



Stephen A. Campbell
T (313) 309-4274
F (313) 309-6882
Email:SCampbell@ClarkHill.com

Clark Hill
500 Woodward Avenue, Suite 3500
Detroit, MI 48226
T 313.965.8300
F 313.965.8252

July 11, 2025

VIA ELECTRONIC CASE FILING

Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
Lansing, Michigan 48917

Re: Case No. U-21806 – 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.

Dear Executive Secretary:

Enclosed for filing please find the **Association of Businesses Advocating Tariff Equity's Reply Brief** and **Proof of Service** in the above-referenced matter.

Sincerely,

CLARK HILL PLC
Stephen A. Campbell
Digitally signed by: Stephen A. Campbell
DN: CN = Stephen A. Campbell
email = SCampbell@clarkhill.com
C = US O = Clark Hill PLC
Date: 2025.07.11 14:53:03 -04'00'

SAC/nab
Enclosures

cc: Parties of Record

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.)
_____)

Case No. U-21806

ALJ James M. Varchetti

**REPLY BRIEF OF THE
ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY**

The Association of Businesses Advocating Tariff Equity (“ABATE”), by its attorneys, CLARK HILL PLC, files its Reply Brief in this proceeding initiated by Consumers Energy Company (“Consumers” or the “Company”) before the Michigan Public Service Commission (“Commission”) in accordance with the schedule established by the presiding Administrative Law Judge (“ALJ”).

TABLE OF CONTENTS

- I. INTRODUCTION 1
- II. ARGUMENT 2
 - A. Test Year –There is no requirement that utility revenues be based on projected costs and doing so consistently results in inaccurate rates and excessive revenues. 2
 - B. Capital Structure and Rate of Return Issues. 4
 - 1. The Company discounts the Commission’s repeated preference for a balanced capital structure..... 4
 - 2. The Company misrepresents its financial condition to justify a higher equity ratio and ROE..... 5
 - 3. The Company commits several errors in its quantitative analyses. 7
 - C. Capital Cost Recovery Issues..... 8
 - 1. The Company fails to justify its increased EIRP expense. 8
 - 2. The burden is on the Company to prove its variances in Asset Relocation Program expenditures were not the result of poor project management. 9
 - D. Operations and Maintenance Cost Issues. 9
 - 1. The Commission should adopt the GDP Chained Price Index to calculate the non-labor inflation factor. 9
 - 2. The Commission should disallow the Company’s request to recovery \$1.3 million related to Leak Detection and Repair (“LDAR”) O&M expenditures. 10
 - E. Cost Allocation and Rate Design – Consumers and Staff’s proposed cost allocation and rate design do not reflect cost of service..... 11
 - 1. The Version 3 CCOSS A&E method corrects the flaws in the Version 2 CCOSS P&A method. 11
 - 2. The Version 3 CCOSS A&E method should be used to equitably guide revenue apportionment. 14
 - F. Cost Allocation and Rate Design – The Company and Staff’s proposed transportation rates are based on a flawed cost allocation method and an unreasonable premise..... 16
 - G. Cost Allocation and Rate Design – The Company’s uncollectible expense should be allocated to the identifiable customer classes which cause the Company to incur that cost. 18
 - H. Cost Allocation and Rate Design – The Commission should adopt the LBWL/MSU proposal to allocate Other Distribution Plant using a weighted average for high pressure and non-high pressure distribution mains. 19
- III. RELIEF REQUESTED..... 20

I. INTRODUCTION

This case requires the Commission to establish a reasonable revenue requirement for the Company and to allocate that revenue requirement amongst customer classes based on the manner in which they cause the Company to incur its costs. Here, the Company has requested cost recovery based on projected future expenses, many of which are not reasonable or prudent and for which the Company should not recover rate revenue at this time. Further, the Company and Staff proposed to allocate the Company's costs in a manner which does not result in customers paying the costs they cause the Company to incur. The Commission should reject these proposals as they do not accurately reflect the Company's likely costs or the method in which its various customer classes cause Consumers to incur them.

Specifically, the Company's request that the Commission base its revenue requirement on projected costs is unreasonable and has consistently resulted in Consumers recovering more revenue than it requires. Similarly, the Company has proposed a return on equity ("ROE") and equity ratio which are excessive and do not reflect its actual cost of attracting investment. Further, various specific Company capital and operations and maintenance ("O&M") cost recovery proposals are unreasonable and inadequately justified. In addition, the Company (and the Michigan Public Service Commission Staff ("Staff")) recommended the Company's costs be recovered from customers in a way that is inconsistent with the way in which the Company's various customer classes actually cause it to incur them.

Accordingly, to ensure just and reasonable rates the Commission should reject these proposals and adopt the recommendations set out below. This will ensure Consumers' rates are reasonable and prudent and that the Company's costs are allocated to customers consistent with the principle of cost causation.

II. ARGUMENT

A. Test Year –There is no requirement that utility revenues be based on projected costs and doing so consistently results in inaccurate rates and excessive revenues.

The Company argued that ABATE’s objection to using a projected test year as the basis of Consumers’ revenue requirement “is inconsistent with the Company’s right to use a projected test year for determining rates,” as well as the benefits of a projected test year approach. (Consumers Initial Br at 4-7.) As the Company has no right to have its revenues based on speculative future costs and the flaws in this approach are well documented on the record the Commission should reject the Company’s proposal.

