



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

September 4, 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 to Exceptions** and **Proof of Service** in the above-referenced matter.

Sincerely,

CLARK HILL PLC

Stephen A. Campbell
Stephen A. Campbell
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: 2025.09.04 14:08:25 -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 TO EXCEPTIONS 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 to Exceptions to the Proposal for Decision (“PFD”) issued 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”).

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I. INTRODUCTION

The Company's exceptions to the PFD's recommendations regarding a reasonable equity ratio and return on equity ("ROE"), as well as cost recovery disallowances for certain capital projects, are unreasonable and inconsistent with the record. Consumers' arguments regarding these issues were thoroughly considered and rejected by the PFD. As such the PFD's recommendations on these issues should be adopted, as modified in accordance with ABATE's recommendations.

II. ARGUMENT

A. The PFD's equity ratio and return on equity recommendations are reasonable and supported by a thorough and comprehensive review of the record.

As acknowledged by Consumers, an appropriate return for a utility is one "commensurate with returns on investments in other enterprises having corresponding risks," and the ratemaking process "involves a balancing of the investor and the consumer interests." (Consumers Exceptions at 53.) The ALJ's considered and careful engagement with this standard, as well as the parties' equity ratio and ROE testimony and briefing in this proceeding, is demonstrated across 100 pages of the PFD. (PFD at 203-303.) As such the PFD's conclusions demonstrate a thoughtful analysis of the evidence in this case and constitute well-supported and reasonable recommendations. The Commission should therefore reject the Company's exceptions on these issues, as well as its continued requests to dramatically increase its equity ratio and ROE, and instead adopt an equity ratio of 50% along with a ROE no higher than 9.75%.

1. The Company's equity ratio should be 50%.

a. The PFD explicitly considered peer utility and proxy utility equity ratios.

The Company argued that "the utility industry trend in authorized equity ratios and ROEs is upward" and pointed to a presentation of "equity ratios of a peer group of utilities that

demonstrated an average equity ratio of 54.05%.” (Consumers Exceptions at 57-62.) The PFD thoroughly addressed these arguments and found that while the Company “asserted that the median equity ratio increased 130 basis points from 2019 to 2023 while the company’s ratio decreased during that period,” the supporting report “shows that the median approved equity ratio in almost every year from 2005 to 2023 was close to or below 50%.” (PFD at 229-30.) Further, from “2013 to 2021 the median approved ratio remained very close to 50% with only minor deviations up or down” and only “in three years, 2012, 2022, and 2023, did the median approved equity ratio meet or exceed 51%.” (*Id.*) Thus, while “this might demonstrate a recent upward trend in approved ratios for utilities in 2022 and 2023, it does not demonstrate that a balanced equity ratio is unreasonable, let alone an outlier.” (*Id.*) This is particularly relevant here, where the Company’s proposed equity ratio also exceeds that for the proxy group the Company used to support its ROE recommendation. (See ABATE Initial Br at 16-17; Walters 4 Tr 2185; see also Exhibit AB-7.) In fact, the Company’s proxy group had an average common equity ratio of 46.3% (including short-term debt) and 50.4 (excluding short-term debt) as calculated by S&P Global Market Intelligence and *Value Line*, respectively. (Walters 4 Tr 2186.) Consumers proposed equity ratio of 50.75% therefore exceeds that of the proxy group’s comparable average equity ratio. (*Id.*)

Further, the PFD explained the deficiencies with the Company’s analysis and argument that “Company witness Marc R. Bleckman chose his peer group to ensure that he had access to actual regulatory authorized equity ratios.” (Consumers Exceptions at 58.) Specifically, the PFD noted the Attorney General’s point that “16 of the 30 companies listed in the exhibit (units of Black Hills, WEC Energy, and CenterPoint Energy) were not included in the company’s ROE peer group in this case” and explicitly rejected Consumers’ justification, which “essentially stated that the company’s selection was appropriate because it adhered to the established selection criteria that

the company itself selected.” (PFD at 229-32.) The Company’s explanation of the deficiencies in its own analysis is not a justification for increasing its equity ratio.

Thus, after considering the same arguments the Company makes here the PFD properly found that Consumers “failed to establish that its request for a capital structure with an equity layer of 50.75%—an increase of 75 basis points from its most recent authorized equity ratio—is required or reasonable.” (*Id.*) The Company’s arguments regarding trends and peer utilities are flawed and do not serve as a legitimate basis for rejecting the PFD’s recommendation. As such the Commission should adopt the same.

b. The PFD’s recommended equity ratio is in line with Commission direction on this issue.

