

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of Consumers Energy Company for Authority to increase its rates for the distribution of natural gas and for other relief. MPSC Case No. U-21806

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Attorney General's Reply Brief

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INTRODUCTION

On June 25, 2025, the Attorney General of Michigan, filed an Initial Brief in this matter before the Michigan Public Service Commission (“Commission”) responding to the Application filed by Consumer’s Energy Company seeking a rate increase for its natural gas business. Also on June 25, 2025, other parties to this proceeding filed their Initial Briefs including, Consumers Energy Company (“Consumers” or “the Company”), Michigan Public Service Commission Staff (“MPSC Staff” or “Staff”), Michigan State University and the Lansing Board of Water and Light, Association of Businesses Advocating Tariff Equity (“ABATE”), and Michigan Environmental Council, Sierra Club, and Citizens Utility Board of Michigan. This Reply Brief responds to certain arguments made in Consumers’ initial brief. The Attorney General’s decision not to address certain issues in this Reply Brief is not a waiver of those issues. Her initial brief, testimony, and exhibits should also be considered in evaluating her position on the issues appearing in this case.

Consumers Energy in its Initial Brief confirmed a downward adjustment to its test year revenue request and is now seeking approximately \$217 million.¹ The Company is still seeking a return on equity (“ROE”) of 10.25% and an equity ratio of 50.75%² for the projected test year. This Reply Brief will address the following issues: (1) the Company’s misleading use of evidentiary standards; (2) Consumers

¹ Initial Brief of Consumers Energy Company, p.2. See also, Appendix A, line 8, column (e).

² Initial Brief of Consumers Energy Company, p. 122.

Energy's arguments against certain Attorney General capital expenditure disallowances; (3) Consumers Energy's proposed equity ratio; and (4) Consumers Energy's request for an excessive authorized return on equity.

ARGUMENTS

I. Consumers Energy misstates the evidentiary standards.

Consumers' brief includes statements intended to bolster the testimony and exhibits of its witnesses. As part of that discussion, it quotes from a case, *Great Lakes Steel Div of Nat'l Steel Corp v Pub Serv Comm*, 130 Mich App 470, 481; 344 NW2d 321 (1983) which it claims support its position that it met its burden of proof.³ Specifically, the Company states that "[e]xpert opinion testimony is considered "substantial" if offered by a qualified expert who has a rational basis for his or her views, whether or not other experts disagree. "To hold otherwise would thus neutralize all expert testimony in cases of conflict and the party with the burden of proof would automatically lose. Const 1963, art 6, § 28, intends no such absurd results.""⁴ However, the Company's limited reference to the case distorts the Courts treatment of the subject with the intended result of diminishing the burden it rightfully bears to prove its case.

³ *Id.* at p. 2.

⁴ *Id.*

While the Court quotes the language discussed in the Company’s brief, it starts with a broader discussion of the proper standard for review in the case, holding that “the proper standard for review in the case before us is whether, the MPSC’s decision is an abuse of discretion, which in the context of a utility rate case subsumes both standards – the constitutional evidentiary test of Const. 1963 art. 6, § 28, and the statutory test of reasonableness, M.C.L. § 462.26; M.S.A. § 22.45.”⁵ So merely looking at the constitutional standard alone does not determine whether burdens of proof are met.

As noted in the Attorney General’s Initial Brief, Consumers bears the burden of proof to demonstrate that its requested rate increase and other proposals are just and reasonable. That as the applicant, Consumers must prove its case including any fact upon which it affirmatively relies on an issue.⁶ The Michigan Supreme Court has held that in administrative cases, a party seeking relief must prove his, her, or its claim by a preponderance of evidence. “The Comparative degree of proof by which a case must be established is the same in an administrative as in a judicial proceeding – that is, a *preponderance of the evidence*. It is not satisfied by proof creating equipoise, but it does not require proof beyond a reasonable doubt. No essential issue may be left to surmise, guess, or conjecture, for an administrative

⁵ *Great Lakes Steet Div.*, 130 Mich App 470, 480 (1983).

⁶ *White v Campbell*, 25 Mich 463, 475 (1872).

body cannot base an award or decision upon conjecture or speculation...”⁷ More recently the Supreme Court held, that:

“it is generally well established that issues of fact in civil cases are to be determined in accordance with the **preponderance of evidence** with the burden of persuasion placed upon the party asserting the claim. In *Aquilina v. General Motors Corp*, 403 Mich 206, 210, 267 N.W.2d 923 (1978), this Court stated that the same burden of persuasion applies to proceedings before an administrative agency. Accord, Cooper, *State Administrative Law*, p.355. Proof by a preponderance of the evidence requires that the factfinder believe that the evidence supporting the existence of a contested fact outweighs the evidence supporting its nonexistence.”⁸

Likewise, in MPSC cases, a utility has the burden of proof by a preponderance of evidence.⁹ In fact the Court in the Great Lakes case acknowledges this burden of proof when it states that “it was for the PSC to weigh the conflicting opinion testimony of the qualified (“competent”) experts to determine how the evidence preponderated...”¹⁰ Therefore, to prevail, Consumers must prove its proposals are reasonable and prudent by a **preponderance of the evidence**.

Moreover, as stated in the Attorney General’s Initial Brief, the Commission may disbelieve even uncontradicted evidence.¹¹ When the burden of proving a fact

⁷ *Dillon v Lapeer State Home & Training School*, 364 Mich 1, 8; 110 NW2d 588 (1961) (emphasis added).

⁸ *BCBSM v Governor*, 422 Mich 1, 88-89; 367 NW2d 1 (1985) (emphasis added).

⁹ *In re Michigan Gas Utilities Co*, MPSC Case No. U-7484, Opinion & Order dated August 30, 1983; *In re Detroit Edison Co*, MPSC Case No. U-8030-R, Opinion & Order dated July 9, 1987, pp 16-17. See also, *SBC Mich v PSC (in re Complaint of Rovas)*, 482 Mich 90, 100 – 101 (2008).

¹⁰ *Id* at 481 referencing *Aquilina v General Motors, Corp*, 403 Mich 206, 211 – 212, 267 N.W.2d 923 (1978).

¹¹ *Woodin v Durfee*, 46 Mich 424, 427; 9 NW 457 (1881); *Accord, Yonkus v McKay*, 186 Mich 203, 211; 152 NW 1031 (1915); *Cuttle v Concordia Mut Fire Ins Co*, 295 Mich 514, 519; 295 NW 246 (1940).

falls on one party, then the other party does not have the burden of proving the opposite fact.¹² So presenting substantial evidence alone, is not enough. A Plaintiff has the burden of proof or risk of non-persuasion for all elements necessary to establish its case and that burden never shifts during the trial.¹³ Therefore, Consumers always has the burden of proof to support the requests that make up its application.

II. Net Utility Plant

The Company disagreed with most of the Attorney General's proposed reductions to Capital Expenditures in its initial brief. The Attorney General stands by her proposed reductions as described in her initial brief and will only reply to a few issues addressed in the Company's initial brief in this reply brief.

A. Regulatory Compliance

1. Maximum Allowable Operating Pressure Project Expenditures

The Company disagrees with the Attorney General's proposed disallowances for the MAOP Compliance Pipeline Program.¹⁴ The Attorney General recommended partial disallowances for most of these projects except one for which she recommended a total disallowance.¹⁵ The reconfirmation option chosen by the

¹² *S.C. Gary, Inc v Ford Motor Co*, 92 Mich App 789, 803-804; 286 NW2d 34 (1979).

¹³ *Kar v Hogan*, 399 Mich 529. 539 (1976).

¹⁴ Initial Brief of Consumers Energy Company, p. 34 – 45.