While MCL 460.6a provides that utilities “may use projected costs and revenues for a future consecutive 12-month period in developing its requested rates and charges,” it does not require the Commission to accept those projections as the basis of establishing utility revenues. The Commission has recognized “that the use of projected test years by utilities in developing requested rates in rate cases is permissible per statute—subject, however, to the burden that the company prove the accuracy of each and every test year projection.” *In the Matter of the Application of Consumers Energy Co*, order of the Public Service Commission, entered March 21, 2025 (Case No. U-21585), p 8. Thus, the Commission reiterated that “while MCL 460.6a(1) ‘plainly provides the utility with the opportunity to develop requested rates based on projected costs and revenues,’ the statutory language ‘does not require the Commission to approve such requested rates.’” *Id.* (internal citations omitted). Despite the Company’s claims, there is therefore no “statutory requirement” that Consumers file, or that the Commission approve, revenues based on projected costs. (Consumers Initial Br at 5-7.) The evidence in this case demonstrates that doing so consistently results in inflated revenues beyond those necessary to cover the Company’s actual costs.

The Company's claims that the "[u]se of the projected test year is the most accurate way to set rates because it provides the calculation of rates necessary during the period for which the rates will be in effect" is therefore clearly wrong. (*Id.*) Through the use of projected test years the Company reliably collects rate revenues higher than necessary to meet its costs. (See ABATE Initial Br at 2-8.) This practice is therefore a demonstrably and consistently inaccurate method of aligning revenues and expenses. Further, this misalignment reliably results in over-recovery, meaning projected test years continue to annually provide the utility greater revenues and result in higher rates than the utility actually requires.

The errors and inaccuracies in the Company's further claims are addressed in ABATE's Initial Brief. Whatever opportunity intervenors are provided to review and comment on projected costs, ever-expanding rate case filings and inflated revenue requests render that opportunity inadequate to accurately set rates. (*Id.*) As recognized by the Michigan Office of Administrative Hearings and Rules ("MOAHR"), "[w]here utility projections are often unchallenged and result in substantial rate increases, a fully projected test year may not serve the best interests of utility customers." (See Case No. U-21637, MOAHR Comments at 3.) Further, while the Company may be "incentivized to hold spending at the levels approved in rates," it is also incentivized to inflate its rate revenue requests in the first place, as evidenced by ever-expanding rate case filings. (*Id.*; Consumers Initial Br at 6.) Further, the Company's consistent revenue sufficiencies demonstrate that this "incentive" does nothing to benefit customers or encourage the utility to accurately forecast its costs. In terms of incentivizing utilities to control costs, the Company recognized that "[s]etting rates based on historical spending only allows for review of spending after it has occurred." (Consumers Initial Br at 6.) In other words, the use of a historic test year incentivizes the utility to only incur prudent and reasonable costs for which it can seek recovery, rather than

requesting inflated revenues based on hypothetical potential costs. Contrary to Consumers' claim, customers are not "better served by allowing parties to understand and raise concerns with how dollars will be spent before the spending occurs," they are better served by being able to review the actual costs the Company *has* incurred, rather than thousands of pages of possible future costs. (*Id.*) The former invites and encourages conjecture, while the latter requires prudent cost incursion in advance of a reasonableness and prudence review.

While utilities are permitted to request revenue increases based on projected costs, the Commission is not required to approve such requests. Given the Company's consistent revenue sufficiencies this approach is clearly not resulting in accurate rate increases and is instead producing year after year of excessive rates and overearning. The Commission should therefore reject the Company's proposal here and instead base its revenue request on its historic test year, which does not support a rate increase in this proceeding.

B. Capital Structure and Rate of Return Issues.

1. The Company discounts the Commission's repeated preference for a balanced capital structure.

The Commission has made clear on numerous occasions that utilities should strive for a balanced 50/50 capital structure, unless exceptional circumstances require otherwise. See, e.g., *In re Consumers Energy Co.*, order of the Public Service Commission, issued March 21, 2025 (Case No. U-21585), p 232 (stating that "the company has not demonstrated *significant changes* in the economic circumstances to support a deviation from a balanced capital structure") (emphasis added). The proposed equity ratios of ABATE, Staff, and the Attorney General ("AG") are aligned with this preference. (ABATE Initial Br at 16–17; Staff Initial Br at 48; AG Initial Br at 106–107.) Yet, given this requirement (and precedential history), the Company discounts the Commission's position on capital structures by characterizing it as "not predetermined" and "flexibl[e]."

(Company Initial Br at 140.) And it minimizes its request as only a “small departure” from a balanced equity ratio. (*Id.* at 143.)

The Company’s position should be rejected because although the Commission agreed that there is “some degree of flexibility” in calculating the appropriate capital structure, circumstances do not warrant a deviation from a 50/50 capital structure in this case. *In re Consumers Energy Co, supra*, at 232. The Company has failed to demonstrate that its financial condition is at risk or somehow deteriorated, or that its cash flow to debt coverage ratio requires a higher equity percentage. (AG Initial Br at 108–114.) In fact, the Company’s financial position is relatively stronger than the proxy group used to assess the Company’s cost of equity (*i.e.*, an average common equity ratio of 46.3% including short-term debt.) (Walters 4 Tr 2185.) The Company should therefore be required to adhere to the Commission’s preference of a balanced capital structure.