The Company claimed that despite the acknowledged Commission direction to establish a balanced equity ratio, “Consumers Energy needs to maintain strong credit ratings because the Company’s credit rating has been downgraded once already since the Commission’s decision in Case No. U-17735,” and “[o]ver the last several years, the Company’s credit metrics have also deteriorated as a result of numerous external economic factors coupled with numerous reductions in the Company’s equity ratio that have already been adopted.” (Consumers Exceptions at 63-64.) Again, the PFD already considered and rejected these claims as insufficient to justify an increased equity ratio.

Specifically, the PFD provided a thorough account of the “company’s economic circumstances since the Commission’s last rate case order” in determining that there are not “significant changes . . . that would warrant increasing the company’s equity layer.” (PFD at 224-29.) Thus, the concerns regarding “financial market volatility, inflationary pressures fueled by the Trump administration’s trade policies, the potential threat of an impending recession, and geopolitical tensions” are not “new circumstances” justifying an increased equity ratio. (*Id.*)

Further, credit rating agencies reports regarding Michigan’s regulatory environment and Consumers’ circumstances explain that “Michigan ‘remains more constructive than average,’” and “approved ROEs for [utilities regulated by the Commission] remain above the prevailing industry averages” while Consumers has a “stable outlook” meaning “there is no apparent need to move away from a balanced capital structure.” (*Id.* (internal citations omitted).)

Thus, the “headwinds” Consumers cited have been addressed previously and Consumers’ arguments regarding its credit quality are “overstated.” (*Id.*) The Commission should therefore reject the Company’s exception on this issue and adopt the PFD’s recommended 50% equity ratio.

c. The PFD appropriately considered the evidence regarding Consumers’ FFO-to-debt ratio, market conditions, the nationwide utility industry, and the regulatory environment.

As noted above, the PFD thoroughly engaged with the record evidence regarding Consumers’ FFO-to-debt ratio, market conditions, the nationwide utility industry, and the regulatory environment. (*Id.*) In doing so it reaffirmed that Consumers’ request is overstated. Credit rating agencies’ view of both Michigan and Consumers demonstrate the Company’s current 50% equity ratio should be maintained given Michigan’ favorable regulatory environment and Consumers’ “stable outlook.” (*Id.*) The Company’s own claims demonstrate the validity of this determination. Specifically, the Company argued the statement from Regulatory Research Associates (“RRA”) that “[w]hile approved ROEs for [Michigan Public Service Commission regulated utilities] remain above the prevailing industry averages, they compare less favorably to these averages, which have risen, albeit modestly, in recent periods,” expressed “concerns with the Company’s regulatory environment and overall credit outlook.” (Consumers Exceptions at 65-71.) This statement instead demonstrates that the Company’s returns are *higher than prevailing industry averages, even if those averages may be modestly rising*. Thus, despite Consumers’ focus on purported upward trends in financial metrics those trends are, at most, “modest[.]” and

Consumers' authorized return on equity is already "above the prevailing industry averages." (PFD at 224-29.) The Company's requested increase is therefore not supported by the evidentiary record, particularly the credit rating agency reports and their analysis of Consumers' current circumstances. Furthermore, despite the Company's current 50% equity ratio it continues to consistently overearn its authorized return. (See ABATE Initial Brief at 15.) The Company's claims regarding the necessity for a higher equity ratio are therefore inconsistent with its own realized financial performance, and increasing its equity ratio will do nothing but ensure a costlier burden for customers.

This reality is particularly important given Consumers' acknowledgement that it is "attractive for the benefit of customers in the near-term to downsize the Company's weighted rate of return." (Consumers Exceptions at 65-71.) While the Company decried a "potential resulting credit rating downgrade," the evidentiary record and the PFD's review thereof demonstrate how little weight should be given to that prognostication. Without any credit ratings analysis to support its position, the Company instead turned to arguments regarding "the possibility that market conditions can include shocks to the financial markets" including hypothetical "spikes in interest rates" that "can cause an increase in the cost of capital or even, under extreme market events, inaccessibility to capital." (Consumers Exceptions at 65-71.) None of this speculation provides a basis for inflating the Company's equity ratio in the face of actual analyses providing a "stable outlook" for Consumers and highlighting Michigan's advantageous regulatory environment which produced the 50% equity ratio the Company now claims is damaging and inadequate.

