meltzer takes exception to the PFD's failure to offer the Commission any remedy or direction regarding opt-out customers who live in apartments or condominiums and who do not receive the benefit of the opt-out charges they are paying due to the fact that opting out only disables one smart meter among multiple meters clustered together. He also argues that the PFD failed to recommend that the Commission require DTE Electric to communicate the health and privacy reasons that exist for opting out of smart meter installation. He suggests that, if more people knew the reasons for opting out, more people would choose to do so, and that this would affect the overall cost structure of the AMI program.

Although neither the PFD nor any party addressed this particular line of argument by Mr. Meltzer, the Commission has considered its merits and concludes it must be rejected. First, if the

Commission were to waive opt-out surcharges on health and safety grounds for those apartment or condominium residents who choose to opt out because they believe they are not receiving any health benefits from opting out, this would contradict the Commission's stated position on the health and safety risks associated with AMI. In Case No. U-17000, the Commission adopted the Staff's report and its conclusion that smart meters are a safe technology. Here, Mr. Meltzer's argument presupposes AMI meters are unsafe and pose a health risk, a position the Commission has never adopted. Significantly, the Commission's decision to permit customers to opt out allows customers to opt out for any or no reason at all. More importantly, waiving costs for apartment or condominium dwellers who choose to opt out would result in passing those costs on to other customers who did not incur them, which is counter to cost-causative principles used in designing rates. Indeed, the reason the Commission approved of the opt-out surcharges in Case No. U-17053 was to permit the utility to recoup the costs associated with disabling the AMI meter and providing monthly manual meter readings. As already discussed, the Court of Appeals affirmed the Commission's approval of those costs and the Commission declines the invitation to re-litigate those costs in the absence of new evidence or evidence of a change in circumstances. *See*, *In re Application of Detroit Edison Co to implement opt-out program*, *supra*, and *Pennwalt*, *supra*.

11. Retention of Analog Meters

The ALJ also rejected the arguments of Mr. Meltzer and the Attorney General that DTE's removal and replacement of fully functioning analog meters with non-transmitting AMI digital smart meters should be rejected as needless. The ALJ's reasons for rejecting this proposal were the Commission's approval of DTE Electric's existing AMI program, the fact that the utility has almost completed installation of the meters, and the fact that the Commission's decision has been reviewed and affirmed by the Court of Appeals. PFD, pp. 258-259.

Mr. Meltzer takes exception to the fact that the PFD did not adequately address his and the Attorney General's arguments in favor of customers retaining their analog or legacy meters as opposed to the utility's requirement that opt-out customers pay for a non-transmitting smart meter. Mr. Meltzer disagrees with Staff witness testimony that this is merely a choice in utility equipment and instead asserts that the implementation of smart meters represents a transformative paradigm shift with health and privacy consequences. Like Mr. Meltzer, the Attorney General takes exception to the ALJ's rejection of his recommendation that the Commission should require DTE Electric to permit customers to retain their analog meters arguing that Consumers Energy Company permits customers to retain their existing analog meters.

The Attorney General reiterates arguments made during initial briefing including Mr. Meltzer's suggestion that a disabled non-transmitting smart meter is the functional equivalent of an analog meter and that retention of the analog meters saves the expense of purchasing the new smart meters as well as the labor costs to install them. He also reiterates Mr. Sheldon's assertion that the utility has failed to demonstrate that non-transmitting smart meters will address customer health or privacy concerns. Thus, the Attorney General asks the Commission to consider an order that grants DTE customers who opt out of the AMI program the option of retaining an analog meter.

DTE Electric replies that this proposal ignores established precedent of the Supreme Court of the United States that customers pay for service and not the utility equipment used to provide it and that customers have no interest, legal or equitable, in utility property used for their convenience or in the company's funds. DTE Electric's Replies, p. 51, quoting *Bd of Pub Utility Comm'rs v New York Tel Co*, 271 US 23, 32; 46 S Ct 363; 70 L Ed 2d 808 (1926). The company further relies on judicial precedent to argue that it is settled law that decisions regarding the type of

equipment to use are a matter of management prerogative. DTE Electric's replies, p. 50. In contrast, the RCG replies that it supports the exceptions of the Attorney General and Mr. Meltzer advocating that customers should be able to retain their analog meters.

The Commission has considered the arguments put forward by Mr. Meltzer and the Attorney General regarding customer retention of analog meters and rejects this proposal. As discussed in the PFD, the Court of Appeals weighed in on this very issue when it affirmed the Commission's May 15, 2013 order in Case No. U-17053 (May 15 order). In the May 15 order, the Commission concluded, among other things, that the utility's residential non-transmitting smart meter option was a satisfactory response to the Commission's request that customers be permitted to opt out of AMI. On appeal, the Court reasoned that any order by the PSC that required DTE Electric to allow customers to retain analog meters would violate the holding in *Union Carbide v Pub Serv Comm*, 431 Mich 135, 151-152; 428 NW2d 322 (1988) that the choice of meter equipment is a managerial prerogative. *In re Application of Detroit Edison Company To Implement Opt Out Program*, *supra*, p. 5. As the Court of Appeals has already decided this issue in a well-reasoned judicial opinion that binds the parties to the case, the Commission must follow the Court's decision. Moreover, the Commission is likewise bound by the holding in *Union Carbide* that it may not tell DTE Electric what metering equipment to use. Thus, the Commission rejects the Attorney General's and Mr. Meltzer's proposal that customers be permitted to retain their analog meters in lieu of accepting a non-transmitting smart meter.

12. Opt-In Approach

The RCG further argues in its exceptions that the Commission erred by not adopting an opt-in approach to AMI that would address those same concerns. DTE Electric replies that the company already has a Commission-approved AMI opt-out program that was affirmed by the Michigan

Court of Appeals. It argues that there is no company proposal to change this approved and affirmed program. Finally, it contends that the Commission is not required to re-litigate this ruling just because a party continues to disagree with the program.