2. The Company misrepresents its financial condition to justify a higher equity ratio and ROE.

Next, the Company complains that parties simply do not appreciate its need for a higher equity ratio and ROE and that they “ignore[] the importance of financially sound planning and appear content to push the Company to financial margins that would not appropriately protect it or its customers.” (Company Initial Br at 134.) There is zero evidence that the Company will be “push[ed] . . . to financial margins” if the Company does not receive a 50.75% equity ratio and 10.25% ROE (*Id.*) On the contrary, the Company has experienced consistent revenue sufficiencies and excess earnings. (Rayl 4 Tr 1765-66 (Company witness Rayl calculating a revenue sufficiency of \$9.4 million for the historical test year)); see also (Walters 4 Tr 2222 (explaining that the Company has persistently over-earned the last several years).)

As explained by the Attorney General in her Initial Brief, several factors contradict the Company's alarmism related to its financial condition. (AG Initial Br at 106.) First, the Company has a strong cash flow to debt coverage ratio and credit rating. (*Id.*) Second, the Company receives equity infusions from its parent company, CMS Energy, "albeit financed with debt." (*Id.*) And third, Michigan has a uniquely favorable regulatory environment supported by historical returns on common equity above industry averages. (*Id.*)

The Company discounts its relationship with its parent Company, yet CMS Energy has control over the Company's equity ratio. (*Id.* at 114–115.) In addition, the Company can call for equity capital whenever it wants without approval from the Board of Directors since the Company is not publicly traded. (Coppola 4 Tr 1958.) This has resulted in the Company experiencing a net increase in common equity of \$3.7 billion over the past five years. (AG Initial Br at 115; see also (Bleckman 4 Tr 869) (Company witness Bleckman explaining that the "goals of the parent company include maintaining a strong and healthy utility").) Moreover, the Company benefits from Michigan's regulatory construct that includes a streamlined 10-month rate case process, the use of forward or projected test years, and mechanisms such as the Gas Cost Recovery adjustment to ensure cost recovery and minimize regulatory lag. (ABATE Initial Br at 15; see also Consumers Initial Br at 242 (noting that "the utility industry is mature due to its relatively stable demand and historical regulatory status . . . [t]herefore, financial projections are likely to be stable over the long-term").)

Given the Company's consistent revenue sufficiencies the past several years, a higher equity ratio and 10.25% ROE is totally unjustified. Instead of a deteriorating financial condition as suggested by the Company, the Company is financially healthy and has been producing excessive rates and overearning. The Commission should therefore reject the Company's proposal

and implement a balanced capital structure and a reasonable ROE of 9.45% to ensure the Company is fairly compensated while maintaining rates that are competitive, just, and reasonable.

3. The Company commits several errors in its quantitative analyses.

The Company contends that ABATE's quantitative analyses support the Company's 10.25% ROE "with valid and proper adjustments." (Consumers Initial Br at 238.) On the contrary, it is the Company's quantitative analyses that need to be corrected. For instance, the Company includes NiSource in its proxy group although that company underwent a "transformative transaction" by selling a large portion of its market capitalization in early 2024. (*Id.* at 239.) This recent sale necessarily inflated NiSource's value and skewed its finances making it inappropriate for use in the proxy group. (ABATE Initial Br at 17.) Second, the Company is simply wrong that there is a "negative, not a positive, relationship between earning growth rates and retention ratios." (Consumers Initial Br at 241.) In ABATE's sustainable growth rate DCF analysis, it assumed that a proportion of the utility's earnings is retained and reinvested in the Company's plant and equipment. (Walters 4 Tr 2197). These reinvested earnings enhance the Company's earnings base or rate base. (*Id.*) In other words, as the payout of dividends decreases, the retention ratio increases, leading to stronger growth as the Company funds more investments using retained earnings. (*Id.*) This phenomenon is not simply theoretical, but observed in practice using the Company's current market-to-book ratio and *Value Line*'s three to five-year projections of earnings, dividends, earned returns on book equity, and stock issuances. (Walters 4 Tr 2198.) Finally, the Company overstates its long-term growth rate as untethered from the projected growth rate of the overall economy. A utility cannot indefinitely sustain a growth rate that exceeds the growth rate of the economy in which they sell services in perpetuity. (ABATE Initial Br at 19, n 8; see also Walters 4 Tr 2200.)

C. Capital Cost Recovery Issues.

1. The Company fails to justify its increased EIRP expense.

ABATE demonstrated that the Company's dramatic increase in EIRP spending through 2026 is not justified given the Company's current safety and reliability metrics. (ABATE Initial Br at 28.) In particular, the Company overstates the risk posed by even the "top 25" risk segments and it overestimates its planned distribution main replacement to the detriment of ratepayers. (*Id.* at 29–30.) The Company claims that ABATE did not consider that the average risk score of its top 1,000 risk segments is 0.48, and that ABATE did not consider the "cumulative risk" posed by that system. (Consumers Initial Br at 53.) As explained by ABATE witness Colin Fitzhenry, merely because the average risk score is 0.48 does not justify the Company's multimillion dollar EIRP increase to address a problem that, frankly, does not exist. (Fitzhenry 4 Tr 2135-41; see also MNSC Initial Br at 43 ("it is unclear why the most risky segments should be compared to all of the segments on Consumers' distribution system – many of which have been replaced or were constructed more recently with modern materials in the first instance").) Rather, the Company should selectively replace only the mains with the highest risk (*i.e.*, risk above 5.0). This satisfies the Company's mission to ensure safety and reliability, while maintaining cost value for ratepayers. (ABATE Initial Br at 30.) With respect to "cumulative risk," there will always be residual risk in a gas distribution system. The correct approach is to balance the appropriate level of residual risk with the appropriate expense level which the Company has not done. (*Id.*)

