

The Commission is not persuaded by RCG's exceptions and finds that the ALJ's recommended adjustment of \$148.2 million attributed to "Staff Witness Pung" in Attachment A of the PFD, line 11, is not only supported by Mr. Pung's testimony and calculations, but is reasonable and prudent as well. His explanation is clear that "it was necessary for newly approved rates to be used in calculating projected revenues" in this case, indicating that DTE Electric filed its case with calculations completed prior to the new rates approved by the settlement in the company's Credit A case.¹⁹ 8 Tr 4281. Further, the Commission is cognizant that reduced rates due to the effects of the TJCA result in reduced revenue to the company that must be included in the rate case calculations when the credit expires. Accordingly, the Commission adopts the Staff's calculation of the effects of the TCJA and the ALJ's figures relating to the TCJA as set forth in Appendix A to the PFD, line 11.

B. Adjusted Net Operating Income Summary

In summary, the Commission finds that DTE Electric's jurisdictional projected NOI for the 2019-2020 test year is \$842,172,000.

VI. OTHER REVENUE-RELATED ISSUES

A. Electric Vehicle Pilot (Charging Forward)

DTE Electric proposed an electric vehicle (EV) pilot (Charging Forward) which is a three-year set of projects developed after meetings with stakeholders and participation in the Commission's electric vehicle technical conference. 8 Tr 3563-3564. The company's proposal will cost approximately \$13 million, including O&M, through the end of 2021. 8 Tr 3579. Overall, the parties did not object to the pilot but made several recommendations for modifications. The ALJ

¹⁹ See, July 24 order.

reviewed each of the proposed modifications, in detail, in the PFD at pages 182-214, which are also addressed individually below.²⁰

1. School Bus Pilot

As proposed, Charging Forward included a limited school bus pilot program which the Staff recommends should be greatly expanded beyond the “make ready” infrastructure proposed by the company. 8 Tr 3412. The expansion was supported by ChargePoint and ELPC, yet opposed by DTE Electric.

The ALJ found that the Staff’s expansion proposal was reasonable. PFD, pp. 182-183. She concluded that the school bus pilot should be expanded, and that the costs involved with implementing new technology should not fall on the school systems. *Id.*, p. 184.

In exceptions, DTE Electric again opposes the expansion of the school bus pilot program. Specifically, the company states that, while the pilot is important, expansion is premature and its “initial objective will be to find school districts that are willing to add electric buses to their fleets.” DTE Electric’s exceptions, p. 80.

MEC/NRDC/SC reply, arguing that the school bus pilot should be expanded and that the financial risk should not be passed on to the school districts. They also argue that it is not premature to expand the pilot and the funding because the Michigan Department of Environmental Quality (DEQ) “is also already handling Michigan school districts’ grant applications for electric

²⁰ The Commission notes that DTE Electric agreed to the Staff’s proposal to close the D1.9 Option 2 flat fee to new enrollment and phase it out, to keep rebate amounts flexible, and to submit annual summary reports (which will include information on the level of rebates used for the different categories of the charging infrastructure enablement component of the program). 8 Tr 3618-3620; PFD, p. 178, n. 418, and pp. 179-180. The Commission approves these agreed-upon changes to the Charging Forward program.

bus funding” MEC/NRDC/SC’s replies to exceptions, p. 39. Therefore, MEC/NRDC/SC state that the ALJ’s recommendation should be adopted by the Commission.

The Commission finds that DTE Electric’s argument is reasonable. At this early stage, an expansion is not warranted and the company should be permitted to find participating school districts before additional expenditures are made. MEC/NRDC/SC’s contention that the DEQ is reviewing grant applications bolsters the company’s resistance to additional funding, at this time, given that districts may have an additional source of funds. At this stage, it is not clear which districts are willing to participate or what funding those districts will have available. The Commission is not persuaded, therefore, to require an expansion of the school bus pilot, or approve additional funding for the expansion at this time.

2. 80 Amp Charging Pilot

The Staff recommended that the Commission should approve an additional pilot with regard to 80 amp chargers as it “is an emerging charging technology that has not been extensively vetted by an electric utility in Michigan.” 8 Tr 3413. ChargePoint reasoned that the Commission should take a “technology-agnostic” stance to explore varying innovations and the company argued that an additional pilot is not necessary. 7 Tr 3061; 8 Tr 3615.