The Commission rejects the RCG's proposal to implement an opt-in approach to smart meter installation for the following reasons. First, requiring customers to opt-in to smart meter installation is tantamount to the Commission telling the utility what metering equipment it may use to provide service. This the Commission may not do. *Union Carbide, supra, p. 151-152*; *In re Application of Detroit Edison Co to implement opt-out program, supra*, p. 5. In addition to this limitation on the Commission's authority, the fact that AMI meter installation is well underway within DTE Electric's service territory also presents challenges for adopting a different approach at this time. There was evidence that, as of October 2014, the utility had installed over 1.5 million electric meters, 337,000 AMI gas modules and 173,000 Advanced Meter Reading (AMR) gas only modules for a total of over 2 million endpoints or 53% of the company's planned meters. Further, planned AMI meter installation is scheduled to be completed in 2017. Requiring the utility to start over from scratch with a different approach now would be a waste of resources and would likely result in increased costs that are ultimately passed on to ratepayers. Thus, the Commission rejects the RCG's proposal requiring DTE Electric to adopt an opt-in approach.

VII. REVENUE DEFICIENCY SUMMARY

In accordance with the foregoing findings, DTE Electric's jurisdictional revenue deficiency for the test year is computed as follows:

Rate Base	$13,431,968,000
Adjusted Net Operating Income	619,913,367
Overall Rate of Return	4.62%
Rate of Return	5.6969%
Income Requirements	765,199,030
Income Deficiency (Sufficiency)	145,285,163
Revenue Conversion Factor	1.6393
Revenue Deficiency (Sufficiency)	$238,171,788

VIII. COST OF SERVICE

A. Production Cost Allocation

On June 15, 2015, pursuant to 2014 PA 169, (Act 169) the Commission issued an order (June 15 order) in Case No. U-17689, in which, *inter alia*, it approved a proposal to modify DTE Electric's then-existing 12CP 50-25-25 method of production cost allocation to 4CP 75-0-25, finding that 4CP 75-0-25 better assures that rates are equal to cost of service. In addition, the Commission approved the allocation of transmission costs based on 12CP 100-0-0, and it addressed a number of rate design proposals, some of which are also addressed in this case and are discussed in more detail below.

Although most parties to this proceeding considered production cost allocation resolved, DTE Electric continued to argue that a production cost allocator based 100% on demand was more

appropriate than the 4CP 75-0-25 method approved in the June 15 order. ABATE filed testimony that likewise supported 4CP 100, however, ABATE did not present any arguments in its briefs.

The ALJ noted that the Commission recently addressed the appropriate production cost allocation method for DTE Electric and determined that a 4CP 75-0-25 production cost allocator best assures that costs are aligned with causation. She found that DTE Electric provided no new information in this case that would support a change in the Commission's recent decision. Therefore, she recommended the use of a 4CP 75-0-25 production cost allocator for this case.

In its exceptions, DTE Electric claims that, although it agrees with the Commission's decision to move from 12CP 50-25-25 to 4CP 75-0-25, as an incremental improvement, the Commission should nevertheless adopt the company's proposed 4CP 100 production cost allocation method because this method better aligns cost with causation. As it did in Case No. U-17689, DTE Electric asserts that production costs allocated on a 100% demand basis places greater weight on production capacity, an emphasis that is necessary in light of potential capacity shortfalls in Michigan. DTE Electric contends that information from MISO, released after the June 15 order, and the Commission's determination in the July 23, 2015 order in Case No. U-17751, both of which predict capacity shortfalls in the coming years, make it essential to assign production costs to customers whose load characteristics drive those costs. DTE Electric again claims that changing the production cost allocator to one that is 100% demand-based would send more appropriate price signals and encourage customers who use the system less efficiently to increase their load factors.

The Staff and MEC/NRDC reply, arguing that the Commission should adopt the PFD on this issue. According to them, the ALJ correctly found that DTE Electric did not present anything new in this case that would require the Commission to revisit this issue or change its decision from that

in the June 15 order. They further assert that the Commission's adoption of 4CP 75-0-25 was the most appropriate production cost allocator that best matches costs to causation.

The Commission finds that DTE Electric's exception should be rejected. As the ALJ, the Staff, and MEC/NRDC/SC point out, DTE Electric's arguments in this proceeding largely mirror those that it made in Case No. U-17689. The alleged new information presented here simply provides some limited additional information on DTE Electric's claim that there may be capacity shortfalls in the future that, the company contends, are best addressed through a 100% demand allocator. This argument was considered, and dismissed, in the June 15 order, p. 21:

> While there may possibly be capacity shortfalls in the future, as the Staff points out, a change to a 4CP 100 method is not adequately refined to have a substantial impact on that particular concern. Moreover, as the Staff, Energy Michigan and MEC/CARE/NRDC explained, merely raising the overall cost of electricity does not necessarily encourage customers to shift their usage from peak times, although total energy consumption may decrease. Thus, the Commission rejects these claims by DTE Electric in support of allocating production costs exclusively on the basis of demand.

The Commission therefore reaffirms the 4CP 75-0-25 production cost allocation method for use in this proceeding.

B. Uncollectibles Cost Allocation

The Staff recommended that the Commission revisit the issue of uncollectibles cost allocation which, in the June 15 order, the Commission determined should be assigned based on historical write-offs rather than by class revenue requirement. Energy Michigan supported the Staff, and also proposed that, however allocated, uncollectibles be divided into power supply and distribution charges.

Noting that the Commission decided both these issues in the June 15 order, and further observing that the Staff and Energy Michigan presented no new evidence or arguments in this case, the ALJ found that the proposals by the Staff and Energy Michigan should be rejected.

The Staff takes exception to the ALJ's recommendation. While recognizing that the Commission recently decided this issue in the June 15 order, the Staff nevertheless reiterates that uncollectibles costs are better allocated using an overall allocation method rather than by historical write-offs. The Staff indicates that it intends to present additional evidence in future rate cases to better support its position on uncollectibles cost allocation.

ABATE replied observing that the ALJ's decision was supported by cost-of-service principles, the NARUC Manual, and the June 15 order. DTE Electric also replied, arguing that the uncollectibles allocation method approved by the June 15 order is more appropriate because it comports with the principle of cost-causation by customer class.

The Commission finds that the Staff's exception should be rejected. As the ALJ found, the Staff's allocation method was fully considered in the June 15 order, and the Staff presented no new evidence or arguments in this proceeding that would require that the Commission revisit this issue at this time.