Staff asserts that it is "unclear" what ABATE's basis is for advocating that the Company only replace the top 10 segments instead of the "entire top 25 risk segments" and how that position advances risk abatement and public safety. (Staff Initial Br at 38.) This is because the Company has not sufficiently justified cost recovery for replacement of pipeline segments that pose little threat of leak or failure. (ABATE Initial Br at 29.) Moreover, Staff's position here is logically

flawed. Simply because the top 25 risk segments account for 18% of all risk in the Company's distribution pipeline system does not mean the risk is substantial. (*Id.* at 39.) To the contrary, Mr. Fitzhenry demonstrated that many of the risk segments identified by the Company do not even have a risk score higher than 5.0. (*Id.* at 29.) Therefore, the risk that these segments will fail without prompt Company attention is remote. The Commission should refrain from awarding the Company recovery for these EIRP expenses.

2. The burden is on the Company to prove its variances in Asset Relocation Program expenditures were not the result of poor project management.

The Company erroneously claims it is ABATE's position that the variances in the Company's Asset Relocation Program expenditures *were* the result of "poor project management." (Consumers Initial Br at 29.) It may be so that the Company exercised poor project management for the Mound Road Projects, Atlas Iron Belle Trail Project, and the 9 Mile Road Eastpoint projects—but ABATE's position throughout this case is that the variance in cost for these projects has not been sufficiently explained or justified. (ABATE Initial Br 31–32.) The Company contends that the substantial cost variances were the result of unexpected construction costs, among other reasons. (Exhibit AB-5.) But that explanation is vague and insufficient for cost recovery purposes. The Company has failed to meet its burden of proof, and the cost recovery for these projects should be denied by the Commission.

D. Operations and Maintenance Cost Issues.

1. The Commission should adopt the GDP Chained Price Index to calculate the non-labor inflation factor.

The Company argues that the Commission should reject ABATE's proposed non-labor inflation factor because: (1) the Commission prefers the Consumer Price Index ("CPI"); (2) the GDP Chained Price Index is not necessarily more accurate as it relates to gas meters; and (3)

ABATE fails to justify its assertion that the Chained Price Index is supported by a “consensus” in the industry. (Consumers Initial Br 334.) *First*, the Commission is not bound to follow a particular methodology and instead is focused on determining the reasonableness of the Company’s requests. *In re Detroit Edison Co*, order of the Public Service Commission, entered November 23, 2004 (Case No. 13808), p 21 (“the overall objective is fairness, not devotion to a particular methodology” and the “question to be asked is whether the methodology and the result are reasonable”).) The GDP Chained Price Index provides a more accurate, and therefore reasonable, measure to calculate the non-labor inflation factor in this case. *Second*, the Chained Price Index is more responsive to consumer substitution of particular goods and services, including the price of gas meters. (ABATE Initial Br at 33.) *Third*, it is axiomatic that the Chained Price Index is based on the opinion of *multiple* industry experts, whereas the CPI is developed using data from a *singular* government entity, the Bureau of Labor Statistics. (*Id.*) For these reasons, among the others discussed in ABATE’s Initial Brief, the Commission should utilize the GDP Chained Price Index to calculate the non-labor inflation rate.

2. The Commission should disallow the Company’s request to recovery \$1.3 million related to Leak Detection and Repair (“LDAR”) O&M expenditures.

The Commission should disallow the Company’s request for \$1.3 million related to LDAR O&M expense and to address a backlog of leaks. As discussed by ABATE witness Fitzhenry, the Company’s leak backlog claims are not accurate. (See ABATE Initial Br at 34–35.) And the Company’s newfound argument that the \$1.3 million is necessary *regardless* of the outcome of the LDAR rule update should be rejected. (Consumers Initial Br at 272–75.) Notably, the \$1.3 million O&M expenditure is listed as an LDAR-related expense in the Company’s application and the direct testimony of Company witness Pnacek. (AG Initial Br at 168.) The costs are not

justified—but especially because the updated LDAR rules have not been finalized. On this issue, ABATE is aligned with the Attorney General (*Id.*) As the Company’s proposal is flawed the Commission should reject the Company’s request for \$1.3 million related to LDAR O&M expense.

E. Cost Allocation and Rate Design – Consumers and Staff’s proposed cost allocation and rate design do not reflect cost of service.