The ALJ concluded that the Commission should “take a technology neutral position” and “permit the involved parties to determine what arrangements and technologies best meet their needs.” PFD, p. 185. No party took exception to the ALJ’s recommendation to take no action on the Staff’s proposal. The Commission adopts the findings and recommendations of the ALJ.

3. Future-Proofing

Many parties argued that it would be prudent for the company to future-proof upstream charging infrastructure; future-proofing refers to the inevitable need to upgrade to ultra-fast

charging rates. 8 Tr 3414. DTE Electric noted that “[t]o the extent ‘future-proofing’ is possible and reasonable . . . the Company will do so.” 8 Tr 3615.

The ALJ found that DTE Electric should be proactive in its attempts to future-proof but that “it does not appear that the Commission can provide additional guidance.” PFD, p. 189.

Exceptions were not filed on this issue and the Commission adopts the findings and recommendations of the ALJ.

4. Sale-for-Resale

The Staff recommended that the Commission require the removal of tariff provisions on “sale-for-resale” that prohibit site hosts from charging customers on a per kWh basis. This position was supported by MEC/NRDC/SC, ChargePoint, and MEIBC/IEI. DTE Electric opposed the recommendation and contended that such a requirement would exceed the Commission’s authority.

The ALJ found that allowing DTE Electric “to retain its sale-for-resale prohibition would remove a valuable tool from Charging Forward’s toolbox of pilot program options that should be available to site hosts and DTE Electric.” PFD, p. 194. She concluded that the revision of a tariff is directly within the Commission’s authority to regulate, including the enforcement of reasonable rates and charges under *Union Carbide Corp v Public Service Comm*, 431 Mich 135; 428 NW2d 322 (1988) (*Union Carbide*). Specifically, the ALJ stated that “the Commission is called upon to amend a DTE Electric tariff provision that Staff and Intervenors find unreasonable” and she concluded that “the Commission has full authority to grant that request.” PFD, p. 195. Therefore, the ALJ recommended that the company should be instructed to modify its tariffs to permit sale-for-resale by site hosts.

In exceptions, DTE Electric argues that the ALJ's recommendation to remove the sale-for-resale provision exceeds the Commission's authority, that allowing volumetric pricing could create confusion for its customers, and that site hosts should not be limited to charging on a per kWh basis. DTE Electric specifically contends that modifying the tariff provision is "contrary to the fundamental business structure that the Company envisioned for the Charging Forward Program." DTE Electric's exceptions, p. 73. Therefore, the company argues that the adoption of this recommendation would be contrary to the court's holding in *Union Carbide*. The company concludes that the prohibition on sale-for-resale is not problematic and should remain in place.

The Staff replies, contending that the company misapplied *Union Carbide* regarding the sale-for-resale provision. The Staff states that MCL 460.54 and MCL 460.6 provide the Commission with broad ratemaking authority which directly applies to the modification of tariff provisions. The Staff also notes its support for MEC/NRDC/SC's arguments as quoted by the ALJ and concludes that the Commission should adopt the ALJ's recommendation and "direct the Company to amend its tariffs to state that the sale of electricity for vehicle charging purpose is not considered a sale for resale." Staff's replies to exceptions, p. 32.

In reply, the Attorney General states that "if EVs are to truly be moved forward in a collaborative manner, then transparency and ease for EV drivers and EV charging station site hosts must be preserved." Attorney General's replies to exceptions, p. 28. She states that the company's *Union Carbide* arguments lack merit and that the amendment of DTE Electric's tariff is within the Commission's discretion. Therefore, the Attorney General requests that the Commission reject DTE Electric's exceptions and recommends the removal of the sale-for-resale prohibition.

MEC/NRDC/SC also reply, stating that the removal of the prohibition on sale-for-resale is supported by several parties and “is a matter of common practice across the country.”

MEC/NRDC/SC’s replies to exceptions, p. 40. They argue that this change in the tariff would support the success of the pilot. MEC/NRDC/SC also state that no party argued to exclusively limit site hosts to charging on a per kWh basis, but to allow it as an additional option rather than a limitation. Further, they argue that DTE Electric’s *Union Carbide* argument is without merit.