IX. RATE DESIGN AND TARIFF ISSUES

A. Undisputed Matters

As an initial matter, the Commission observes that there were several rate design and tariff issues that were contested and decided in the PFD, and there were no exceptions to the ALJ's findings and conclusions. Therefore, the Commission adopts the PFD's recommended modifications to Rate D8, line extensions,[5] residential and commercial distribution charges, senior

[5] DTE Electric takes exception insofar as the PFD found that, in rejecting a proposal by Energy Michigan, "DTEE's proposed revisions be adopted." PFD, p. 304. DTE Electric points out that it proposed no revisions to the line extension policy. The Commission agrees and clarifies that with respect to this issue, the company's line extension allowances should not be altered.

citizen credit, residential time-of-day participation cap, Rate D1.8, and the elimination of Rate D1, D1.3, D1.4 and D1.5.

The Commission notes that DTE Electric and the Staff agreed that Rate D2 should be retained, albeit closed to new customers, and the ALJ agreed. In its exceptions, the Staff points out that the Staff's recommendation to change the COSS to include Rate D2 was not addressed in the PFD. According to the Staff, however, "the information necessary to separate D2 in the COSS, consistent with Staff's recommendation, is not in evidence in this case. Staff, therefore, recommends that the Commission use Staff's initial estimation procedure for the D2 revenue requirement." Staff's exceptions, p. 10. The Commission agrees and directs that the COSS be modified to include Rate D2 in future filings, with the revenue requirement estimated in this case using the Staff's original procedure.

Finally, in its exceptions, the Staff clarifies that although, in the June 15 order, the Commission did direct the company to make Dynamic Peak Pricing (DPP) and time-of-use (TOU) rates available to all customers, the Staff's recommendation in this case, that DTE Electric incorporate on-peak, off-peak, and seasonal differences in its power supply costs into its rate design, was a distinct recommendation that was not addressed as such in the PFD. The Staff therefore urges the Commission to adopt this proposal and direct DTE Electric, either in its next rate case or in a special proceeding (after all AMI meters have been installed) to include on-peak, off-peak, and seasonal rates into its basic rate offerings.

The Commission notes that this proposal was unopposed, and it agrees that the Staff's recommended modifications to the company's default rate offerings will send more accurate price signals and allow customers to make informed decisions about energy use based on the cost of energy as it varies over time. The Commission therefore directs the company to incorporate

proposals for on-peak, off-peak, and seasonal differences in power supply costs, both energy and capacity, into its rate design once it has completed full implementation of its AMI program.

The implementation of a Stand-by Rates workgroup was uncontested by the parties to this proceeding. The Commission notes that the convening of such a workgroup was approved in the November 19, 2015 order in Case No. U-17735, and the Commission directs the Staff to assure that DTE Electric is included in that workgroup. The parties in this case also agreed to the Staff's recommendation that DTE Electric provide periodic reports to the Staff on the status of the company's cyber-security efforts. The Commission agrees and finds that this recommendation should be approved.

B. Customer Charges

DTE Electric proposed to increase the monthly service charge for residential customers from $6.00 to $10.00 per month. Similarly, DTE Electric recommended increasing monthly service charges for commercial secondary customers from $8.78 to $16.00, and from $275 to $375 for primary customers. The company contended that its COSS actually supported much more significant increases: to over $25.00 per month for residential, $87 per month for commercial secondary, and $1222 per month for primary customers. However, in the interest of gradualism, DTE Electric proposed more modest adjustments in this case. *See*, Exhibit A-13 Revised, Schedule F1.5.

The Staff opposed the company's recommendation, pointing to the Staff's COSS, contained in Exhibit S-12, which supported a customer charge of slightly more than $6.00 for residential customers and $8.70 for commercial secondary customers. According to the Staff, the company's COSS included a number of customer-related costs that were inappropriately assigned to the customer charge. The Staff cited previous Commission orders that defined the costs that are

properly included in the customer charge. The Staff recommended that, based on its COSS, the current customer charges should remain the same for residential and commercial secondary customers. DTE Electric subsequently made corrections to Exhibit S-12 and presented alternative charges in Exhibit A-24, Schedules N1 and N2.

MEC/NRDC/SC likewise opposed DTE Electric's proposed customer charges for residential and commercial secondary customers. Echoing the Staff, MEC/NRDC/SC contended that DTE Electric misallocated costs to the customer charge, and that the customer charge should only include the cost of the service drop, metering, account maintenance, and distribution transformers. MEC/NRDC/SC claimed that increasing the allocation of costs to fixed charges would increase the energy burden on low-income customers who tend to use less energy and therefore would face a much higher percentage increase in their electric bills if DTE Electric's proposal is approved. MEC/NRDC/SC also argued that increasing the amount of the bill that is fixed, while decreasing the unit cost of the variable charge, disincentivizes energy efficiency investments, and reduces the benefits of energy efficiency for customers who have already made these investments. ELPC similarly opposed the increase in monthly residential and commercial charges and argued that DTE Electric failed to meet its burden of proof to demonstrate that increasing monthly fixed charges for residential and commercial customers is reasonable.

Kroger asserted that charges for primary customers should be set at $100 per month, or, at the very least, should not be increased above the current $275 per month.

The ALJ found that DTE Electric had not demonstrated that its proposed increases in customer charges for residential and commercial secondary customers were reasonable. She noted that the company's cost analysis had been discredited by several witnesses and that DTE Electric did not provide an adequate response to the policy criticisms presented by MEC/NRDC/SC and

the ELPC. Further, the ALJ agreed with the Staff that DTE Electric's corrections to the Staff's COSS were not timely and therefore could not be validated by the other parties.

With respect to primary voltage customer charges, the ALJ recommended that the monthly charge be "revised" to $275, with a customer charge of $375 per month for subtransmission and transmission-level customers in accordance with the company and the Staff's recommendation. PFD, p. 291.

DTE Electric takes exception, noting that there appeared to be a typographical error in the PFD and asserting that it actually proposed to revise the customer charges for all primary customers from the current $275 per month to $375 per month. DTE Electric requested that the Commission clarify the ALJ's decision and adopt the company's proposal to increase primary customer charges from $275 to $375 per month.

The Commission agrees that there does seem to be an error in the PFD in the discussion about proposed revisions to customer charges for primary customers. The Commission nevertheless agrees with the ALJ's central recommendation that monthly customer charges for primary customers should remain at $275, except for transmission and subtransmission customers, whose charges should be increased to $375 per month as supported by Exhibit S-12 and Exhibit A-24.