¹⁵ See, Attorney General's Initial Brief, pp. 33 – 39. See also, Coppola, 4 TR 1869 – 1876 and 1902 – 1903.

Company involves replacing transmission and distribution lines and pipelines, which the Company claims would provide benefits to customers beyond compliance with the rules. However, the lack of compliance with the rules is the reason why the Company is considering replacing the lines and pipelines in question.

The costs are being incurred because the Company failed to keep records that would document or verify things such as pressure records, pipe locations, missing pipe and fittings specifications, whether previous maximum allowable operating pressure for its pipelines were commensurate with regulations, and pressure tests. And, the Company has not made the case that their age necessitates the replacement of the lines now. Although the Attorney General believes that a full disallowance is justified for all of the projects, she proposes a partial disallowance for certain of the pipeline segments.¹⁶

The Company argues that depending on when a pipeline was put in service, it may have a lesser requirement,¹⁷ or no pressure record requirement. It also states that the line 1080 project remains grandfathered and is subject to different requirements.¹⁸ It claims that the project related to that line is needed because it cannot serve local requirements (i.e., operate at higher pressure) consistent with PHMSA requirements. However, it operates below 30% SMYS because it does not

¹⁶ *Id.*

¹⁷ Initial Brief of Consumers Energy Company, pp 40 - 41

¹⁸ *Id.*

meet the TVC standard so the lack of records is the problem.¹⁹ The Commission should approve the Attorney General’s proposed disallowances.

2. Pipeline Integrity TOD

The Company disagreed with Mr. Coppola’s testimony recommending disallowances for the Casing Assessment Program and Risk Mitigation under this category of expenditures.²⁰

a. Casing Assessment Program

The Company criticizes Mr. Coppola opinion that \$2.0 million included in the assessments for 2025 and 2026 seemed like ballpark amounts and that \$2.0 million should be eliminated.²¹ The Company based the amount on previous assessments noting that the level of planning and costs to accomplish the planned four examinations is complex and expensive.²² The Company’s explanation does not justify including the projected \$2.0 million for 2025 and 2026 in rate base. As Mr. Coppola noted, “the Company forecasted capital expenditures have them repeating two years in a row at the same amount of \$2.0 million. These amounts appear to be ballpark amounts with no specific quantification of the forecasted cost.”²³ While the Company dislikes the “ballpark amounts” characterization, it admits that it has

¹⁹ *Id.* at p 44. See also, Coppola, 4 TR 1872.

²⁰ Initial Brief of Consumers Energy Company, p 32.

²¹ *Id.*

²² *Id.*

²³ Coppola, 4 TR 1900.

very limited experience with the cost of inspecting and remediating casings and that the project are (or were) in the planning and scheduling phase.²⁴ In addition to the projections being questionable, as Mr. Coppola testified, the 2026 projects appear to be premature. The \$2.0 million for the projected test year should be disallowed by the Commission.

b. Risk Mitigation

The Company disagreed with Mr. Coppola's recommendation to remove \$2,593,000 for the projected test year related to the ramp up in mileage and costs for this project from 2024 to 2026.²⁵ According to the Company the "ramp up is due to the Company needing to secure the necessary resources to complete more mileage in a single year."²⁶ The Company states that it is moving to align non-HCA assessments with the HCA assessment. The goal appears to be to reduce the risk of leaks due to external corrosion and improve system safety.²⁷

Mr. Coppola testified that the Company inspected and mitigated 18 miles in 2024 at a cost of \$578,000 and projects doubling the number of miles to 34 for 2025 at a cost of \$661,000, which he deemed reasonable. However, for 2026, he noted that the Company proposes to triple the number of miles to be assessed and remediated to 105 from the number in 2025 at a cost of \$4,866,000. Based on his

²⁴ *Id.* See also, Exhibit AG-15 (AG-CE-0316).

²⁵ Initial Brief of Consumers Energy Company, pp 32 – 33.

²⁶ *Id.* at p 33.

²⁷ *Id.*

analysis, the large increase in both the number of miles and cost is excessive and has not been supported or justified. The Company also indicated that the Risk Mitigation work was still in the planning and scheduling phase, making the entire costs uncertain and premature to include in rate base in this rate case.²⁸ Therefore, Mr. Coppola calculated a reasonable amount of capital expenditures for the projected test year.²⁹ Regardless of the goals for the project, the Company's projections are not reasonable and the Commission should adopt Mr. Coppola's proposed adjustment.

B. Capacity and Deliverability Projects

1. TED-I RCV

The Attorney General recommended that the Commission disallow \$14.1 million for these projects because it is too premature to include them in rate base.³⁰ The Company disagrees with this recommendation, arguing that the projects are following the normal cadence for RCV projects and therefore not too premature to be included in rates.³¹ According to Company witness Griffin, the project process includes creation of the project scope documents and potential surveying and material selection a year before construction (2025). In 2026 (the year of construction), any outstanding surveying from the prior year is done, and the

²⁸ See, Coppola, 4 TR 1900 – 1901.

²⁹ *Id.* at p. 1901.

³⁰ Attorney General Initial Brief, pp 60 – 62.

³¹ Initial Brief of Consumers Energy Company, p 66.

Company expects receipt of materials, engineering and design work, release of design packages, construction bidding and selection, and finally construction and project closeout to occur.³² There are a lot of steps to be completed and it is not clear that they will all occur as expected. Customers should not be charged for costs that may not be incurred during the projected test year.

Even assuming *arguendo* that the projects are progressing at the normal cadence as the Company argues, the projects are still in the early planning and scoping phase, there is no engineering or design started yet, as they are not expected to occur until 2026.³³ Any forecasted costs can only be preliminary and should not serve as the basis for inclusion in rates. The Commission should adopt the Attorney General's recommendation.

C. Gas Compression and Storage Capital Expenditures

The Company disagreed with the Attorney General's proposed disallowances for this category of expenditures. As an initial matter the Attorney General will address a thread running through this section of the Company's brief that her witness, is incompetent to testify on this topic because he is not an engineer.³⁴ He does not have to be an engineer to review the materials on this issue and respond to what the Company has provided, further the Company never tried to disqualify him

³² *Id.* See also, Griffin, 4 TR 1318.

³³ Attorney General's Initial Brief, p. 61.

³⁴ See, Initial Brief of Consumers Energy Company, pp. 81, 84, and 87.

as a witness on this or any other issues. This collateral attack at the briefing stage is inappropriate.

Mr. Coppola has over twenty-four years of experience at MCN Energy Group and Michigan Consolidated Gas Company (now DTE Gas) holding various analytical, accounting, managerial, and executive positions. He was Senior Vice President and Chief Financial Officer of SEMCO Energy, Inc. with responsibility for all financial operations, corporate development and strategic planning for the Company's Michigan and Alaska operations. More recently he has been an independent consultant.³⁵ Over the course of his career he has been involved in presenting rate cases for two gas utilities and, he has experience evaluating gas facilities in rate cases beyond just Consumers Energy's cases.

The focus of rate cases is on evaluating whether the Company has demonstrated that its proposed expenditures are reasonable and prudent. The Commission should simply judge the record in the case, which the Attorney General argues support her proposed disallowances for this category of expenditures.

The Company disagrees with the disallowances recommended by Mr. Coppola for drilling new storage wells,³⁶ the Lyon 29/24 (Northville Storage) Dehydration Project,³⁷ and the compression station project.³⁸ The Attorney General addressed

³⁵ See, Appendix A to his Direct Testimony for his qualifications and representative cases. 4 TR 2037 – 2060.

³⁶ Initial Brief of Consumers Energy Company, p. 80 – 82.

³⁷ *Id.* at pp 84 – 86.

³⁸ *Id.* at pp 87 – 88.

those projects in her initial brief and witness testimony and will not repeat them here.³⁹ For the reasons provided by the Attorney General, the Commission should adopt her recommendations.