In reply, ChargePoint argues that DTE Electric’s concern about customer confusion is unfounded. ChargePoint explains that “more than half of the States have already addressed this non-controversial issue without creating widespread customer confusion.” ChargePoint’s replies to exceptions, p. 3. ChargePoint further states that DTE Electric mischaracterizes the recommendation to remove the prohibition on sale-for-resale as a limitation upon site hosts.

The Commission agrees with the Staff, the Attorney General, MEC/NRDC/SC, ChargePoint, MEIBC/IEI, and the ALJ, and finds that DTE Electric should be required to file amended tariffs allowing sale-for-resale for commercial EV charging site hosts. The contention that volumetric pricing would be confusing for customers is not supported on the record. The Commission adopted a similar tariff change in the February 28, 2017 order in Case No. U-17990 (February 28 order), wherein the Commission held that “the sale of electricity by charging station owners should not be treated as a resale of electricity under the tariff, or as a sale by regulated utilities.” February 28 order, p. 160. The Commission finds that consistency between the utilities will lessen confusion for both site hosts and EV customers rather than cause confusion as the company contends.

DTE Electric also contends that retaining the sale-for-resale prohibition is a managerial decision with which the Commission cannot interfere under *Union Carbide*. The Commission

disagrees and finds that the company's argument is without merit. The Commission has broad ratemaking authority under MCL 460.54 and MCL 460.6, and the Commission finds that the modification of a tariff does not exceed its jurisdiction or authorized powers. As discussed by the ALJ, the court in *Union Carbide* specifically held that the Commission has the authority to regulate and enforce reasonable rates and charges and the amendment of a tariff provision is squarely within the Commission's authority. PFD, pp. 194-195. Therefore, the Commission adopts the findings and recommendations of the ALJ.

5. Demand Charges

MEC/NRDC/SC and MEIBC/IEI expressed concern with the demand charges associated with DC fast charger (DCFC) charging station usage. Specifically, they argue that the Commission should implement a demand charge holiday because, under Rate Schedule D4, a monthly demand charge for DCFC site hosts could exceed \$2,500. *See*, 6 Tr 2216-2217. The Staff agreed, in part, stating that during the early stages of Charging Forward there may be benefits associated with a demand charge holiday. However, the Staff also stated that the holiday should be specific and not permanent. 8 Tr 4255. DTE Electric argued that the demand holiday issue is moot as commercial customers have multiple available rates which do not have demand charges and the customer should be able to choose which rate is best for their individual needs. 8 Tr 3624.

The ALJ found that "demand charges pose a significant and unnecessary economic impediment to the successful deployment of publicly available [DCFC] charging stations." PFD, p. 198. Therefore, the ALJ recommended that the Commission adopt the Staff's proposal for a demand charge holiday for up to five years.

DTE Electric excepts, arguing that the ALJ misunderstands DTE Electric's rate schedules. The company explains that Rate Schedule D1.9 does not have a demand charge and is available to

both residential and commercial customers, and that commercial customers can also choose the D3 General Service Rate or the D3.3 Interruptible General Service rate which do not have demand charges.

The Staff also takes exception arguing that the ALJ's recommendation to create a demand charge holiday should be modified "to add language to tariff D3 stating that the 1000 kW [kilowatt] demand cap for the tariff does not apply to EV fast chargers until June 1, 2024." Staff's exceptions, p. 10. The Staff further states that the adoption of the same would not be detrimental to the company because the effects should be minimal given the adoption of the EV rates.

The company filed replies to the Staff's exceptions stating that the Staff's suggestion is meritless because there is "no specific demand 'cap' in the Rate D3 tariff language, and thus no changes are necessary to the tariff to allow customers with a load 1000 kW and larger to sign up on the rate." DTE Electric's replies to exceptions, p. 39.

MEC/NRDC/SC also reply, stating that it is the company's obligation to offer rates which not only reflect reasonable costs but also accommodate the evolving uses of the electricity grid, and that DTE Electric fails to recognize the limitations of its existing rates. They contend that DTE Electric's D3 rate schedule "is not available to customers with annual demand that exceeds 1,000 kW" which is "unlikely to be workable in cases where multiple DCFC are installed"

MEC/NRDC/SC's replies to exceptions, p. 43. MEC/NRDC/SC reiterate that, under the D4 rate schedule, site hosts risk incurring large demand charges. Therefore, they argue that the Commission should adopt a demand charge holiday to provide ratepayers with more reasonable options.