DTE Electric also takes exception to the ALJ's recommendation to keep customer charges for residential and commercial secondary customers at their current levels. DTE Electric contends that the ALJ was swayed by unsubstantiated "policy rhetoric" rather than the evidence supporting an increase in customer charges for residential and commercial secondary customers. DTE Electric's exceptions, p. 110. DTE Electric points out that, for low-income customers, the increased customer charge will be offset by an increase in the low-income credit, thus, its proposal is not regressive. DTE Electric adds that the claim by MEC/NRDC/SC that low-income customers

tend to be low energy users was contradicted by MEC/NRDC/SC's own evidence. Further, DTE Electric argues that the changes it proposes will have a minimal impact on energy efficiency investments and will not result in inaccurate price signals because the great majority of most customers' bills will still be based on variable charges.

In response, the Staff urges the Commission to adopt the PFD, noting that the "policy rhetoric" to which the company objects, is in fact fundamental to regulation as a substitute for the market. According to the Staff, "Regulation ensures that, to the extent possible, prices reflect what would prevail were the regulated company operating in a competitive environment. In other words, prices should reflect marginal costs." Staff's replies, p. 28.

MEC/NRDC/SC similarly contend that the Commission should reject DTE Electric's exception and adopt the ALJ's recommendation to retain the current service charges for residential and commercial secondary customers. They argue that the ALJ's decision was clearly based on record evidence and that DTE Electric's critique of MEC/NRDC/SC's evidence on the regressivity of increased customer charges was based on a selective reading of their analysis, and that energy usage in DTE Electric's system is indeed correlated with income.

The Commission finds the PFD well-reasoned and adopts its findings and conclusions regarding the appropriate customer charges for residential and commercial secondary customers. The Commission concurs with the other parties' claims that DTE Electric's COSS was flawed because it included a multitude of costs that, although customer-related, are not costs that vary with the number of customers on the system. As the Staff and others pointed out, the Commission has determined that the costs to be included in the customer charge are the marginal costs associated with attaching a customer to the system. In addition, as the Staff observed, the NARUC Manual likewise supports using only the marginal costs of customer attachment in developing a

customer charge. Accordingly, the Commission finds that customer charges for residential and commercial secondary customers should remain at their current levels, $6.00 per month for residential customers and $8.78 for commercial secondary customers.

C. Rate D11

As part of its Act 169 presentation in Case No. U-17689, DTE Electric proposed, and the Commission approved, a new primary rate, Rate D11, that combined and replaced the company's existing primary rate classes D6, D6.1, and D7. Rate D11 recognizes the value of high load factor customers because these customers have lower capacity costs, thus Rate D11 includes higher demand charges but reduced energy charges. This proposal was unopposed in the Act 169 proceeding.

In this case, ABATE proposed a modification to the Rate D11 rate design, contending that the voltage level discounts contained in the demand and energy charges are inadequate, resulting in transmission and subtransmission customers paying rates above cost of service and providing a subsidy to other primary customers in Rate D11. ABATE contended that Rate D11 should be revised to include demand and energy charges that are different for each voltage level.

DTE Electric claimed that ABATE's proposed refinement should be rejected on grounds that ABATE's underlying assumptions raised some concerns and because of the added complications resulting from separate voltage level billing demands and separate on- and off-peak energy charges. DTE Electric argued, "Until there is sufficient support for separate voltage level demand and energy charges, any additional voltage level cost reductions should be accomplished by increasing the existing voltage level discounts." DTE Electric's reply brief, p. 122.

Wal-Mart and the Staff agreed with DTE Electric that ABATE's proposed rate design relies on assumptions from the rate design stage of the case, not the cost-of-service stage and that it is

difficult to calculate. The Staff further noted that both its and the company's proposed rate designs include a discount based on voltage level. The Staff added that, "Neither the Company nor Staff proposed a change to these discounts in their design for Rate D11, but now both recommend changing the rate's power supply charges to reflect lower losses at transmission and subtransmission voltage levels, and both recommend increasing existing voltage level discounts to do so." Staff's initial brief, p. 75. In its reply brief, DTE Electric indicated that it was not proposing to adjust power supply charges to reflect voltage level discounts in this proceeding.

The ALJ found that the Commission should "adopt Staff's recommendation to use the different loss factors for subtransmission and transmission level customers to increase to adjust [sic] the discounts, with additional refinements to be considered in future cases." PFD, p. 295.

DTE Electric takes exception arguing that the Commission should approve Rate D11 in the same form that it was approved in the June 15 order. According to DTE Electric, it is not clear what the PFD calls for, given that the Staff made no specific recommendation with respect to transmission and subtransmission loss factors or discounts.

ABATE takes exception to the ALJ's recommendation, to the extent that additional calculations will be required after a final order is issued because "the other variables on the D11 rate will ultimately drive the amount of the discounts or credits used to resolve this issue for subtransmission and transmission level customers." ABATE's exceptions, p. 9. ABATE therefore recommends that the Commission, in its final order, direct DTE Electric to increase discounts for transmission and subtransmission level customers.

The Staff disagreed that a calculation will be required after the final order in this proceeding. According to the Staff, "The Commission can and should incorporate voltage level discount

changes in the rates approved as part of the final order based on differential loss factors." Staff's replies to exceptions, p. 31.

The Commission agrees with the Staff, noting that in its initial brief, the Staff proposed, "to recalculate the existing discounts based on the appropriate loss factors, while still designing rates to collect the approved revenue requirement in total." Staff's initial brief, p. 75. Therefore, the Commission finds that ABATE's and DTE Electric's exceptions should be rejected, and the adjusted voltage level discounts, based on loss factors, shall be incorporated into rates as recommended by the Staff.

D. Interruptible Supply Rider 10

DTE Electric proposed to eliminate the stack pricing power supply billing option available under Interruptible Supply Rider No. 10 (Rider 10), and instead use the MISO market pricing method for all Rider 10 customers. ABATE proposed to retain the stack pricing option until more information is provided justifying the elimination of stack pricing. DTE Electric disagreed, arguing that, although both the stack and MISO pricing methods produce similar results, the MISO market pricing method is more transparent, and it eliminates the uncertainty and risks associated with the stack pricing reconciliation process. The Staff agreed with DTE Electric that the stacking method is unduly complex while the MISO pricing method, based on MISO locational hourly marginal energy price at the appropriate load node, provides a more accessible price that measures the same marginal power supply costs.