Given the flaws in the Company’s Version 2 CCOSS, which used a Peak & Average (“P&A” or “A&P”) method to allocate costs, ABATE recommended that the Commission establish a revenue apportionment in this proceeding which was guided by (but did not adopt) the Company’s Version 3 CCOSS, which used the superior Average & Excess (“A&E” or “AED”) method to allocate costs. (ABATE Initial Br at 35-61.) Staff and the Company objected to this approach based on the following claims: (i) despite numerous public utility commission determinations in additional jurisdictions to the contrary, as well as Staff and the Company’s own acknowledgements, the P&A method is not flawed relative to the A&E method; (ii) ABATE’s recommendation does not reflect cost of service.¹ Neither of these claims is accurate.²

1. The Version 3 CCOSS A&E method corrects the flaws in the Version 2 CCOSS P&A method.

Staff made a number of claims arguing that the Version 2 CCOSS P&A method should be approved and the Version 3 CCOSS A&E results should not be utilized. None of these are accurate

¹ LBWL-MSU also objected to ABATE’s proposal based on the positions of Staff and Consumers. (See LBWL-MSU Initial Br at 5.) The response to those positions here is equally applicable to LBWL-MSU’s claims.

² Staff’s further claims regarding the use of non-coincident peaks (“NCP”), the system load factor to weight between the two factors in the allocator, average demand costs on average and peak days, and whether customers should pay the costs they cause the utility to incur based on their usage, are fully rebutted in ABATE’s Initial Brief and, for the sake of brevity, will not be restated here. (See Staff Initial Br at 93-95; ABATE Initial Br at 50-61.)

or justify approving a revenue apportionment based solely on the Version 2 CCOSS without considering the results of the more accurate Version 3 CCOSS.

First, Staff claimed that the P&A method “appropriately reflects the different use of the system by different classes, also balancing the interests of those classes,” better “reflects the cost-causative elements for distribution mains” than the A&E method, and recognizes that “the system is planned to be used every day, even as it may be planned to enable operation on peak days.” (Staff Initial Br at 92-93.) As explained in ABATE’s Initial Brief, none of this is correct or provides a basis for determining the Version 2 CCOSS P&A method should be utilized without consideration of the Version 3 CCOSS A&E method results. (ABATE Initial Br at 35-61.) As explained by Consumers, the primary driver of distribution system investment is the need to meet the peak demand of its customers. (See ABATE Initial Br at 45-47.) As Staff acknowledged, that peak demand (and the associated costs) is driven by weather sensitive customer classes with lower load factors. (See *Id.* at 53-55.) In other words, weather sensitive customers with lower load factors contribute more to the primary cause of the Company’s distribution system costs. As further acknowledged by Staff, contrary to the P&A method, the A&E method “assigns greater costs to customers whose ‘excess’ NCP demand exceeds their average demand by more than another class proportionally.” (*Id.* (internal citations omitted).) In conjunction with doing so, Staff also acknowledged that the A&E method “allocates a portion of costs based on average demand and a portion of costs on ‘excess’ demand, or that by which each class’ non-coincident peak demand exceeds its average demand.” (*Id.* (internal citations omitted).)

Consistent with Staff’s assertions regarding the appropriate features of a cost allocation method, the Version 3 CCOSS A&E method therefore assigns costs based on both customers’ average demand and their contributions to excess demand. As such the Version 3 CCOSS method

appropriately reflects the different use of the system by different classes, balances the interests of those classes, allocates a portion of demand-related costs on throughput, best reflects the cost-causative elements for distribution mains, and allocates costs based on the recognition that the system is planned to be used every day, even as it may be planned to enable operation on peak days. None of Staff's objections to the Version 3 CCOSS A&E method and ABATE's recommendation to use that CCOSS to guide revenue apportionment therefore have merit.

Second, in terms of the flaws inherent in the Version 2 CCOSS P&A method which are corrected by the Version 3 CCOSS A&E method, Staff also claimed both that it was "incorrect" to state that "the A&P allocator double-counts average usage on the peak day, and that the A&E method does not," and that the P&A method does not pose a material problem by redundantly double counting average demand when allocating costs based on customers' average and peak demand usage. (Staff Initial Br at 92-95.) As set out in ABATE's Initial Brief, the Company itself explained that the A&E method improves on the P&A method because, as the P&A method calculates peak demand inclusive of average demand volumes, while the A&E method only considers the amounts of each rate class's peak demand over and above its average demand, the "more granular approach of the A&E method avoids double counting the average demand volumes in the A&P methodology."³ (ABATE Initial Br at 44-45.) Staff similarly acknowledged that the "peak" element of the P&A allocation incorporates all usage below the peak, including average demand. (Exhibit AB-28 at 23.)

³ The Company's objection to ABATE's proposal is therefore contradicted by its own assertions and should be given no weight. While Consumers noted that the Commission has previously declined to adopt the A&E method, it also explicitly acknowledged that the Version 3 CCOSS A&E method improves upon the flaws in the Version 2 CCOSS A&P method. (See Consumers Initial Br at 347, 349-51.)

Numerous public utility commissions have also recognized this reality. (See ABATE Initial Br at 42-49.) Staff acknowledged these “other jurisdictions are notable for their reasoning.” (Staff Initial Br at 92.) That reasoning includes findings that “the Peak and Average method double counts the average system usage, and for that reason is unreliable,” the “choice to use peak demand in excess of average demand mitigates the double-counting problem associated with the Peak & Average method,” and the “AED method recognizes such cost-related factors as class and system load factors, diversity of demand, and peak class demand.” (ABATE Initial Br at 42-49 (internal citations omitted).) As such, Staff’s claims regarding the flaw in the P&A method are also meritless.