III. Working Capital

A. Response to Company's cash balance argument.

The Company asks the Commission to approve its method of projecting a 1% benchmark for its cash balance, which it claims is a simple, efficient, and easy calculation method.⁴⁰ According to the Company, this methodology yielded a \$28.4 million cash balance estimate which it claimed was reflective of normal levels of cash.⁴¹ An initial problem with the Company's simple, efficient and easy calculation was that it was not accurate because the Company used erroneous data resulting in a corrected case balance using the Company's methodology of \$23.13 million.⁴² The bigger problem is that the Company's methodology results in an inflated cash balance that far exceeds its cash needs.

The Attorney General discussed problems with the Company's approach to calculating its cash balance and recommended using the Company's average cash balance at the end of 2022, 2023, and 2024 to calculate the Company's cash balance, resulting in three-year average of cash-on hand of \$12.3 million. The Attorney

³⁹ Attorney General Initial Brief, pp 67 – 77 and Coppola, 4 TR 1913 – 1923.

⁴⁰ Initial Brief of Consumers Energy Company, p. 123 – 124.

⁴¹ *Id.*

⁴² *Id.* at p 130.

General recommended that the Commission adopt this amount as the Company's cash balance for the projected test year.⁴³

The Company argues that the Commission should reject the Attorney General's proposed reduction to the Company's cash balance.⁴⁴ The Attorney General supported her recommended cash balance in her initial brief, however she will respond briefly to issues raised by the Company in its brief.⁴⁵

First, the Company claims that Mr. Coppola use of actual cash balances resulting in a cash balance of \$12.3 million equates to approximately 0.5% of test year revenues is unreasonably low and would not allow the Company to manage working capital requirements and manage financial risks.⁴⁶ To the contrary, Mr. Coppola's testimony provides the actual cash balance needs versus the inflated amount forecasted by the Company. Mr. Coppola is not basing his projections on the Company's revenue because there is no cause and effect between revenue and cash needs. There is just no logical connection as discussed in the Attorney General's Initial Brief.⁴⁷ In addition, the cash balance projection is just one part of the Company's overall working capital, so claims that the Attorney General's

⁴³ See, Attorney General's Initial Brief, pp 91 – 98 for the Attorney General's complete analysis and recommendation.

⁴⁴ Initial Brief of Consumers Energy Company, pp 125 – 129.

⁴⁵ Attorney General Initial Brief, pp 91 – 98.

⁴⁶ Initial Brief of Consumers Energy Company, p. 125.

⁴⁷ Attorney General's Initial Brief, pp 92 – 93.

recommendation would not allow the Company to manage working capital requirements or manage financial risk is hyperbole.

Second, the Company states that its 1% of test year revenue guidepost for projecting the cash balance is not intended to match other utilities' liquidity and financing practices. Instead, it claims to base its projected cash balance on its own liquidity and financing strategy.⁴⁸ This is nothing more than a rationalization because as discussed above, the Company explains that it uses the 1% guidepost to determine its cash balance because it is simple, efficient and easy to calculate. It is simply the Company's preferred method.

Third, the Company is essentially arguing that Mr. Coppola fails to recognize the importance of having adequate liquidity on hand for utility operations.⁴⁹ To the contrary Mr. Coppola looked at its actual cash needs which is indicative of the Company's liquidity needs. With the availability of its short-term borrowing facility the Company should have more than enough liquidity available for its utility operations. The Company already has a layer of short-term debt in place and has projected an average short-term debt balance of \$201 million for the projected test year.⁵⁰ Other than allowing the Company to earn a return on the inflated amount of cash on hand to the detriment of ratepayers, there is no need for such a high cash

⁴⁸ Initial Brief of Consumers Energy Company, p. 127.

⁴⁹ *Id.* at pp. 125 and 127.

⁵⁰ *Id.* at p. 139.

balance. The Company's argument does not support the high cash balance that it is projecting.

Fourth, the Company misconstrues Mr. Coppola's testimony regarding the Company's reliance on projected revenues to calculate its test-year cash balance. It notes that "[i]n support of his proposed reduction to Consumers Energy's projected cash balance, Attorney General witness Coppola argues, that if the Company were to instead base its projection on current revenues, the test year cash balance would be lower. 4 TR 1941. Because it uses a forward looking test year, the Company appropriately projects an adequate level of cash for the test year ending October 2026. 4 TR 876. Basing the projected cash balance on current or historical revenues would not appropriately measure what the Company's test year cash balance should be."⁵¹ This argument distorts the point being made by Mr. Coppola.

Mr. Coppola is not advocating for using current or historical revenues to calculate the cash balance, he is pointing out the absurdity of using revenues to project cash balances – "Of course, using the forecasted revenues would not be appropriate because the Company is not likely to receive the entire additional revenue of \$248 million it seeks in this rate case,"⁵² which is true since the Company has already reduced the amount it seeks in this case to approximately \$217 million. Further, this point is part of a larger analysis that goes on to point

⁵¹ Initial Brief of Consumers Energy Company, pp 126 – 127.

⁵² Coppola, 4 TR 1941.

out that there is no logical connection between the Company's cash need and the Company's calculated revenues.⁵³

Fifth, the Company claims that Mr. Coppola's arguments against the proposed cash balance are inconsistent with his arguments related to credit metrics.⁵⁴ The Company is comparing apples to oranges. The credit metric analysis was about the impact of the spike in gas prices, an event that occurred three years ago (December 2021 to December 2022) on the Company's debt coverage ratio, especially considering that the gas prices began to recovery in 2023 and 2024.⁵⁵ Moreover, it was in response to Company witness Bleckman's claim that in recent years the Company's FFO to Debt ratio as calculated by Moody's is trending down.⁵⁶ Mr. Coppola explained how temporary forces were impacting that trend. He concludes his analysis with "[t]emporary events from year to year can have either a positive and negative effect on earnings, cash flow, short-term debt, and the cash flow to debt coverage ratio. However, rating agencies look past those temporary issues and focus on the long-term financial health of the Company."⁵⁷

The cash balance projection performed by Mr. Coppola is a different type of analysis for a different purpose. He uses three years of data, 2022, 2023, and 2024

⁵³ *Id.*

⁵⁴ Initial Brief of Consumers Energy Company, p 129.

⁵⁵ Coppola, 4 TR 1952 – 1953.

⁵⁶ *Id.* See also, Bleckman 4 TR 811.

⁵⁷ Coppola, 4 TR 1953.

in making his projections. While 2022 and 2023 (although less so) includes some period where gas prices spiked, averaging the three years evens out the impact of gas price hikes. More importantly, the availability and use of short term debt by the Company helped to address this temporary bump in gas prices without requiring the Company to carry a unnecessarily high cash balance.

The Company's arguments should be rejected for the reasons provided above and in the Attorney General's initial brief.

IV. Capital Structure and Rate of Return

As noted above, the Company continues to request an equity ratio of 50.75% and a ROE of 10.25% in its initial brief.⁵⁸ It discusses that the Company's equity ratio and ROE are utilized by credit agencies to determine the Company's financial strength and that they must be strong enough to allow the Company to maintain its credit and raise capital at reasonable financing rates.⁵⁹ The Company claims that "it is sound public policy for the Commission to grant the Company's requested capital structure and rate of return."⁶⁰ Citing to *Bluefield*,⁶¹ the Company claims that the other parties to the case have lost sight of the Court's mandate, however this claim is hollow.⁶² As the Attorney General discussed in her initial brief, her

⁵⁸ Initial Brief of Consumers Energy Company, p 132.

⁵⁹ *Id.*

⁶⁰ *Id.* at p 133.