The Company's requested equity ratio is therefore inadequately supported and would do nothing but unnecessarily increase customer costs. The Company's view on this point is clear in its assertion that the "goal should be to improve the Company's credit quality at all of the credit

reporting agencies, not continuously degrade its credit to achieve the lowest rates possible in the short term.” (Consumers Exceptions at 65-71.) As stated above, the actual goal of establishing a fair return is “balancing of the investor and the consumer interests” to provide a return “commensurate with returns on investments in other enterprises having corresponding risks.” Based on the evidentiary record in this case the PFD’s recommendation accomplishes this goal. The Company’s exceptions to the same should therefore be rejected.

- 2. The Company’s return on equity should be set no higher than 9.75%**
 - a. National ROEs are relevant and properly considered when determining a reasonable ROE for attracting investment.**

As set out in ABATE’s Initial Brief, the Commission has stated “the fact that other utilities have been able to access capital using lower ROEs, as argued by many intervenors, is a relevant consideration.” (See ABATE Initial Br at 11 n 7 (internal citations omitted).) The PFD also noted that “it is both appropriate and necessary to examine and consider ROEs authorized for other gas utilities because doing so is consistent with the Commission’s precedent, and even more importantly, consistent with Supreme Court precedent in *Hope* which expressly provides that the equity returns for a utility ‘should be commensurate with returns on investments in other enterprises having corresponding risks.’” (PFD at 294-95.) The Company’s exceptions on this issue should therefore be rejected.

First, the Company claimed that “[r]ather than comparing recently authorized ROEs for utilities ‘at the same time’ as directed by the Supreme Court, the PFD relies on an incomplete data set showing the recently authorized ROEs of utilities nationally for 2022 and 2023 for this rate case with a 2026 test year.” (Consumers Exceptions at 72-78.) The Company’s claim that relevant contemporaneous ROE evidence cannot be used to determine a reasonable ROE because the Company is using a projected test year is, first of all, a compelling argument for eliminating the

use of projected test years. With regard to comparative ROE analysis more specifically, it cannot be considered reasonable to assert that there is no possible data set against which to evaluate the Company's requested ROE because the request is for a future period. It is also directly contradicted by Consumers' additional assertion that the "trend of nationwide authorized ROEs is certainly a relevant consideration because it is evidence for the trend in the utility industry that faces the same market conditions as Consumers Energy." (Consumers Exceptions at 78-84.) The PFD's approach to considering "approved ROEs for gas utilities nationwide in 2023 and 2024" as "illustrative" is therefore reasonable. (PFD at 295.)

The Company also objected to the PFD's adoption of "9.15%-10.25% as a general comparative range that can be referenced to determine whether the results of the various financial models proposed by the parties are generally aligned with *Hope's* directive." (Consumers Exceptions at 78-84; PFD at 295-96.) The Company claimed that the PFD "did not establish that the gas utilities making up his range are useful proxies for the Company" and "because the ALJ did not quantify any comparison between those gas utilities as proxies for the Company, the PFD's conclusion that the range is representative is unsupported by the record." (Consumers Exceptions at 78-84.) The PFD's use of this range was simply a method of determining the weight afforded to the results of the parties' various analyses in accordance with the "precedent in *Hope* which expressly provides that the equity returns for a utility 'should be commensurate with returns on investments in other enterprises having corresponding risks'" because "[o]ther regulated utilities are the business enterprises that generally have corresponding risks that most closely correlate to those of the company." (PFD at 295-96.) Furthermore, as the PFD recounted, there was "meaningful overlap in the core components of each party's" actual proxy group of companies "that alleviates concerns that the groups may be too divergent from each other." (PFD at 245.)

Applying the analytical analyses to these proxy groups resulted in ROE ranges of 8.58% to 11.25%. (PFD at 239.) Thus, a 9.15%-10.25% “general comparative range” can hardly be considered incommensurate with returns on investments in other enterprises having corresponding risks. It instead fits exactly within the proxy group ROE ranges presented in this case.

The Company also argued that an upward trend in ROEs should be given more weight than a range or average. (Consumers Exceptions at 78-84.) As noted above, however, the Company’s financial metrics and the PFD’s recommendation are already above that trend. Again, the standard set out in *Hope* contemplates a return commensurate with returns on investments in other enterprises having corresponding risks, not commensurate with trend lines irrespective of the actual returns at issue. The Company’s financial metrics exceed those of its peer companies. As such a reasonable ROE is one that is commensurate with their returns, trends notwithstanding.