ABATE further argued that, because Rider 10 is an interruptible rate, Rider 10 customers do not use DTE Electric generation. Thus, according to ABATE, production O&M costs should not be allocated to this rate through the administration charge. DTE Electric disagreed, contending that because Rider 10 customers benefit from the company's generation resources through lower

and less volatile MISO energy prices, these customers should bear some production O&M costs. DTE Electric pointed out that the Commission agreed on the allocation of these costs in DTE Electric's last rate case.

The ALJ agreed with the company that because this issue was settled in a prior proceeding, and because ABATE has provided no reason to revisit that decision, ABATE's recommendation should be rejected.

ABATE takes exception to the inclusion of production O&M expenses in the administrative charge, repeating its argument that these expenses should not be included in Rider 10. ABATE further contends that the previous rate order, on which DTE Electric and the ALJ relied, was in error and ABATE continues to maintain that, because Rider 10 customers are interruptible, they do not derive any economic benefit from production O&M. ABATE also takes exception to the ALJ's recommendation to eliminate the stacking option. ABATE reiterates that this option should remain available until DTE Electric provides more support for its elimination.

The Commission agrees with the ALJ on both issues concerning Rider 10. As noted by the company and the ALJ, the issue of including production O&M costs in Rider 10 was addressed in the October 20 order, p. 100, where the Commission determined that Rider 10 customers "are [not] overallocated production costs simply because more of their load is purchased through MISO." Because ABATE raises nothing new in its arguments here, the Commission finds that ABATE's exception should be rejected.

The Commission also agrees with DTE Electric and the Staff that the stack pricing method should be eliminated under Rider 10. As these parties point out, the results from the MISO pricing method are comparable to those obtained from the stacking method, and the MISO pricing option is more transparent and less complex than the stacking method.

E. Standby Service under Rider 3

DTE Electric proposed to eliminate the power supply pricing option for standby service under Standard Contract Rider No. 3 (Rider 3) because it does not have cost-of-service support. ABATE proposed keeping the option instead. According to DTE Electric, however, "ABATE is proposing to have MISO option customers pay a market-based charge for capacity (instead of their share of the Rider 3 capacity costs determined through the COSS), with any differences recovered from other customers. This results in intra-class subsidies within the D11/Other cost of service class, and should be rejected." DTE Electric's initial brief, p. 134. In response, ABATE contended that DTE Electric should retain the power supply pricing option so that it may be addressed by the Standby Rates Workgroup proposed by the Staff.

In its initial brief, ABATE argued that, "historically, the Administrative Charge for Rider R3 has been the same for the Administrative Charge in Rider R10. DTE's proposed Administrative Charge for Rider R3, like that for Rider R10, presently includes fixed costs associated with production plants. The Commission should adopt for the power supply option Rider R3 the same Administrative Charge that it does for Rider R10." ABATE's initial brief, p. 24. And in its reply brief, ABATE pointed out the asymmetry between DTE Electric's proposal under Rider 10, where the market option will be retained, and Rider 3, where DTE Electric proposes to eliminate this option.

The ALJ did not make a recommendation concerning DTE Electric's proposal to eliminate the power supply pricing option. Both ABATE and the company take exception to this omission. The ALJ also did not address ABATE's observation that administrative charges for both Rider 10 and Rider 3 should be the same. ABATE takes exception.

DTE Electric contends that the ALJ's failure to explicitly address DTE Electric's proposal implicitly means that the proposal was rejected. In addition, DTE Electric expresses disagreement with the Staff's Rider 3 secondary voltage distribution charges as "not consistent with the Company's design methodology and existing Rider 3 tariff." DTE Electric's exceptions, p. 118. DTE Electric reiterates that ABATE's recommendation to retain the power supply pricing option should be rejected on grounds that it is not cost-of-service based and results in intra-class subsidies. DTE Electric adds that the focus of the Standby Rates Workgroup will be distributed renewable and combined heat and power generation, thus, it is not necessary to direct other Rider 3 concerns to that forum.

ABATE observes that the ALJ made no recommendation concerning whether to retain the market supply power option for Rider 3 customers, nor was ABATE's claim that the administrative charge for Rider 3 and Rider 10 should be the same addressed. ABATE maintains that the power supply option should be retained until the Standby Rates Workgroup completes its evaluation. ABATE further argues that, "eliminating this option will eliminate the incentive for co- and self-generation that promotes customer-owned capacity that strengthens the grid." ABATE's exceptions, p. 12. ABATE reasserts that the Rider 10 and Rider 3 surcharges should mirror each other and adds:

> It is worth noting here, as ABATE did in its Reply Brief, that while DTE argues that the R3 Market Option is inconsistent with cost-of-service principles, DTE favors the same option in R10 because it is transparent and efficient because it offers the identical MISO LMP price. Those same market efficiency reasons, which DTE chooses to ignore in the context of the R3 Market Option, support keeping the R3 Market Option, which also offers customers the MISO LMP price. DTE has not articulated a reason that a market efficiency pricing option in R10 should be used while a market efficiency pricing option in R3 should be eliminated.

ABATE's exceptions, p. 12 (citations omitted).

In reply, DTE Electric again argues that the market power supply option should be eliminated based on cost-of-service principles, as demonstrated by the record in this case. With respect to ABATE's claim that Rider 3 and Rider 10 should be treated the same, the Staff replies:

> These two riders represent polar opposites as far as a customer's impact on the system. Interruptible customers help the Company mitigate risk during supply emergencies by allowing the Company to drop load from the system. Standby customers, on the other hand, increase the risk; the Company may need to meet their load during supply emergencies, which hinders the Company's ability to deal with an emergency. The point is, R3 and R10 customers differ in important ways, so it makes sense to treat them differently.

Staff's replies to exceptions, p. 32.

The Commission finds that ABATE's exceptions should be rejected, and that the record justifies the elimination of the power supply market option. Specifically, the Commission finds that the record supports DTE Electric's claim that the power supply market option is not cost-based and results in intra-class subsidies. Further, the Commission agrees with the Staff that, for Rider 3 and Rider 10, the continuation of the market option for one and not the other is supported when considering the impact of Rider 3 and Rider 10 customers on the system. Finally, the Commission agrees that DTE Electric's proposed secondary distribution rate design method for Rider 3 is reasonable. As the company pointed out, not only does its proposed rate design comport with the findings in Case No. U-10102, the Staff's rate design method only utilizes the distribution demand charge and zeros out the distribution energy charge, which is inconsistent with the currently approved tariff. Because no party proposed to change the tariff, DTE Electric's rate design method is appropriate.