The Commission finds that the ALJ's recommendation to implement a limited demand charge holiday is reasonable. While the company argues that this issue is moot, the record reflects that

the D3 General Service Rate schedule is expected to be the primary choice for site hosts and that it “is limited to a load of 1000 kW (or possibly slightly more, according to the tariff)” 8 Tr 3624, 4255. Further, the D4 Large General Service Rate would likely result in significant demand charges for potential site hosts. The Commission finds that the ALJ properly described DTE Electric’s current offerings as “a significant and unnecessary economic impediment to the successful deployment of publicly available [DCFC] charging stations.” PFD, p. 198. Specifically, the load limitation in the D3 tariff, as described by the Staff, and the demand charges set forth in the D4 tariff, could deter potential site hosts from installing DCFC charging stations. Therefore, the Commission adopts the findings and recommendations of the ALJ to implement a demand charge holiday for site hosts. More specifically, the Commission finds that DTE Electric shall add language to tariff D3 stating that the 1000 kW demand cap for the tariff does not apply to EV fast chargers until June 1, 2024.

6. DC Fast Charger Price Regulation

Like the demand charge holiday, MEC/NRDC/SC and MEIBC/IEI contend that the Commission should implement consumer protections such as a pricing limitation in the early stages of the program, noting that a reasonable standard would be to tie the cost per charge roughly to the cost of one gallon of gasoline. 6 Tr 2217-2218. The Staff and DTE Electric disagreed and stated that the Commission should not regulate charging rates or impose a specific standard. MEC/NRDC/SC further argued that the company should work with site hosts to provide reasonable rates which are appropriate for the market, similar to Consumers’ approach in PowerMIDrive. MEC/NRDC/SC’s initial brief, p. 87.

The ALJ found that the most reasonable solution was presented by MEC/NRDC/SC and recommended that the Commission adopt the same consumer protection measures that were approved in Case No. U-20134. PFD, p. 201.

DTE Electric takes exception and contends that the ALJ's recommendation needs to be clarified. The company notes its agreement with reasonable rates for DCFC charging which is consistent with the January 9, 2019 order in Case No. U-20134. However, the company disagrees with the ALJ's statement that MEC/NRDC/SC provided the most reasonable solution because the record reflects their position includes a specific standard, which the company opposes. DTE Electric argues that at this early stage specific standards for pricing should not be imposed. DTE Electric's exceptions, pp. 83-84.

The Staff also filed exceptions seeking clarification of the ALJ's recommendation. Like the company, the Staff argues that MEC/NRDC/SC's recommendation for a specific standard such as setting the cost of charging comparable to the cost of gasoline is not appropriate. The Staff argues that this position should be rejected but agrees that the language from the settlement in Case No. U-20134 "provides a reasonable approach to price regulation" Staff's exceptions, p. 12.

In reply, ChargePoint agrees with the company and the Staff, stating that the ALJ's conclusion is somewhat unclear. The settlement in Case No. U-20134 does not include a requirement that DCFC chargers be regulated according to the cost of gasoline. ChargePoint argues that preemptively regulating prices would be detrimental to the pilot program and that if pricing becomes a problem, the Commission can address the problem at a later date. Therefore, ChargePoint agrees that the ALJ's recommendation should be clarified. ChargePoint's replies to exceptions, pp. 2-3.

The Commission agrees with DTE Electric, the Staff, and ChargePoint that the ALJ's recommendation is not fully reconcilable. The Commission finds that MEC/NRDC/SC's testimony includes very specific recommendations such as tying the cost per charge roughly to the cost of one gallon of gasoline, which the ALJ found to be inappropriate. PFD, p. 201. The Commission agrees with the ALJ's finding that a specific standard is not reasonable. Nevertheless, it disagrees that MEC/NRDC/SC set forth the most reasonable solution, as also stated by the ALJ, given the recommendation regarding specific pricing standards. Notwithstanding, the ALJ's determination that consumer protection measures should be imposed, is well taken by the Commission. The Commission finds that DTE Electric shall work with potential site hosts to educate them on available rates, discuss benefits, and assist in determining reasonable and market-based pricing options, while also providing the site hosts flexibility and authority to set rates based on their individualized needs.