Furthermore, as noted in the PFD, “a February note from Barclay’s highlighted that the company’s parent, CMS Energy, demonstrated strong financial performance with a 13% ROE over the previous twelve months and estimated that it could over-earn the allowed ROE by 50 basis points on the gas side of the business.” (PFD at 291.) Consumers’ ability to over-earn its ROE means that its authorized ROE is already set higher than necessary to attract capital. Considered alongside the credit rating agency reports describing Michigan’s strong regulatory environment, Consumers’ stable outlook, and national ROE levels the Company’s ROE should be reduced.

The Company’s objections to the PFD’s recommendation and analysis are therefore unavailing. The PFD’s recommendation would establish a return commensurate with returns on investments in other enterprises having corresponding risks and the Commission should not approve a ROE above 9.75%.

b. The Company’s quantitative models contain significant flaws and were properly evaluated by the PFD.

The Company objected to the PFD limiting the weight of its methodologies for quantitative analyses, arguing that “if there is no meaningful problem with the methodology, there is no justification for limiting the weight of the analyses.” (Consumers Exceptions at 84-91.) The fundamental flaws with the Company’s CAPM, ECAPM, DCF, and BYRP analyses are well documented on the record, thoroughly explained by the PFD, and, for the sake of brevity, will not be repeated here. (See PFD at 244-59 (CAPM), 259-63 (ECAPM), 263-75 (DCF), and 275-84 (BYRP).)

Suffice to say, the Company’s CAPM used a 10.45% market growth rate, which is nearly *three times* the growth rate of the U.S. GDP long-term growth outlook of 4.14%. (ABATE Initial Br at 26.) The earnings growth rate of companies within the composite indices (*i.e.*, S&P 500), should be *lower* than the earnings growth rate for the overall economy—not triple the growth rate of the economy. (Walters 4 Tr 2229.) Additionally, Consumers only used a single model, the DCF, to calculate the expected return on the market and inappropriately included NiSource in the proxy group. (*Id.*) This led to a biased, inflated, and inaccurate result. In terms of its ECAPM, the Company’s model included a redundant adjustment which renders it unreliable and has been rejected by the Commission numerous times. (ABATE Initial Br at 26-27.) Further, again, the Company’s DCF growth rates exceed projected GDP growth, which is impossible. (ABATE Initial Br at 24-25.) Finally, the Company BYRP bases its risk premium analysis on the authorized ROEs for *electric* utilities and significantly overstates the average equity risk premium. (ABATE Initial Br at 27.)

The Company’s analyses are therefore fatally flawed and operate to inflate their results. The Commission should therefore reject the Company’s exception.

c. The Company's arguments regarding flotation costs, capital expenditures, and the regulatory environment do not demonstrate a higher ROE is appropriate.

The Company argued that the PFD did not adequately consider its claims regarding additional factors influencing a reasonable ROE, despite the fact that the PFD did just that. (Consumers Exceptions at 91-94; PFD at 285-93.) As such the Company's exception should be rejected and the Commission should not adopt a ROE higher than 9.75%.

First, the Company claimed that the PFD "did not recognize that Ms. Bulkley included a consideration of flotation costs in her analysis as another factor in the determination of an appropriate ROE," even though Consumers also acknowledged that "flotation costs were not a determining factor." (Consumers Exceptions at 91-94.) Considering this acknowledgement, it was not an error for the PFD to agree "with Staff that flotation costs should not be included or considered when setting the ROE because CMS Energy, not the company, incurred flotation costs." (PFD at 286-87.) Furthermore, "it has been approximately two decades since CMS Energy last issued stock and it would be unfitting to attempt to recover flotation costs decades later." (*Id.*) While Consumers apparently applied the calculated cost "to the proxy group in the DCF analysis to estimate the impact of the cost of equity associated with flotation costs," this was irrelevant to Consumers' cost of equity, the Company's DCF analysis itself was flawed as set out above. (Consumers Exceptions at 91-94.)