F. Experimental Load Aggregation Pilot

DTE Electric proposed to eliminate the Experimental Load Aggregation Pilot (ELAP) on grounds that the program, which allows primary customers with multiple sites, to aggregate their power supply billing demands, was not cost-based and therefore results in intra-class subsidies.

Kroger objected to DTE Electric's proposal and argued that instead of eliminating the ELAP, it should be found to be cost-based, and it should be made permanent. According to Kroger, DTE Electric failed to present evidence to demonstrate that the ELAP is not cost-based and, in fact, the ELAP eliminates the subsidy that multi-site customers would pay under Rates D4 and D6.

The ALJ agreed with Kroger and found that DTE Electric had failed to provide a COSS or analysis to show that the ELAP is not cost-based and should therefore be eliminated. She therefore recommended that the ELAP continue until the company's next rate case when DTE Electric will have the opportunity to present an analysis of this rate.

DTE Electric takes exception, arguing that it demonstrated that the ELAP resulted in Rate D4 and D6 customers paying higher rates to subsidize ELAP customers who receive a rate reduction simply due to ownership of more than one site. Because of these intra-class subsidies, DTE Electric maintains that the ELAP should be eliminated. Specifically, DTE Electric contends:

> [T]he fact that the ELAP does nothing to alter the Company's costs or the allocation of costs, and yet reduces rates paid by ELAP customers, proves that the ELAP is not cost based (4 T 568-569). Instead, with ELAP customers paying reduced rates for unchanged costs, the costs must be shifted elsewhere. Kroger witness Mr. Townsend's further proposition that "ELAP eliminates the subsidy that multi-site customers would otherwise pay on behalf of single-site customers –by placing multi-site and single-site customers on an equal footing" (9 T 2775) is baseless and backwards from a cost-to-serve perspective. The ELAP is an unfair, arbitrary pricing mechanism that allows a select group of customers to reduce their billing demand costs based on ownership at the expense of other customers. (4T 560, 569-70).

DTE Electric's exceptions, p. 120.

With respect to the ALJ's finding that the company failed to provide sufficient analysis to demonstrate that the ELAP is not cost-based, DTE Electric points to testimony by Timothy A. Bloch, a Principal Financial Analyst in Regulatory Affairs for DTE Energy Corporate Services, LLC, at 4 Tr 559-561.

The Commission agrees with DTE Electric and finds that the record supports the elimination of the ELAP due to the intra-class subsidies created by this rate. Specifically, the Commission concurs with Mr. Bloch who pointed out, "The fact that the ELAP does nothing to alter the Company's costs or the allocation of costs to cost of service classes and yet reduces rates paid by ELAP customers is proof that the ELAP is not cost based." 4 Tr 569. Accordingly, the Commission finds that the ELAP should be terminated.

G. Municipal Lighting

DTE Electric proposed to unbundle the per-lamp charge for municipal street lighting and outdoor protective lighting into a customer service charge, fixture charge, and an energy charge. According to DTE Electric, this proposed structure will allow customers to better understand their total charges, so that they will be able to make more informed decisions regarding which technology and program may best serve their community. The Staff initially supported the company's proposals.

While many of DTE Electric's proposed changes to its municipal and street lighting programs were uncontested, the Municipal Coalition raised significant concerns with the company's proposal to eliminate its Experimental Efficient Lighting Technologies (EELT) tariff and to transition the customers on that tariff to a new Rate E1 tariff. Among other things, the Municipal Coalition took issue with the fact that many EELT customers made significant contributions in aid of construction (CIAC) to install energy efficient light-emitting diode (LED) technology and these

contributions are not taken into account in the E1 tariff. The Municipal Coalition also criticized the Community Lighting Model that was used as the basis for DTE Electric's E1 rate design and the company's cost allocations, noting that the company's proposals actually discourage the transition to more energy efficient lighting. And the Municipal Coalition also took issue with the company's proposed fixture and maintenance charges, arguing that these charges were overstated. The Municipal Coalition therefore requested that the Commission decline to approve the company's proposals for changes to municipal and outdoor lighting and direct the company to file a revised tariff, after consultation with the affected municipalities. Alternatively, the Municipal Coalition requested that the Commission adopt its proposed tariff set forth in Exhibit MSL-19. In its initial brief, the Staff reconsidered its position and indicated its support for a municipal lighting collaborative. The Attorney General also supported a lighting collaborative.

The ALJ agreed with the Municipal Coalition that DTE Electric failed to support the reasonableness of its revisions to its municipal lighting tariff. She noted that DTE Electric's EELT requires a significant CIAC, however the E1 tariff does not take this into account. Although DTE Electric contended that many of these contributions came from grants, she agreed with the Municipal Coalition that the source of CIAC funds was irrelevant. Further, she disagreed that simply because municipalities were aware that the EELT could be changed did not mean that the company's changes were just and reasonable. Accordingly, the ALJ agreed with the Municipal Coalition, the Staff, and the Attorney General that a municipal lighting collaborative should be ordered by the Commission. Alternatively, the ALJ suggested that the Commission direct DTE Electric to file a revised E1 tariff addressing the Municipal Coalition's concerns. In the interim, she recommended, according to the proposals by the Municipal Coalition and the Staff, that existing rates be increased by an equal percentage.

DTE Electric takes exception and urges the Commission adopt its proposed changes to municipal and outdoor lighting charges and tariffs. DTE Electric notes that its proposals were fully supported and that the Staff expressed its agreement on the record. While DTE Electric admits that the Commission has the authority to order a collaborative, it nevertheless contends that the Municipal Coalition's vision of such a proceeding, if approved, would impermissibly impinge upon the company's management prerogative, analogizing to the Commission's previous findings on AMI.

In response, the Municipal Coalition presses the Commission to adopt the PFD. The Municipal Coalition repeats its criticisms of the company's proposed E1 tariff, noting that its claims were either unrebutted or not sufficiently addressed. The Municipal Coalition maintains that the best way to address its concerns is through a collaborative. The Staff agreed with the Municipal Coalition.