⁶¹ *Bluefield Water Works and Improvement Co v Public Service Comm of W Va*, 262 US 679 (1923).

⁶² Initial Brief of Consumers Energy Company, p 133.

expert relied on *Bluefield* in his analysis, noting the United States Supreme Court indicated that:

“A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that being made at the same time...on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties...”

The principals of *Bluefield* were re-affirmed by the U.S. Supreme Court in 1944 in the case *FPC v Hope Natural Gas Company*, 320 U.S. 591. Mr. Coppola made his recommendations based on these guiding principles.⁶³ While the Company repetitively refers to *Bluefield* in its brief to support its proposals, it fails to give full effect to the entirety of its holding.

The Company claims that its proposed equity ratio and ROE support its credit quality, support its access to capital at reasonable rates, and attract investment in the Company to allow it to make necessary infrastructure investment to supply service to customers.⁶⁴ However, its analysis mostly ignores its obligation under *Bluefield* to manage its business efficiently and economically. Instead, it attempts to shift the obligation on to ratepayers. The Company also references the

⁶³ Coppola, 4 TR 1967 – 1968.

⁶⁴ Initial Brief of Consumers Energy Company, pp 132 – 133.

holding in *Hope* regarding balancing investors and ratepayers' interest without providing any real analysis of everything that might entail,⁶⁵ while putting forth arguments that would have ratepayers paying more due to higher than necessary equity ratios and ROE for the benefit of its shareholder. It uses *Bluefield* and *Hope* as some kind mandate to maximize the Company's return without question.

The Company spends a considerable amount of its brief repeating claims that the Staff, the Attorney General, ABATE and other intervenors do not sufficiently support its credit quality and therefore imperil the Company's ability to support key objectives of its Investment Plan. It also claims that Staff and intervenors do not appropriately heed the warnings of the credit agencies, or risks to investor or consumer interest.⁶⁶ According to the Company, they also do not consider unforeseen economic conditions and events and instead of recognizing such events negatively affect the utility's ability to access capital, propose to reduce the Company equity ratio and ROE.⁶⁷ It further claims that they made random adjustments to the Company's equity level and proposed reductions to the Company's ROE that push the limits of the Company's credit health.⁶⁸ According to the Company "[t]hey do so by ignoring, trivializing, or undervaluing the words of credit agencies and act as though uncertainty is not present, and in acting without

⁶⁵ *Id.* at p 134, *citing Hope*, 320 US at 603.

⁶⁶ Initial Brief of Consumers Energy Company, p 134.

⁶⁷ *Id.*

⁶⁸ *Id.*

proper risk mitigation – prudently set equity ratio and ROE – they seem content to risk the Company’s credit and ability to access markets at reasonable rates.”⁶⁹ As discussed herein and in the Attorney General’s initial brief, the record – including the opinions and reports of the credit agencies – do not support such claims.

A. Consumers Energy’s requested equity ratio is inflated and unsupported by the record.

1. Background

The Company argues for a 50.75% equity ratio in its initial brief claiming that its “balances capital investment plans, credit metrics, customer rate impacts, the guidance of the Commission, and continues to support affordable utility infrastructure financing for the State of Michigan.”⁷⁰ It argues that “[w]hile the Commission previously voiced its desire for the Company to move toward a balanced capital structure in several cases, the Commission has also made clear that there should be flexibility in its assessment, allowing for a deviation from a balanced capital structure when circumstances warrant it.”⁷¹ It also references the COVID-19 pandemic; volatility and economic uncertainty in recent months with respect to financial markets, interest rates, and geopolitical tensions; a possible shift in trade policy, higher tariffs on imported goods leading to impacts on the U.S. economy among other things as bases to deviate from a balanced equity ratio to its

⁶⁹ *Id.* at pp 134 – 135.

⁷⁰ Initial Brief of Consumers Energy Company, p 137.

⁷¹ *Id.* at p 140.

proposed equity ratio.⁷² It claims that these developments represent a material change in the Company's risk environment since previous rate cases and speculate that the will most likely continue through the test year.⁷³ However, the whole record in this case does not justify a 50.75% equity ratio.

First, the Commission did more than voice a desire for the Company to move toward a balanced capital structure, it was forceful and resolute. The Company had steadily increased the equity part of its capital structure, a development that the Attorney General highlighted over several cases. The growing imbalance became such a concern for the Commission that it put the Company on notice in Case No. U-17990 that if it has not reached a 50/50 balance by its next rate case it must "present a strategy to return to a balanced structure within the five-year infrastructure plan time period."⁷⁴ After initially providing a plan, the Company has offered many reasons for not moving to a completely balanced debt equity ratio and now for retreating from a balanced ratio, including those similar to the ones offered in this case.

Second, it was never intended for the Company's equity ratio to be anything but balanced. Unfortunately, over the years the Company's equity balance

⁷² *Id.* at p 141.

⁷³ *Id.* at p 142.

⁷⁴ *See*, February 28, 2017 Order in Case No. U-17990, p. 64.

continued to increase until the Commission finally acknowledged what had been intended all along as noted in its February 28 Order in U-17990:

The appropriate capital structure of a utility is based on considerations of cost and risk, and in accordance with these considerations, the Commission from time to time adjusted a company's capital structure to one that was more reasonable. While a company with more debt is a financially riskier enterprise, a company with more equity has a greater amount of capital invested in the most expensive type of capital. Not only is equity capital more expensive than debt capital, but the return on equity adds a tax burden to total revenue requirements, whereas debt does not. Thus, the Commission seeks an appropriate balance between the risks and costs of investor debt funding.

Beginning in the 1980s, Consumers adopted a holding company structure **and the Commission treated Consumers as a stand-alone company for ratemaking purposes. However, treating Consumers as a stand-alone company has been predicated on the company maintaining "a capital structure roughly balanced between debt and equity."** June 7, 2012 order in Case No. U-16794. In the instant case Consumers states that a balanced capital structure continues to be its goal. p.63. (emphasis added.)

Third, as discussed in the Attorney General's initial brief, the Commission, in a series of rate cases, made corrective adjustments to properly balance the Company's debt/equity ratio despite the Company's arguments to the contrary.⁷⁵ In Case No. U-20963, the Commission indicated that anything other than a 50/50 ratio should be treated as an exception and not the rule. In fact, the Commission refers to such deviations as "temporary," with the Company having the burden of proving why anything other than a balanced capital structure is appropriate.⁷⁶ Clearly, the

⁷⁵ Attorney General's Initial Brief, pp 106 and 107.

⁷⁶ December 21, 2022 Order, Case No. U-20963, pp. 200 – 201.

Commission's preference is for a balanced debt-equity ratio to balance the interest of investors and customers, unless the Company can demonstrate an unbalanced capital structure is appropriate.⁷⁷ Further, as discussed below, in the Attorney General's Initial Brief, and her witnesses' testimony, the Company has not demonstrated specific impacts to its financial performance and other than to speculate, it cannot predict, how if at all it will be impacted in the future by unknown events. Consumers has not demonstrated that its earnings have been negatively impacted by its current equity ratio which is lower than 50.75%. It has not demonstrated that it has been unable to fund its capital programs. The arguments presented by the Company do not justify anything more than a completely balanced equity ratio.⁷⁸

2. Response to Consumers Energy's equity ratio position.

According to the Company, it determined the average common equity balance for the test year of 50.75% by starting with the actual balances of long-term debt, preferred stock, common equity, short term debt, deferred income taxes, and ITC as of December 31, 2023,⁷⁹ and making two adjustments to the 2023 year-end common equity balance consisting of \$466 million in projected retained earnings on a weighted average basis from January 2024 through October 2026 and \$1.825 billion

⁷⁷ See, Order dated March 21, 2025, Case No. U-21585, pp 224, 232 and 233.