The flaws in the Version 2 CCOSS A&P method are therefore clearly demonstrated on the record and were acknowledged by both Consumers and Staff. The Commission should therefore not approve a cost allocation based solely on that inaccurate CCOSS and should adopt a revenue apportionment guided by the more accurate Version 3 CCOSS.

2. The Version 3 CCOSS A&E method should be used to equitably guide revenue apportionment.

As noted above, Staff and Consumers objected to using the Version 3 CCOSS to guide an equitable revenue apportionment which more accurately reflects the Company’s different cost to serve its various rate classes. As these objections are incorrect or mischaracterize ABATE’s proposal they should be rejected.

First, Staff claimed that ABATE’s proposal to use the Version 3 CCOSS in conjunction with the Version 2 CCOSS to guide revenue apportionment was not accompanied by an explanation of “why the proposed revenue apportionment is more equitable.” (Staff Initial Br at 96.) As set out above and at length in ABATE’s Initial Brief, this claim overlooks the voluminous discussion of the flaws in the Version 2 CCOSS A&P method, and the more accurate cost

allocation reflected by the Version 3 CCOSS A&E method. (See ABATE Initial Br at 35-61.) As the Company's system investment is driven by the need to meet peak demand, cost allocation should similarly reflect how customers cause the Company to incur its costs to serve average and excess demand. The Version 3 CCOSS A&E method accomplishes this more accurately than the Version 2 CCOSS P&A method. Staff's objection that the A&E method is "inappropriate" is therefore inaccurate. (*Id.*)

Further, Staff claimed ABATE's proposal did not reflect an equitable revenue apportionment "by arbitrarily lowering the increase to the transportation class and shifting revenue responsibility to the sales class (and amongst the transportation rate schedules)" and by arbitrarily determining "whether the results of the A&P or A&E COS was more appropriate." (Staff Initial Br at 96.) Consumers similarly claimed that "[r]ather than using a COSS to guide revenue allocation, witness York is relying on revenue apportionment—essentially shifting revenue between classes without a supporting cost basis." (Consumers Initial Br at 349-51.)⁴ These claims entirely mischaracterize ABATE's proposal and do not engage with its actual testimony. As ABATE explained above and in its Initial Brief, again, the Version 2 CCOSS A&P method proposed by Consumers and Staff contains inherent flaws recognized by Consumers, Staff, and numerous public utility commissions across the country. (See ABATE Initial Br at 35-61.) That Version 2 CCOSS would inequitably and inaccurately result in rate increases for transportation

⁴ The Company also claimed that "[a]ppportioning revenue in this way to reach a predetermined outcome undermines the very purpose of conducting a COSS in the first place" while acknowledging in the following sentence that Consumers "also designed rates to maintain existing breakeven points for general service and transportation rate classes." (Consumers Initial Br at 349-51.) In other words, while ABATE's proposed revenue apportionment seeks to more equitably align the Company's costs with the customer classes which cause them, Consumers' own proposed rate design deviates from its CCOSSs to maintain arbitrary breakeven thresholds, as described in more detail below.

customers ranging from 24.3% to 32%, or 1.64x to 2.11x the system average increase, which increases are significantly higher than those proposed for any other customer class. The Version 3 CCOSS A&E method corrects the flaw in the P&A method and represents a cost allocation which better reflects how various customer classes use the Company's system and cause it to incur costs. (*Id.*) Despite this more accurate allocation, however, ABATE proposes to only use the Version 3 CCOSS results to guide revenue apportionment in a manner which moves customer class revenues closer to that more appropriate CCOSS result in a balanced and equitable way. This is consistent with the Commission's decision in Case No. U-21291 which, as described by Staff, moved "classes toward a more rational revenue allocation based on a more accurate measure of class cost of service." (See Staff Initial Br at 96.) Namely, it utilizes a more accurate Version 3 CCOSS to temper the extraordinary and inaccurate rate increases that would result for larger customer classes from the flawed Version 2 CCOSS, with minimal to no impact on additional customer classes. (See York 4 Tr 2099-101.) Staff and Consumers' claims are therefore inconsistent with ABATE's actual proposal and lack merit.

Staff and the Company's objections to ABATE's proposal therefore mischaracterize its recommendation and are inaccurate. For the reasons set forth above as well as in ABATE's Initial Brief the Commission should therefore reject the Company and Staff's proposed rate design and adopt the revenue apportionment proposed by ABATE.

F. Cost Allocation and Rate Design – The Company and Staff's proposed transportation rates are based on a flawed cost allocation method and an unreasonable premise.

Staff argued that its transportation rate design should be adopted, as it "was developed without a shift in revenue between the Transportation rate schedules and maintains existing breakevens," and "Company witness Smith agreed that Staff witness Rademacher's proposed adjusted rate stability targets were reasonable." (Staff Initial Br at 97-98.) As explained in

ABATE's Initial Brief the Company and Staff's proposed rate design relied on the flawed Version 2 CCOSS and would assign even more costs to the transportation customers than suggested by that flawed method. (ABATE Initial Br at 66-69.) As this approach does not reflect cost of service and is both unreasonable and inequitable, and for the reasons set out in ABATE's Initial Brief, it should be rejected.