The Commission finds persuasive the extensive analysis and recommendations of the ALJ and agrees that the most reasonable course to arrive at appropriate rates for municipal lighting is to increase current lighting rates by an equal percentage and allow interested parties to engage in a Municipal Lighting Collaborative. The Commission therefore directs the Staff, within 90 days of the date of this order, to initiate a Municipal Lighting Collaborative comprised of the company and other interested parties to address the appropriate method and inputs for designing rates for municipal and outdoor lighting.

H. Low-Income Programs

DTE Electric proposed to modify its Residential Assistance Credit (RIA) by increasing the credit amount commensurate with its proposed residential customer charge and by adding a Residential Service Special Low Income Pilot tariff (Rate D1.6).

Under Rate D1.6, customers will receive a $40 bill credit each month. To qualify for this rate, the customer must also qualify for Rate D1 and must have been billed $1,700 or less for electric service over the previous 12 months. In addition, a qualifying customer must provide annual evidence of receiving a Home Heating Credit or must provide confirmation by an authorized state or federal agency verifying that the customer's total household income does not exceed 150% of the federal poverty level. DTE Electric proposed capping Rate D1.6 at 32,000 customers and limiting enrollment in both the RIA credit and Rate D1.6 at 55,000 customers, which, the company noted, is the current number of customers receiving the RIA credit.

The Staff, MEC/NRDC/SC, and the ELPC supported the company's proposed Rate D1.6 but opposed the company's cap on the RIA credit. The Staff argued that the company's concerns about revenue stability were misplaced, noting that the RIA credit has been in place for several years and, to date, only 55,000 customers are taking advantage of the credit. The Staff opined that it appears exceedingly unlikely that there will be a large influx of customers at this time and that it would be unreasonable to limit low-income program offerings to an arbitrary number of customers. The other parties opposed to the cap point out that there are tens of thousands of customers who qualify for the RIA who would be excluded if DTE Electric's cap is approved.

The ALJ found that because there is currently no cap on participation in the RIA, imposing a cap in this case would raise questions about how additional customers would be selected for the program if space opens up.

DTE Electric takes exception, again arguing that Rate D1.6 and the RIA are designed to work together and that eliminating the cap on the RIA program could potentially subject the company to financial risks until rates can be reset in another rate case proceeding. Alternatively, if the Commission decides to eliminate the cap on RIA participation, DTE Electric suggests that rates

should be set assuming that 55,000 customers, rather than 23,000 customers, will receive the RIA credit.

In reply, the Staff reiterates that the majority of interested, eligible customers are likely receiving the RIA credit now, and the mere addition of Rate D1.6 will not result in thousands of additional customers requesting a credit. The Staff therefore urges the Commission to reject DTE Electric's exception and adopt the PFD.

The Commission finds the PFD well-reasoned and adopts its findings and conclusions. The Commission agrees with the Staff that simply because DTE Electric has decided to add a pilot low income program, it does not stand to reason that thousands more eligible customers will be flocking to a credit program that has been in place for many years.

I. Rider 16 Net Metering Time of Use

The Staff proposed to change DTE Electric's time of use net metering tariff (Rider 16) to allow customers to apply excess generation credits during time periods other than the time period when the excess generation occurred.[6] Julie A. Baldwin, Manager of the Renewable Energy Section of the Commission's Energy Reliability Division, explained that in the case of solar, it is typical to have the highest generation during the summer on-peak period. When net excess generation credits are created during this time period, they are placed in a "bank" and can only be applied to offset future usage in the summer on-peak time period. It is likely for these customers to build up a balance of credits in the summer on-peak "bank" that will continue to increase because there may never be a future summer on-peak time period where the customer uses more energy than the solar generates. Ms. Baldwin added that not all customers are satisfied with DTE Electric's offer to move them to a standard, non-time-of-use rate.

[6] In other words, excess generation that occurs during a summer on-peak period can only be carried forward and used to offset usage during a subsequent summer on-peak period.

According to the Staff, its proposal does not conflict with the Interconnection and Net Metering Standards, Mich Admin Code, R 460.601-R 460.656 (Net Metering Rules), because these rules do not specify how excess credits may be applied. The Staff therefore recommended language to be added to Rider 16 that would comport with its proposal.

DTE Electric objected to the Staff's proposal on grounds that it might confuse customers on Rider 16 and that there may be scenarios where, under the Staff's proposal, some customers may be worse off; for example, where a customer might apply summer on-peak credits to winter on-peak billing, leaving nothing for the next summer on-peak period. The Staff responded that the company failed to provide net metering data to demonstrate how this might occur.

The ALJ found that the Staff's proposed modification to Rider 16 should be adopted.

DTE Electric took exception, arguing that Rider 16 has been in place since the Net Metering Rules were approved in 2009, and the Staff provided no compelling reason to change the tariff now. DTE Electric further points out that while the Staff criticized the company for failing to provide net metering data in support of its position, the Staff likewise failed to provide such data in its presentation.

DTE Electric also argued that the Staff's proposal is not timely, in light of the company's plans to implement Customer 360 in 2017. According to DTE Electric, implementing the Staff's proposed changes to Rider 16 now would require expensive and time-consuming changes to the company's soon-to-be retired billing system.

The Commission agrees with the Staff that its proposed changes to Rider 16 are reasonable and comport with the Net Metering Rules. Nevertheless, the Commission finds persuasive the company's argument that it would be costly and inefficient to change the billing for the relatively few net metering customers who are on Rider 16, when these changes could be made as part of the

Customer 360 project. In addition, the Commission observes that there may be changes to Michigan's current net metering law as a result of proposed legislation currently being debated.

X. OFFICIAL NOTICE REQUESTS

On June 30, 2015, after the close of the record in this proceeding, the Staff filed a motion requesting that the ALJ take official notice of a press release from Fitch Ratings announcing that Fitch assigned a BBB rating to DTE Electric's $300 million issuance of senior secured notes. Among other things, the press release states that it assumed a 10% ROE for the company in developing the rating. The Staff explained that it had not introduced the press release as an exhibit because it believed that the report was confidential.