⁷⁸ Initial Brief of Consumers Energy Company, pp 136 – 181.

⁷⁹ Initial Brief of Consumers Energy Company, p. 136 referencing Exhibit A-14 (MRB-2), Schedule D-1a, page 1, column (e).

for projected equity infusions from its parent corporation CMS Energy Corporation.⁸⁰ Apparently it intends for the equity infusion to influence the determination of the Company's equity ratio.

The implication is that its parent company's transfer of equity should dictate the appropriate equity ratio for Consumers Energy. The Company cited no legal authority for such a proposition and the Commission has not set the Company's equity ratio recently, if at all on that basis. To the contrary, the Commission states that it "seeks an appropriate balance between the risks and costs of investor debt funding,"⁸¹ in determining an equity ratio. As Mr. Coppola testified, CMS can make equity infusions at any time and in any amount it chooses and therefore make the Company's equity ratio anything that it wants in its sole discretion.⁸² Of course, the ability to call for equity infusions in this manner would not exist if Consumers was publicly traded.⁸³ Further, for ratemaking purposes, equity infusions into Consumers by its parent do not determine the appropriate equity ratio. The Attorney General's adjustments are reasonably proposed to balance the Company's equity ratio for reasons provided in her initial brief and this reply brief.⁸⁴

⁸⁰ Initial Brief of Consumers Energy Company, p 136.

⁸¹ February 28, 2017 Order in MPSC Case No. U-17990, p. 63.

⁸² Coppola, 4 TR 1958.

⁸³ *Id.*

⁸⁴ Attorney General's Initial Brief, pp. 108 – 125.

The Company argues in support of its proposed equity ratio that it must rely heavily on capital markets to fund significant capital investments.⁸⁵ It claims that a higher credit rating results in lower financing costs.⁸⁶ Regarding equity capital – the Company does not sell stock into the market. In addition, its parent company, CMS, is already planning nearly \$2 billion in equity infusions into the Company as discussed above. And based on its current credit ratings and recent activity, it has access to debt capital markets. So, this argument for increasing the Company’s equity ratio is without merit.

Because the Company’s equity ratio and ROE are components of the FFO-to-debt ratio used by ratings agencies, the Company argues that there needs to be a balance between them. “All else equal, a lower authorized ROE would necessitate a higher approved equity ratio to maintain the same level of financial health.”⁸⁷ However, different considerations underly each measure and they must be evaluated on their own merits. It is not clear what the Company means by “all else equal,” however the Company ignores other measures of the Company’s financial health by focusing on just one metric. This argument should be rejected.

The Company claims that its proposal to increase its equity ratio to 50.75% benefits ratepayers because ratings agencies will look upon the Company favorably presumably signaling to lenders that the Company is a good credit risk, allowing it

⁸⁵ Initial Brief of Consumers Energy Company, p. 144.

⁸⁶ *Id.*

⁸⁷ *Id.* at p 146.

to borrow at lower rates. It goes on to discuss failures and financial pressures experienced by several banks as examples of stresses in the financial markets that its proposed equity ratio would alleviate.⁸⁸ The Attorney General's initial brief and witness testimony already addresses her proposed equity ratio and why it should not lead to a downgrade of the Company's credit. Further, other than making general observations, the Company has not explained why the supposed banking crisis of 2023, which affected a handful of banks involved in speculative investments with high debt, would have impacted utility companies in general and it specifically in a manner justifying an inflated equity ratio.

The Company claims to have saved ratepayers \$153 million annually as a result of improved credit ratings and lowered interest rates.⁸⁹ However, the Company's Exhibit A-35 which is the source of this information, only shows cumulative annual savings of \$153 million beginning in 2008 through 2024.⁹⁰ This includes periods of time where the Company had S&P ratings of BBB, BBB+, and its current stable A rating.⁹¹ Except for 2018, 2023, and 2025 where its credit rating was A and reported savings were \$32 million, \$27 million, and \$17 million respectively, savings in the other years totaled no more than \$12 million annually.⁹²

⁸⁸ Initial Brief of Consumers Energy Company, pp 144 – 145.

⁸⁹ *Id.* at p 144. See also, Exhibit A-35 (MRB-13).

⁹⁰ Exhibit A-35 (MRB-13), line 5.

⁹¹ *Id.* at line 1.

⁹² *Id.* at line 4.

The Attorney General's proposal, as discussed herein should not negatively impact any purported savings.

Any purported savings from a higher equity ratio would be offset by higher costs. While noting that there is some risk for debt, the Commission has stated that "a company with more equity has a greater amount of capital invested in the most expensive type of capital. Not only is equity capital more expensive than debt capital, but the return on equity adds a tax burden to total revenue requirements, whereas debt does not."⁹³ The burden to ratepayers of the Company's proposed 50.75% is an additional \$8.0 million compared to a balanced equity ratio as discussed below and in the Attorney General's Initial Brief.⁹⁴ Anything above a 50% equity ratio is not beneficial to rate payers and is unreasonable.

3. Reply to Consumers Energy's Criticisms of Attorney General Specific Analysis.

Most of the Company's criticisms of the Attorney General's analysis of the Company's credit metrics are addressed above or in her initial brief and witness testimony and will not be addressed in detail in this reply brief. However, the Attorney General will respond to a couple of arguments raised in the Company's initial brief that it claims addresses fatal flaws in her witness's analysis.

⁹³ February 28, 2017, Order in MPSC Case No. U-17990, p. 63.

⁹⁴ Attorney General's Initial Brief, p. 125. *See also*, Coppola, 4 TR 1965.

First, the Company claims that Mr. Coppola mixes the Company's authorized ROE with the Company's earned ROE, which greatly distorts the pro forma FFO-to-Debt impacts; and that it results in a pro-forma FFO-to-Debt ratio that is both invalid and significantly overstated.⁹⁵ Aside for misunderstanding the inputs and purpose of the calculation, the Company appears to dislike the use of a pro-forma calculation.⁹⁶ There is nothing unusual about a pro-forma calculation. They are frequently used to adjust historical results for changes that are projected to occur in the future. Exhibit AG-49 does just that. It shows what the resulting FFO-to-Debt ratio would be if the Company's 2023 financial results are adjusted to a level where the Company earns a 9.75% ROE with a 50/50 capital structure. The Company's argument should be rejected.

The Company also asserts that the Attorney General's claim that the Company's proposed equity ratio is higher than the equity ratio of its peer group is wrong. It claims that Mr. Coppola's use of the equity ratio at the parent holding level is misleading and inappropriate. It cited to the Commission order in Case No. U-20963 that such data could not be used if it did not contain equity ratios set by a regulatory commission. And it claims the analysis violated the Order and failed to explain the deviation and therefore the Attorney General's equity analysis should be rejected.⁹⁷ The Company's argument is meritless.

⁹⁵ Initial Brief of Consumers Energy Company, p. 170.

⁹⁶ *See*, Bleckman, 4 TR 865.

⁹⁷ Initial Brief of Consumers Energy Company, pp. 171 – 172.

The Company referenced Exhibit AG-44. In addition to pointing out that Mr. Coppola uses equity ratios at the parent holding company level, the Company argues that “there is a substantial 270 basis point difference between the results of Mr. Coppola’s analysis on Exhibit AG-44 and his own equity ratio recommendation.”⁹⁸ Exhibit AG-44 was used to calculate the CAPM analysis for the ROE and not to determine the Company’s equity ratio.