Staff claimed that its proposed rate design, and the maintenance of breakeven points, "define the schedules within the transportation class." (Staff Initial Br at 103-04.) Why this is a goal in and of itself is not explained and does not support the Company and Staff's proposal. Instead, Staff acknowledged that these breakevens "are effectively arbitrary as they are not based on differences in the way customers on the schedules use the system." (*Id.*) ABATE's proposal, by contrast, is based on the Version 2 and Version 3 CCOSSs. (See ABATE Initial Br at 66-69.) Staff's claim that "[n]o change to the transportation schedules to reflect different use of the system rather than the breakeven-based schedule definitions was proposed in the instant case" is therefore entirely inaccurate. (Staff Initial Br at 103-04.) ABATE's proposal is guided by the Company's cost to serve its customers, not arbitrary and predetermined guardrails for one set of customers.

Further, the Company and Staff's references to rate shifting, revenue prediction accuracy, and customer confusion are overstated. (*Id.*; Consumers Initial Br at 347, 349-51.) As explained in ABATE's Initial Brief, rate shifting has not presented any material revenue concerns for the Company and does not merit ignoring a cost of service based revenue apportionment. (ABATE Initial Br at 66-69.) The Company's further claims regarding sales determinants and revenue are also rebutted in ABATE's Initial Brief and, for the sake of brevity, will not be restated here. (*Id.*)

The Commission should therefore reject the Company and Staff's rate design, including its transportation rate design, as inconsistent with cost of service principles. ABATE's proposal

reflects an equitable and reasonable cost allocation consistent with the way the Company's customers cause it to incur costs and should be adopted here.

G. Cost Allocation and Rate Design – The Company's uncollectible expense should be allocated to the identifiable customer classes which cause the Company to incur that cost.

Staff and MEC-SC-CUB argued that uncollectible costs should be allocated as a general cost of doing business based on recent Commission decisions for alternative utility operations. (See Staff Initial Br at 90; MEC-SC-CUB Initial Br at 120-24.) As those decisions were inconsistent with cost-causation principles the Commission should approve its former (and current for Consumers' gas operations) practice of allocating these costs to the customer classes which cause them.

While Staff simply pointed to Commission Orders in Case Nos. U-20940 and U-20836, as noted in ABATE's Initial Brief those decisions are inconsistent with the Commission Orders in Case Nos. U-17689, U-17990, U-17767, U-17999, U-18014, and U-18124, as well as the discussion of this issue in the NARUC Manual. (ABATE Initial Br at 70-72; see also LBWL-MSU Initial Br at 4-5.) As the Commission determined in those orders, while no one customer, residential or otherwise, is responsible for any other customer's nonpayment of their bill, irrespective of class membership, "[i]t is appropriate and consistent with regulatory ratemaking principles to directly assign such costs to the class that caused the costs" and the "Commission favors consideration of 'how different classes of customers are actually causing the costs.'" (*Id.*) While the Commission cannot allocate individual customers the specific individual costs they cause, cost-causation principles dictate that customer *classes* be allocated the costs those *classes* cause. As stated in the NARUC Manual, "[m]any utilities monitor the uncollectible account levels by tariff schedule" and thus "it may be appropriate to directly assign uncollectible accounts expense to specific customer classes." (*Id.* (internal citations omitted).)

The further points made by MEC-SC-CUB also demonstrate the unreasonableness of its recommendation. MEC-SC-CUB noted “the impact of rising gas rates on affordability, as evidenced by the increasing number of accounts that are in arrears for 90 days or more,” and noted that “[f]rom 2021 to 2023, residential uncollectible expenses have increased 53.7%,” and here Consumers proposed a 12.1% increase to its primary residential rate. (MEC-SC-CUB Initial Br at 120.) Affordability concerns are just as applicable to larger customers, for which Consumers has proposed rate increases significantly higher (in some cases more than twice as high) than it has for its residential customers (specifically, between 26.2% to 33.9%). (See ABATE Initial Br at 36.) The pursuit of affordability does not serve as a basis for shifting recovery of more than \$2 million dollars from the classes that cause these expenses to the classes that are already facing these exorbitant increases and demonstrably do not contribute to these costs at all.

The uncollectible allocation proposed by Staff and MEC-SC-CUB is therefore inconsistent with cost allocation and is unreasonable. (See ABATE Initial Br at 69-74.) As such the Commission should reject these proposals and adhere to the cost-based approach it approved in the myriad rate case orders set out above.

H. Cost Allocation and Rate Design – The Commission should adopt the LBWL/MSU proposal to allocate Other Distribution Plant using a weighted average for high pressure and non-high pressure distribution mains.

Staff argued that the Commission should reject the LBWL/MSU proposal for different treatment of “other distribution” FERC accounts 374-378 by functionalizing the costs in all of the accounts using a Company workpaper based on mains costs at each pressure level. (Staff Initial Br at 100-01.) Specifically, Staff asserted its understanding “that there are no records on which pressure level associations can be determined for FERC accounts 374-377, and no evidence was presented supporting that costs in FERC accounts 374-377 are related to the costs of mains at each

pressure level.” (*Id.*) Thus, Staff recommended that the Company’s proposed allocation of accounts 374-377 and Staff’s proposed allocation of account 378 should be approved. (*Id.*)

Staff’s objection to functionalizing costs in accounts 374, 375, and 377 using a Company workpaper based on mains costs at each pressure level is unreasonable and should be rejected. The allocation of accounts 374, 375, and 377 should follow the allocation of other demand-related distribution plant, which is mains. If mains are functionalized as high-pressure and non-high-pressure, it is reasonable to apply the same approach to the other demand-related distribution accounts. Furthermore, it is reasonable to use the weighting of mains between high-pressure and non-high-pressure as a proxy for functionalization when direct plant records are unavailable, as the proxy is logical and consistent with system design and operation. Indeed, the NARUC Gas Rate Design Manual supports allocating account 374 and 375 in proportion to the allocation of all other distribution plant, and supports allocating account 377 based on demand, which in this case would be the same demand allocator used for accounts 374 and 375. (See Lyons 4 Tr 2249; NARUC Manual at 32.)