7. Level 2 Metering Options

The Staff recommended that the company add additional provisions to Rate Schedule D1.9 including the addition of submetering options to address the lack of enrollment in the EV TOU rate. 8 Tr 3417-3420. The Staff recommended that DTE Electric file an application within 30 days of the date of this order to amend Rate Schedule D1.9, proposing submetering options to be piloted by the Charging Forward program. 8 Tr 3420. DTE Electric opposed the recommended change arguing that it would be premature to require the modification.

The ALJ concluded that DTE Electric's objections were based upon a misunderstanding of the Staff's recommendation as the Staff "is merely proposing to make it an option, at DTE Electric's discretion." PFD, p. 203. Therefore, she concluded that the Commission should order the

company to add tariff amendments to incorporate the Staff's advanced metering options, at the company's discretion.

No exceptions were filed and the Commission adopts the findings and recommendations of the ALJ. The Commission finds that, within 60 days of the date of this order, DTE Electric shall file an application to amend Rate Schedule D1.9, proposing additional metering options discussed by the Staff on this record. 8 Tr 3417-3420.

8. Reporting Requirements and Technical Conferences

The Staff recommended that the Commission require the company to file a status report prior to the implementation of the pilot and a report every 12 months, and further stated that it will hold a technical conference after each filing. 8 Tr 3420. The company generally supported the Staff's proposal but objected to the status report before implementation, arguing that the record "will provide all the information stakeholders need prior to implementation." 8 Tr 3620.

The ALJ agreed with the Staff and recommended that the Commission require the company to file a status report, prior to the implementation of Charging Forward, so that all interested persons and the Commission are aware of the scope and nature of the program, in addition to the agreed upon annual reports. PFD, p. 206.

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

9. Increased Budget

The Staff recommended an increased budget and an expansion of several of the Charging Forward pilot programs, such as the school bus pilot discussed above. DTE Electric opposed the increased budget and expansion arguing that the Staff's proposals are premature and the company would prefer to implement a successful pilot before expansion. 8 Tr 3613.

The ALJ recommended that the Commission adopt the Staff's proposed \$6 million budget increase in order to cover the proposed expanded school bus pilot, to expand the number of DCFCs beyond the 32 proposed, and to provide additional human resources to implement the programs. PFD, pp. 209-210.

DTE Electric takes exception to the ALJ's adoption of the Staff's proposal to increase the funding by \$6 million. "The Company believes it is premature to increase funding and prefers to ensure it is on target to implement a successful program before it proposes increases in scope and budget to Charging Forward." DTE Electric's exceptions, p. 79. DTE Electric notes its agreement that the school bus pilot is important but states that initially the company must identify school districts willing to participate prior to expanding the scope. Further, DTE Electric argues that the most important part of the pilot, at this stage, is to increase the number and accessibility of chargers.

In reply, MEC/NRDC/SC dispute the company's exceptions and argue that the evidence on record demonstrates that the company will need additional resources to develop a fast charging network, to uncap rebate levels, to future-proof, and to expand the school bus pilot program. MEC/NRDC/SC conclude that "there is no shortage of reasons for the Charging Forward budget to be increased." MEC/NRDC/SC's replies to exceptions, p. 39.

The Commission agrees with the company that the expanded funding and programming is not warranted, at this time. As indicated above, the Commission agrees with the company that it is premature to expand the school bus pilot and authorize additional funding. The Commission further finds that the company should be permitted to implement the pilot and evaluate its strengths and weaknesses before being required to expand the program. The company will be working closely with the Staff and interested persons through reporting and technical conferences

during the implementation and development of Charging Forward. Therefore, the need for additional funding can be evaluated throughout the program and addressed in a future case.

10. Cost Recovery

The company proposed the pilot program costs be recovered through capital expenditures, O&M expense, and regulatory asset treatment for proposed rebates. 8 Tr 3579-3581. The Staff, however, recommended deferral of both rebates and O&M costs through the creation of a regulatory asset with amortization over a five-year period. 8 Tr 4056-4057. The company agreed in rebuttal “to treat costs related to capital expenditures above the capital reflected in this case as a regulatory asset.” 8 Tr 3614.