There are reasons for using equity ratios at the parent company level in the analysis. First, since the common stock of Consumers Energy is not publicly traded, it is necessary to use indirect or proxy approaches in the analysis of an appropriate cost of equity. Comparison to a proxy group of publicly traded companies can be useful.⁹⁹ Second, the Company has focused on its equity ratio in conjunction with the ROE as part of its equity ratio analysis. Arguing that both impact its credit health and ability to access capital. However, it fails to understand the necessary link that must be maintained between the risk profile of those companies and underlying capital structure for those same companies. The Company’s use of equity ratios of utilities that are not publicly traded and not in the Company’s peer group is disconnected from the cost of capital and therefore inappropriate to establish a comparable equity ratio. There is a basic financial link between the cost of equity and the financial risk imbedded in the capital structure which the Company ignores. The Attorney General is asking the Commission not to do the

⁹⁸ Id. at p. 171.

⁹⁹ See, Attorney General Initial Brief, p. 144.

same. Third, to the extent that the Commission has rejected the use of equity ratios or any other data of publicly traded companies that may be holding companies of regulated entities because they may not result from a commission order, the Attorney General asks it to reconsider that position.

The Company claims that the Attorney General ignores the possibility of another credit downgrade and presents no analysis or discussion on the impact of a credit downgrade on the Company or its customers.¹⁰⁰ The record evidence lays bare this claim as discussed below and in the Attorney General's Initial Brief.¹⁰¹ First, the Company's FFO-to-debt ratios are above the levels that the ratings agencies indicate would lead to a negative credit action. S&P indicates one of the scenarios that could lead to it lowering the Company's rating is if the stand-alone measures weaken such that FFO to debt weakens to *consistently below 15%*.¹⁰² The Attorney General has already addressed why that is unlikely to occur.¹⁰³ Moody's indicates the possibility of a downgrade if the CFO-pre-WC to debt ratio declined *below 18% on a sustained basis*. Analysis shows that the ratio should remain above the level for downgrade.¹⁰⁴

¹⁰⁰ See, Initial Brief of Consumers Energy Company, pp 172 – 176.

¹⁰¹ Attorney General's Initial Brief, pp. 101 – 114.

¹⁰² See, Exhibit AG-51, p. 19 - S&P Global Ratings for Consumers Energy Company dated August 20, 2024 (report p. 3).

¹⁰³ Attorney General's Initial Brief, pp. 111 – 112 and 113.

¹⁰⁴ See, Exhibit AG-51, p. 47, Moody's Credit Opinion dated May 31, 2024 (report p. 3). See also, Attorney General's Initial Brief, pp. 110 – 111, and Exhibit AG-49.

The Company claims that its FFO-to-Debt ratio has been trending down and that the Attorney General's witness incorrectly assumes the stable credit outlook will continue in the future.¹⁰⁵ The Attorney General is not assuming that the Company's credit ratings are stable. The ratings agencies themselves are describing the Company's ratings outlook as stable.¹⁰⁶ These are the same stable outlooks that were touted in CMS Energy's presentations to investors and credit agencies.¹⁰⁷

Second, the Company relies on FFO-to-Debt ratios which take into consideration certain items treated like debt by certain credit agencies in the Company's capital structure and that should be rejected. These items are not part of the Company's permanent capital structure. They are not universally considered as part of the capital structure by all rating agencies. Further, the Commission has already considered and rejected the Company's assertion of a more balanced capital structure from a credit ratings agency perspective.¹⁰⁸ There is no need to rebalance the Company's equity ratio to achieve acceptable cash flows, credit metrics or access to capital.

¹⁰⁵ Initial Brief of Consumers Energy Company, pp. 172 – 175.

¹⁰⁶ Exhibit AG-51 Moody's Ratings Credit Opinion dated May 31, 2024, (report pp. 1 and 2). See also, S&P Global Ratings, Consumers Energy Company, dated August 20, 2024 (report p. 1).

¹⁰⁷ Exhibit AG-1 CMS Energy's Investor Meeting March 2025, p. 6 and Investment Thesis (Exhibit p. 16).

¹⁰⁸ Order dated December 22, 2021, MPSC Case No. U-20963, pp. 203 -204.

The Company claims that Staff downplays the effect of Moody's previous credit ratings downgrade of the Company and argues that another credit downgrade could be very negative for the Company and its customers.¹⁰⁹ This refers to the Moody's May 2021 downgrade. However, Moody's credit opinions more recent than the referenced four years old report have incorporated recent equity ratio and ROEs while rendering their stable outlooks.

The Company disagreed with Mr. Coppola's assessment of the S&P report regarding the utility industry.¹¹⁰ The report discusses why having a minimal financial cushion increases the susceptibility to a downgrade if an unexpected event occurs, that further weakens financial performance.¹¹¹ The S&P report refers to the North American regulated utility industry and not specifically to the Company. It is worth noting that the median rating among North American investor-owned regulated utilities is BBB+ whereas Consumers Energy's S&P rating is A-/Stable/A-2. In addition, the Company is not identified as an utility with minimal financial cushion

4. **Conclusion**

There is no dispute that equity is more expensive than debt as previously noted by the Commission. Consequently, a higher equity ratio results in higher

¹⁰⁹ Initial Brief of Consumers Energy Company, p. 158.

¹¹⁰ Initial Brief of Consumers Energy Company, p. 168.

¹¹¹ Exhibit A-107.

costs to ratepayers. And, the Company has not justified burdening ratepayers with the added costs. For the reasons provided above and in her initial brief, the Attorney General recommends that the Commission adopt a completely balanced capital structure with a 50% equity ratio.

B. Consumers Energy's requested ROE is excessive.

The Company continues to seek an excessive return on equity (ROE). As stated above, the Company reiterated its request for an authorized ROE of 10.25% in its initial brief, which is 35 basis points higher than the Company's currently authorized ROE of 9.90%. It is also 50 basis points higher than the Attorney General's recommended ROE of 9.75%. The Company appears to rely on the state of the economy and capital markets, its need to make capital investments, its risk profile, its own principles for setting a ROE, and the results of various economic models as the basis for its proposed cost of equity. It claims that in planning its requested ROE in a rate case, it cannot rely entirely on current or temporary market conditions and instead it has to plan for the possibility of unforeseen market events that may impact its borrowing.¹¹²

To support this argument, the Company refers to current and temporary events such as alleged market disruptions due to the onset of the COVID-19 pandemic in 2020, increases in gas prices and interest rates in 2022, and the banking crisis in 2023, as unforeseen events that can impact volatility. It claims

¹¹² Initial Brief of Consumers Energy Company, p. 183.

that the Company must prepare for unforeseen events to ensure that it remains financially strong in the face of those events, concluding that good credit minimizes what is otherwise substantial risk to the Company and its customers.¹¹³ Obviously, the Company envisions its proposed ROE as a means to minimize this risk. However, this sort of contingency has no place in ratemaking as it would make ratepayers pay more than is reasonable and supported on the record for unknown events that may not occur. Further none of the factors identified by the Company support such an excessive ROE.