DTE Electric, ABATE, and the RCG opposed this request. DTE Electric and ABATE argued that the press release does not contain technical facts within the Commission's specialized knowledge, but rather, contains speculation, especially with respect to assumptions about the company's ROE. They contend that under MCL 24.277, MRE 201, and Mich Admin Code, R 792.10428, the Commission may only take official notice of undisputed facts and not opinion. DTE Electric and ABATE pointed to a disclaimer on the Fitch website that clearly states that "Ratings are not facts, and therefore cannot be described as accurate or inaccurate." DTE Electric's reply brief, p. 19.

The Staff also requested that the ALJ take official notice of a Texas Public Utility Commission report (TPUC Report) about the potential health effects of AMI, which concluded that there is no evidence suggesting harmful effects from low-level RF or that meters emit harmful amounts of EMF. According to the Staff, although the TPUC Report was available before the record closed, the Staff did not introduce it because it did not have a witness with personal knowledge of the report to sponsor it as an exhibit.

The RCG and Mr. Meltzer opposed this request. The RCG contended that if official notice were taken of the TPUC Report, official notice should also be taken of two reports that it submitted in rebuttal. The RCG and Mr. Meltzer both objected to the fact that the Staff waited until after the hearing to submit the report contending that the Staff's request was far too late.

The ALJ found that both of the Staff's requests should be denied. The ALJ noted that while the Commission often takes official notice of updates of published market prices or indices, neither of these documents could be characterized as such. With respect to the Fitch press release, the ALJ found that there were disputes in the case concerning the significance to attach to credit ratings generally, thus the Fitch report was likely to be controversial as well. Recognizing that MCL 460.6a severely limits the time available to consider late-filed evidence, the ALJ found that it was simply too late to reopen the record to address the Staff's request.

The ALJ also found that while the TPUC Report may be the type of evidence the Commission might consider in evaluating its response to AMI issues, the report met the requirements for an authenticated document under MRE 901 and MRE 902, and therefore could have been entered into the record without a sponsoring witness, thus giving the RCG and other parties an opportunity to provide rebuttal.

The Staff takes exception and argues that the Commission may still take administrative notice of these documents under MCL 24.277, and the Commission should do so if the Commission finds the information helpful in arriving at a decision. The Staff points out that under MCL 24.277, aside from giving other parties notice and an opportunity to dispute the fact or materiality of any officially noticed matter, the Commission is not limited in taking official notice.

The RCG takes exception to the ALJ's denial of its request to take official notice of rebuttal studies regarding health and safety concerns relating to the utility's AMI program, that the RCG

presented in response to the Staff's June 30 motion, and further takes exception to any official notice accorded the Staff Report presented in Case No. U-17000 (Staff Report). According to the RCG, the Staff Report was not sponsored by a credentialed witness in this proceeding, and the Staff members who compiled the report lacked expertise in the matters contained in the report.

DTE Electric replies that the request by the RCG to provide rebuttal was an alternative predicated on an official notice request made by the Staff. DTE Electric points out that the RCG asked the ALJ to deny the Staff's request to take official notice of the TPUC Report. Alternatively, the RCG asked that the ALJ take official notice of its studies regarding health and safety offered during rebuttal. According to the utility, the RCG only asked for official notice of its studies if the ALJ failed to deny the Staff's request for official notice of the Texas commission's report. Thus, when the ALJ denied the Staff's request thereby granting the RCG the relief it asked for, the RCG's alternative request became moot. DTE Electric's replies to exceptions, p. 52.

The Commission finds that these exceptions should be rejected. The Commission agrees with the ALJ that, because of the unforgiving time limits under MCL 460.6a, official notice requests, especially those that may generate controversy regarding the materiality or weight of the evidence proffered, can rarely, if ever, be entertained after the close of the record. With respect to the RCG's objection to the ALJ's recommendation, the Commission finds that the RCG had adequate opportunity to address the findings in the report. To the extent that the RCG objects to the Staff Report on grounds that it does not meet the standards set forth in *Daubert v Merrell Dow Pharmaceuticals*, 509 US 579 (1993), the Commission finds that the ALJ's ruling should be reviewed for an abuse of discretion. Because the Commission finds that the ALJ's evidentiary ruling admitting the Staff's Report was not an abuse of discretion, the RCG's exception is rejected.

THEREFORE, IT IS ORDERED that:

A. Based on this order's findings adopting a 2015-2016 test year, a jurisdictional rate base of $13,431,968,000, an authorized rate of return on common equity of 10.30%, an authorized overall rate of return of 5.70%, and a jurisdictional revenue deficiency of $238,171,788, DTE Electric Company is authorized to implement rates that increase its annual electric revenues by $238,171,788 on a jurisdictional basis over the rates approved in Case No. U-16472.

B. DTE Electric Company is authorized to implement the rates approved by this order on a service rendered basis for service provided on and after December 17, 2015, as summarized in Attachment A, and set forth in Attachment B. Within 30 days of December 11, 2015, DTE Electric Company shall file tariff sheets substantially similar to those contained in Attachment B. When filing the tariffs consistent with those ordered, DTE Electric Company shall also update the Standard Allowance amounts on Tariff Sheet C-30.00, Section C6.2(4)(a) to be consistent with the rates approved in this order. Due to the size of Attachment B, it is not physically attached to the original order contained in the official docket or paper copies of the order, but is electronically appended to this order, which is available on the Commission's website.

C. On or before March 11, 2016, DTE Electric Company shall file an application for authority to conduct a self-implementation reconciliation proceeding as required under MCL 460.6a(1).

D. Within six months of the date of this order, DTE Electric Company shall file its first report on the project costs and the progress of implementation of the Customer 360 program in this docket, and shall update that report every six months thereafter in this docket until the Customer 360 project is complete.

E. Within six months of the date of this order, DTE Electric Company shall file its first report on the cost and reliability benefit of the enhanced vegetation management program compared to

the benefit of the company's traditional vegetation management program, and shall update that report every six months thereafter in this docket until an order is issued in a subsequent rate case.

F. Within 90 days of the date of this order, the Commission Staff shall initiate a meeting with DTE Electric Company for the purpose of discussing future analysis of the hazardous tree removal program.

G. Within 90 days of the date of this order, the Commission Staff shall initiate a workgroup comprised of the company and other interested parties to address the appropriate method and inputs for designing rates for municipal and outdoor lighting.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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John D. Quackenbush, Chairman

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Sally A. Talberg, Commissioner

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Norman J. Saari, Commissioner

By its action of December 11, 2015.

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Mary Jo Kunkle, Executive Secretary