Staff’s objection is therefore unreasonable and inconsistent with this “well established and widely utilized” approach. (*Id.*) To more accurately allocate costs in accordance with their causation the Commission should therefore adopt the LBWL/MSU proposal to functionalize accounts 374, 375, and 377 using a Company workpaper based on mains costs at each pressure level.

III. RELIEF REQUESTED

WHEREFORE, ABATE requests the Commission issue an Order adopting ABATE’s positions as outlined in its Direct and Rebuttal Testimony, as well as its Initial and Reply Briefs.

Respectfully submitted,

CLARK HILL PLC

Stephen A.

By: **Campbell**

Digitally signed by: Stephen A. Campbell
DN: CN = Stephen A. Campbell email =
SCampbell@clarkhill.com C = US O =
Clark Hill PLC
Date: 2025.07.11 14:53:22 -04'00'

Michael J. Pattwell (P72419)
Stephen A. Campbell (P76684)
Benjamin J. Holwerda (P82110)
Attorneys for the Association of
Businesses Advocating Tariff Equity
Clark Hill PLC
500 Woodward, Suite 3500
Detroit, Michigan 48226
313-309-4274
mpattwell@clarkhill.com
scampbell@clarkhill.com
bholwerda@clarkhill.com

Date: July 11, 2025

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.)
_____)

Case No. U-21806

ALJ James M. Varchetti

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

Stephen A. Campbell, being first duly sworn, deposes and says that on July 11, 2025, he did cause to be served the *Association of Businesses Advocating Tariff Equity's Reply Brief*, as well as this *Proof of Service*, in the above docket, via electronic mail, to the persons identified on the attached service list.

Stephen A.
Campbell

Digitally signed by: Stephen A. Campbell
DN: CN = Stephen A. Campbell email =
SCampbell@clarkhill.com C = US O = Clark Hill PLC
Date: 2025.07.11 14:53:33 -04'00'

Stephen A. Campbell

SERVICE LIST
MPSC Case No. U-21806

<p>Administrative Law Judge Hon. James M. Varchetti Administrative Law Judge Michigan Public Service Commission 7109 W. Saginaw Hwy., 3rd Floor Lansing, Michigan 48917 Email: varchettj@michigan.gov</p>	<p>Counsel for MPSC Staff Anna B. Stirling Amit T. Singh Alena M. Clark Michael Orris Email: stirlinga1@michigan.gov singha9@michigan.gov clarka55@michigan.gov orrism@michigan.gov</p> <p>Lori Mayabb Email: mayabbl@michigan.gov</p>
<p>Consumers Energy Company Gary A. Gensch Jr. Evan B. Keimach Kelly Hall Anne Uitvlugt Spencer A. Sattler Bret A. Totoraitis Mark R. Ruskiewicz Email: gary.genschjr@cmsenergy.com evan.keimach@cmsenergy.com kelly.hall@cmsenergy.com anne.uitvlugt@cmsenergy.com spencer.sattler@cmsenergy.com bret.totoraitis@cmsenergy.com mark.ruskiewicz@cmsenergy.com mpsc.filings@cmsenergy.com</p>	<p>Michigan Environmental Council; and Citizens Utility Board Christopher M. Bzdok Holly L. Hillyer Breanna Thomas Natasha Fowles Email: chris@tropospherelegal.com holly@tropospherelegal.com breanna@tropospherelegal.com natasha@tropospherelegal.com</p>
<p>Michigan Attorney General Celeste R. Gill Email: gillc1@michigan.gov ag-enra-spec-lit@michigan.gov</p>	<p>Retail Energy Supply Association Jennifer U. Heston Email: jheston@fraserlawfirm.com</p>
<p>Energy Michigan, Inc. Laura Chappelle Timothy Lundgren Justin Ooms Email: lachappelle@varnumlaw.com tjlundgren@varnumlaw.com jkooms@varnumlaw.com</p>	<p>Lansing Board of Water & Light; and Michigan State University Nolan Moody Mark Matus Cole Lussier Email: nmoody@dickinsonwright.com mark.matus@lbwl.com clussier@dickinsonwright.com</p>

<p>Lansing Board of Water & Light Mark Matus Email: mark.matus@lbwl.com</p>	<p>Counsel for The Ecology Center, Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar Daniel H.B. Abrams Email: dabrams@elpc.org</p>
<p>Counsel for ABATE Michael J. Pattwell Stephen A. Campbell Benjamin J. Holwerda Email: mpattwell@clarkhill.com scampbell@clarkhill.com bholwerda@clarkhill.com</p> <p>Lauren Degnan Email: ldegnan@clarkhill.com</p>	<p>Consultants for ABATE James Dauphinais Email: jdauphinais@consultbai.com</p>