1. **The Company's claims are based on vague or general business and economic factors and should be rejected.**

Much of the support offered by the Company for its proposed ROE is based on arguments about business or economic conditions that are vague and generalized.¹¹⁴ The Company has not presented any credible evidence that its natural gas operations have a risk profile requiring a 10.25% ROE. In fact, the opposite is true. The Company has and continues to meet its obligations. And, while there has been some recent turbulence in the markets, as discussed in the Attorney General's Initial Brief, it does not require the kind of ROE requested by Consumers Energy.¹¹⁵

The Company refers to the testimony of its witness Bulkley in which she describes "ROE as a measure of how much return a company is able to generate

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Attorney General's Initial Brief, p. 145. *See also*, Coppola, 4 TR 1989 – 1990 and Exhibit AG-52.

with each dollar of shareholder equity (investment) it receives and explained that investors compare the ROE of similar companies to help them decide which companies constitute the most attractive investment choices. 4 TR 909-910. Therefore, the ROE of the Company should not be considered in a vacuum, or even between just the Company and its customers, but only be validly viewed with the addition of a comparison with other companies”.¹¹⁶ This testimony may mean something if the Company had access to equity capital markets. Of course, Consumers Energy does not sell its stock on the market to raise capital. Its parent-holding company, CMS Energy, which consists primarily of Consumers Energy Company, can sell its stock on the market. However, the Attorney General is not aware of any plans by CMS to make a stock offering. To the extent that Consumers Energy’s performance impacts the value of CMS’s stock, the Company continues to be a low-risk investment alternative with above average earnings potential. However, as discussed in the Attorney General’s Initial Brief, CMS has its own financial weaknesses that if not managed, can impact its stock performance. It can also negatively impact the Company’s credit rating¹¹⁷

2. The Attorney General’s recommended ROE meets the requirements of *Bluefield* and *Hope*.

The Company argues that “Staff, the Attorney General, ABATE, and CUB witnesses all recommended a reduction in the Company’s authorized ROE while

¹¹⁶ Initial Brief of Consumers Energy Company, p. 183.

¹¹⁷ See, Exhibit AG-51, pp 5 and 20.

simultaneously recommending lowering the Company's authorized equity ratio. None of these recommendations are even remotely reasonable or appropriate based on the analysis presented by these witnesses in this case, and certainly as compared to the Company's gas rate case."¹¹⁸ The Company goes on to claim that if the Commission adopted Staff and other intervenors recommendations, especially given the trend, it would represent a significant change in the Company's ROE. It then cites to the Commission Order in Case No. U-18322 that "it is not realistic to make a significant change in ROE ***absent a radical change in the underlying economic conditions***,"¹¹⁹ and claims that none of the parties have shown a radical change in conditions. The Attorney General recommends reducing the Company's ROE from 9.9% to 9.75%, which is not a radical change. Further, her analysis is not out of line with ROEs granted by public service commission in the United States – in fact it is on the high side.¹²⁰ Interestingly, the Company does not apply the same standard to its proposed increase which is a *35-basis point increase* from the current Commission approved ROE. The order in U-18322 refers to a significant change in ROE not a significant decrease in ROE and it should apply equally to the Company's request.

The Company also discussed *Bluefield* and *Hope* and the elements that a return should ensure the financial soundness of the business and provide a

¹¹⁸ Initial Brief of Consumers Energy Company, p. 185.

¹¹⁹ *Id.*, quoting Case No. U-18322 Order, page 44 (emphasis added).

¹²⁰ *See*, Attorney General's Initial Brief, pp. 142 – 144.

sufficient return to maintain credit and attract capital.¹²¹ It accuses the intervening parties of focusing on reducing the Company's ROE and equity ratio as a simple means to achieve small, short-term customer savings, but that this approach does not benefit customers.¹²² This argument is nonsense.

First, as discussed above and in the Attorney General's Initial Brief, the Supreme Court addressed the standard for the recovery of ROE in the *Bluefield* case, and it was reinforced in the *Hope* case. The Company produced a ROE range of 10.25% to 11.25% with a recommended ROE of 10.25% based on its analysis. Of course this analysis is incomplete. The Supreme Court's standard also involves consideration and balancing of interest to arrive at a reasonable return: "The return should be *reasonably sufficient* to assure confidence in the financial soundness of the utility and should be adequate, *under efficient and economical management*, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties..."¹²³ It is not a blank check to investors or the Company. It requires the Company to efficiently and effectively manage its business, including presumably the type and timing and investments it makes. The Attorney General's analysis takes the entire holdings of *Bluefield* and *Hope* into consideration.

¹²¹ Initial Brief of Consumers Energy Company, p. 186.

¹²² *Id.*

¹²³ *Bluefield Water Works and Improvement Company v Public Service Commission of West Virginia* 262 U.S. 679 (1923) (emphasis added) and *FPC v Hope Natural Gas Company*, 320 U.S. 591 (1944) (emphasis added).

Second, to the extent that the Company's accusation is intended to apply to the Attorney General, she disagrees with the characterization. The Company financial health *overall* is positive, at least that is what the Company has conveyed in recent presentations to credit agencies.¹²⁴ And contrary to the Company's arguments that the Intervenors are simply extracting small, short-term, customers savings,¹²⁵ the Attorney General is applying controlling law – *Bluefield* and *Hope* and advocating against burdening ratepayers with unnecessary costs, based on the record.

The Company also claims that “Staff, the Attorney General and ABATE, underrate and generally trivialize all credit risk of the Company – even those expressly stated by credit rating agencies.”¹²⁶ The Company's claims are untrue. The Attorney General's initial brief and this reply brief, as well as her witness's testimony, found that what the Company has proposed as a ROE (and equity ratio), that is unsupported by the record and is unreasonable. The reality is that the Company continues to be a low-risk investment alternative with above average earnings potential. As Mr. Coppola noted, “there is no evidence equity investors have abandoned utilities that have been granted ROEs near or below the industry

¹²⁴ See, Exhibit AG-1.

¹²⁵ Initial Brief of Consumers Energy Company, p. 186.

¹²⁶ Initial Brief of Consumers Energy Company, p. 189

average. On the contrary, stock investors continue to migrate to utility stocks, recognizing that authorized ROEs are still above the true cost of equity.”¹²⁷

To emphasize that investors remain interested in utility stocks, Mr. Coppola prepared Exhibit AG-47 which shows the market to book ratios for each of the peer group companies, and many of these companies have received rate orders during the past few years, reflecting ROEs as low as 9.37%. This group of companies has an average Market to Book common equity value ratio of approximately 1.5 times.¹²⁸ He further explained that “[a] market to book value greater than 1.0 shows that investors are attracted to the return (ROE) earned by utilities on their book value. A higher market to book ratio indicates that the utility is earning a higher return on book value than other utilities. It also indicates that the utility is earning a return on book value that is higher than the investor expects for that type of investment and is willing to pay a higher market price for the stock than book value.”¹²⁹ More importantly, the Company has not presented evidence that its gas utility has a greater risk profile than any other investment alternative. It offers its usual explanation of attracting investment but has not presented any evidence of a fundamental change in its operations or financial condition supporting its proposed ROE increase.

¹²⁷ Coppola, 4 TR 1988. *See also*, Exhibit AG-48 which includes several electric utilities that have assessed capital markets at competitive rates since receiving a ROE near or below the average rate of 9.50%.

¹²⁸ Coppola, 4 TR 1988.

¹²⁹ *Id.*

As noted in her initial brief, the Attorney considered the effect of risk on a utility's required return on equity. Generally, utilities are not as risky as many other businesses due to the regulatory scheme which provides for rate increases if reasonable and prudent and authorized rates of return. Notably, utility stocks are not as volatile as the market which is evidenced by lower Betas.¹³⁰ As a result, a utility's return should be lower than other riskier businesses. The Attorney General also considered that a utility's return should be comparable to other businesses with similar degree of risk in order to maintain its financial soundness including maintain its credit standing and attract capital for investment.¹³¹ This is consistent with *Bluefield* and *Hope*. Based on the application of the various ROE models that also consider these issues, the Attorney General recommended an appropriate ROE.

Finally, contrary to the Company's claims otherwise,¹³² the Attorney General's analysis relied in part on the credit agencies' opinions and reports. Her analysis of credit risk probably relied even more so than the Company's witness. The Attorney General and her witness not only considered the FFO-to-Debt ratio or the CFO-to-Debt ratio and how the agencies considered them in credit ratings, they also considered other issues identified as positives/benefits or negatives/challenges

¹³⁰ *Id.* at 162.

¹³¹ *See*, Attorney General's Initial Brief, pp. 125 – 129.