The Staff recommended three performance objectives for the Charging Forward Program for DTE Electric: (1) maximize program participation at minimum cost; (2) aggressively test new and novel practices and technologies to ensure that new load associated with EV charging maximizes net benefits to all ratepayers; and (3) ensure that investments in make-ready infrastructure serve double duty by directly addressing core barriers (such as range anxiety), and by enabling the company to learn reasonable and practicable ways to actively manage charging times and locations, to minimize required investment in new distribution infrastructure, and to obviate adverse grid impacts related to uncontrolled charging. 8 Tr 3420-3421. DTE Electric agreed to incorporate these elements. 8 Tr 3621.

The ALJ noted that DTE Electric also agreed with the Staff’s recommendation to treat the O&M expenses as a regulatory asset. Therefore, she recommended that the Commission adopt the Staff’s proposal, stating that “it protects customers from paying for costs that might not be incurred” and allows the company “to fairly recover its costs actually incurred.” PFD, p. 213.

The company takes exception to the ALJ's recommendation to adopt the Staff's proposal for regulatory asset treatment. DTE Electric specifically states that it objects to the "Staff's proposals to (1) begin amortization the year after the costs are incurred, and (2) delay recovery of the unamortized balance until after Staff's review." DTE Electric's exceptions, p. 75. The company contends that it could lose recovery of some deferred costs which are amortized due to regulatory lag and that it "should not have to absorb the expenses for the Charging Forward program." *Id.*, p. 76. In addition, DTE Electric contends that the ALJ misunderstood its position with regard to the regulatory asset treatment. Specifically, the company states that it proposed the O&M expenses be recovered as base O&M and not be deferred and "the lack of certainty on cost recovery could delay the implementation of this aspect of the program." DTE Electric's exceptions, p. 78.

The Commission finds that the ALJ's recommendation is well reasoned and supported on the record. Although the company has clarified that it does not agree with delaying recovery of the O&M expenses through regulatory asset treatment, the Commission finds that the Staff's proposal for regulatory asset treatment, including O&M, is the most reasonable. The Commission further adopts the three performance based objectives articulated by the Staff. 8 Tr 3420-3421, 3621. The Commission also finds that a five-year amortization period beginning the year following cost deferral is appropriate. DTE Electric objects, stating that it could lose recovery of some deferred costs due to regulatory lag. However, DTE Electric made this argument, in part, based upon its reliance on approval of its requested IRM, given that such approval would likely delay the filing of its next rate case. As discussed below, the Commission declines to approve the proposed IRM. As such, the company's contention that its next rate case will be delayed until 2022 is unlikely thereby reducing its risk of lost recovery. Nevertheless, the Commission finds that regulatory asset treatment is still preferred as it balances the risk between the company and the customer.

The Commission finds that the creation of a regulatory asset for Charging Forward expenses is consistent with the Commission's cost recovery approval in Case No. U-20134. Overall, the Commission finds that regulatory asset treatment, as proposed by the Staff, is the most reasonable and prudent recovery mechanism. Regulatory asset treatment balances the company's interest with customer protection, by not requiring customers to pay for expenses that may not be incurred and by allowing the company to recover the actual costs incurred. As such, the Commission finds that DTE Electric is authorized to create a regulatory asset to recognize deferred EV program costs with the amortization of those costs over five years beginning the year after the costs are incurred. Further, the Commission authorizes the company to include recovery of the resulting amortization expense in rates and include the deferred net unamortized balance of EV program costs in rate base. However, the program costs will not actually be recovered until they have undergone a future reasonableness-and-prudence review in a rate case. The Commission also adopts the ALJ's recommendation for DTE Electric to examine whether there would be cost savings associated with the use of a tracker for future rebate programs as compared to regulatory asset accounting.

B. Infrastructure Recovery Mechanism

DTE Electric proposed an IRM with a total revenue requirement of nearly \$824 million. The company contended that "with the proper IRM in place for the intervening years, it may be able to defer filing for a rate increase until sometime in 2022 for new base rates in 2023." 3 Tr 75. The Staff contends that the IRM could result in a significantly larger regulatory burden. 8 Tr 4163-4164. Additionally, the Staff stated that it is not clear what value will be returned if the IRM is approved, yet it will result in guaranteed rate increases.

The ALJ found that the company failed to demonstrate the reasonableness of the proposed IRM expenses or that ratepayers would receive any benefit from the IRM, if approved. PFD, p.