¹³² *See*, Initial Brief of Consumers Energy Company pp 187 – 190.

by the agencies, the Company's management choices, and overall economic assessments by the agencies.

3. The Company has not demonstrated that a ROE of 10.25% is needed for Michigan's regulatory environment to be conducive to investment.

The Company's reliance on an investor expectation argument and analysts' opinions as a basis for its proposed excessive ROE is misplaced. According to the Company, investors may use declining authorized ROEs as an incentive to redirect investments within the state of Michigan or may cause them to invest outside of Michigan.¹³³ It argues that the equity investors in a public utility, such as Consumers are entitled to a ROE comparable with investments of comparable risk.¹³⁴ Which is true, and the Attorney General's proposed ROE provides that. There is no merit to the Company's claim that a reduced ROE is unjust and unreasonable.¹³⁵ In any event, the Company does not sell stock on the open market as discussed above. It is owned by CMS Energy Company, and it has not demonstrated that CMS has been harmed by the Company's 9.90% ROE. There are other problems with the Company's analysis.

First, the Company appears to be applying its own restrictive definition for a "supportive or unsupportive regulatory environment." While the Company never

¹³³ Initial Brief of Consumers Energy Company, p. 191.

¹³⁴ *Id.* at p 192.

¹³⁵ *Id.*

completely defines what makes a supportive regulatory environment, the Company's discussion of the term indicates that its definition requires higher than average authorized ROEs. Interestingly, the credit ratings agencies, Moody's, S&P and Fitch, have expressed generally positive opinions of the regulatory environment in Michigan notwithstanding the ROEs and equity ratios authorized in recent rate cases.

Second, Moody's most recent credit opinion noted that Michigan has a credit supportive regulatory environment.¹³⁶ S&P noted that "We believe Michigan's regulatory construct as above average compared to peers because of the benefit of a streamlined 10-month rate case process. Other constructive rate mechanisms include the used of forward test-years, power supply and natural gas cost rider adjustments and natural gas cost rider adjustments. These mechanisms help the company earn its allowed return on equity and minimize regulatory lag."¹³⁷ The Company has not supported its claim that a ROE of 10.25% is necessary for Michigan to be considered a supportive regulatory environment. Nor does it demonstrate that Michigan's regulatory environment is less certain or predictable given its statutory and regulatory construct.

¹³⁶ See, Exhibit AG-51, Moody's Credit Opinion, dated May 31, 2024, report p. 1.

¹³⁷ See, Exhibit AG-51, p. 18 - S&P Global rating report for Consumers Energy Co., dated August 20, 2024, (report pp. 1 – 2).

Third, the Company's view of the regulatory environment in Michigan is inconsistent depending on the audience. In its Investment Thesis it touts Michigan as a top-tier regulatory jurisdictions and having supportive energy policies.¹³⁸

4. Responses to the Company's Criticism of the Attorney General's quantitative analysis.

The Company made several criticisms of the Attorney General's and other parties' use of the quantitative models and analysis.¹³⁹ The use of the models including assumptions and the bases underlying the Attorney General's approach are included in her Initial Brief and her witness's testimony and exhibits, therefore, she will not repeat them here.¹⁴⁰ She will briefly highlight the Company's distortion of Mr. Coppola's analysis in an attempt to justify its proposed ROE.

Although the Mr. Coppola explained and supported the basis for his calculations, the Company made self-serving adjustments to the growth rates in the case of his DCF analysis and using another witness's risk premium in the case of Mr. Coppola's Utility Risk Premium to develop Frankenstein ROEs that unsurprisingly the Company claims support its proposed ROE.¹⁴¹ This mixing and matching of pieces of calculations by a different witness is inappropriate and inaccurate because each party uses different time periods and inputs, which creates

¹³⁸ Exhibit AG-1, pp. 9 and 13, respectively.

¹³⁹ Initial Brief of Consumers Energy Company, pp. 221 – 251.

¹⁴⁰ See, Attorney General's Initial Brief, pp. 129 – 135. See also, Coppola, 4 TR 1967– 1984, and Exhibits AG-41 – 52.

¹⁴¹ Initial Brief of Consumers Energy Company, pp. 237 – 238.

a mismatch. The Commission should reject such a brazen attempt to calculate faulty outcomes to bolster the Company's projected ROE.

As discussed in her Initial Brief, the Attorney General's proposed ROE is based on the principled application of commonly accepted and used quantitative models. She concludes that a 10.25% ROE is not needed in this case for a legally sufficient ROE and is excessive.¹⁴² She also refers to lower ROEs in other jurisdictions to help alleviate any concerns that the Commission may have regarding the financial impact of a lower ROE on the utility. This information should help dispel the notion that a ROE rate below the current 9.90% and in line with the 9.75% proposed by the Attorney General would impair the Company's ability to raise capital.

The Commission has authorized ROEs around 9.9% range in recent cases. Based on the total record in this case there is more than substantial evidence to support a much lower ROE for the Company in this case. Further, the ROE of 9.75% proposed by the Attorney General for the Company ROE is a very conservative estimate and there is in fact a reasonable basis for a ROE a couple of basis points lower. As Mr. Coppola stated in his testimony, the true cost of equity is 9.52%, but he recommended a ROE of 9.75% as a transition to the true cost of

¹⁴² See, Attorney General's Initial Brief, pp. 127 – 146.

equity, to address any business and financial risk, and it is more generous than the average ROE granted to other electric utilities around the country last year.¹⁴³

5. Problems with the Company's application of quantitative models.

The Company claims that its application of the quantitative models demonstrates that an appropriate ROE is between 10.25% and 11.25%.¹⁴⁴ It settles on a ROE of 10.25%. As usual, the Company's proposed ROE is an outlier, compared to those proposed by the witnesses for other parties in the case. The main reason for the difference is the Company's use of unorthodox methodology to determine its ROE compared to the Attorney General's use of standardized methodologies. Particularly problematic is the Company's use of a nonconventional risk premium based on a "Bond Plus Risk Premium" approach.¹⁴⁵ This results in an upwardly biased risk premium.¹⁴⁶ The Company also used multiple risk-free rates which appeared to be a search for an approach that will result in a higher ROE among other things. It also relies on the ECAPM which tends to overstate and inflate the true cost of equity.

Rather than go painstakingly through the analysis which has already been addressed in her initial brief and her witness' testimony, the Attorney General

¹⁴³ See, Exhibit AG-48.

¹⁴⁴ Initial Brief of Consumers Energy Company, pp. 196 – 199.

¹⁴⁵ See, Attorney General's Initial Brief, p 136 – 137.

¹⁴⁶ Id. at p 138.

directs the Commission to her initial brief and witness's testimony for a full analysis of the Company's application of the quantitative methods.¹⁴⁷ The Commission should give no weight or reliance to these alternative methods because they are clearly devised to inflate the Company's ROE calculation.

V. Other O&M Expense.

The Company addressed its proposals related to Other O&M expenses on pages 267 – 338 of its Initial Brief. The Attorney General is recommending \$55.7 million in reductions to this category of expenses as discussed in her Initial Brief.¹⁴⁸ Instead of revisiting her analysis and recommendation in this reply brief, the Attorney General directs the Commission to her initial brief.

¹⁴⁷ See, Attorney General's Initial Brief, pp. 136 – 141. See also, Coppola, 4 TR 1975 – 1982.

¹⁴⁸ See, pages 158 – 194.

RELIEF REQUESTED

The Attorney General respectfully requests the Administrative Law Judge to issue a proposal for decision that is consistent with the positions set forth in the Attorney General's initial brief.

Respectfully submitted,

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PROOF OF SERVICE - U-21806

The undersigned certifies that a copy of the *Attorney General's Reply Brief* was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 11th day of July 2025.

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