The Company also claimed that the PFD's analysis of the regulatory environment, credit, and macroeconomic considerations "fails to recognize that [Consumers] was comparing those factors for Consumers Energy with [its] proxy group for a more wholistic analysis." (Consumers Exceptions at 91-94.) Despite the Company's claim, the PFD explicitly analyzed these factors in the context of its recommended ROE. Indeed, the PFD recognized "that the Commission has explicitly stated its preference for gradualism and its belief that, in the absence of radical changes

in circumstance, gradual changes in financial measures like ROE are appropriate and consistent with *Hope* and its direction to assure confidence in a utility's ability to maintain credit and attract capital." (PFD at 301.) Specifically:

[T]his recommended ROE is also aligned with the standards announced in *Hope* and *Bluefield* directing that an authorized return should be sufficient to maintain credit and attract access to capital. Indeed, the company's ability to maintain credit and attract capital is largely a function of its minimal business risk as a regulated utility, and this PFD has discussed at length the record evidence relating to ratings agencies and their stable outlook for the company. Given the company's current stable outlook and the fact that a 9.75% ROE would be slightly above the national average, this PFD concludes that there is no question that the company could maintain access to credit and attract capital with an authorized ROE of 9.75%. [(*Id.*)]

As such, the PFD's recommendation reflects and thoroughly considered the market condition factors raised by Consumers. The Commission should therefore reject the Company's objections and not approve a ROE above 9.75%.

B. The PFD's recommendations regarding certain capital expenditure cost recovery should be modified.

1. The PFD properly found the Company's requested cost recovery for main replacement expenditure projections is not reasonable.

The Company objected to the PFD's recommendation that the Commission disallow recovery of \$84.889 million for seven EIRP projects for which the company has not yet started any design work, as well as the PFD's recommendation to place a budget cap on the EIRP program to prevent spending from continuously increasing at an unsustainable level. (Consumers Exceptions at 12-17.) As explained in the PFD a cost cap is reasonable here, although a lower figure than that recommended by the PFD should be approved. (ABATE Exceptions at 28-30.)

The PFD included a comprehensive review of the record on this issue in properly determining a cost cap is appropriate. (PFD at 66-79.) While the Company argued that for the specific projects identified for cost disallowance, "these seven EIRP projects are progressing

through the design process in 2025 and are all on schedule for construction in 2026,” it did not refute the basis for the PFD’s recommendation. (Consumers Exceptions at 12-17.) As the PFD explained, either “no design work” or “less than 30% of design work” has been completed for these projects. (PFD at 67.) The Company’s claims that “they are progressing through design and are scheduled for construction in the test year” and “these projects follow a standard engineering process, and are on track to proceed as planned” were already considered. (PFD at 69, 72.) As explained by the Attorney General, these “seven projects have no or little engineering completed such that they should be disallowed and the company can seek recovery in its next rate case if the costs are incurred.” (PFD at 74.) Indeed, Consumers “confirmed the design status was as [the Attorney General] described, offered no specific evidence of negative impacts from delays, and failed to justify immediate rate base inclusion when costs could be recovered in future rate cases.” (*Id.*) Thus, the PFD properly found that “such projects are premature for approval because they are too uncertain in both their cost and their timeframe for completion when no design work has commenced.” (PFD at 77-78.) Thus, Consumers “can recover any costs actually expended in its next rate case.” (*Id.*)

The Company’s argument that these projects “represent individual phases of larger EIRP projects, and if these phases are not constructed as planned, it could negatively impact the larger project and construction sequencing because each phase is typically designed to build on the previous one” was also already considered and rejected. (Consumers Exceptions at 12-17; PFD at 69.) As noted above, declining to approve cost recovery at this time does nothing to prevent Consumers from seeking cost recovery after project costs are more certain or known, and the Company is in no way prevented from undertaking these projects as necessary. Indeed, given the Company’s consistent revenue surpluses, its claims regarding potential negative impacts to project

advancement are significantly overstated. (York 4 Tr 2071-73, 2076.) Declining to approve cost recovery at this time for project work which is in its nascent stages does not prohibit Consumers from undertaking these projects or seeking cost recovery in its next rate case.

Regarding the spending cap recommended by the PFD, the Company argued that it will hinder the Company's efforts as Consumers "still has more than 1,400 miles of vintage mains," which "pipe has reached the end of its useful life, and continuing prolonged use increases the likelihood of incidents as the pipe continues to deteriorate." (Consumers Exceptions at 12-17.) First, these claims are greatly overstated. As set out in ABATE's Initial Brief, the vast majority (77.8%) of the Company's distribution main leaks in 2024 were the result of issues unrelated to pipeline corrosion failure, to which legacy cast iron mains are particularly susceptible. (ABATE Initial Br at 28.) Therefore, the Company's stated desire to accelerate replacement is questionable when most of the gas leaks the Company experienced in 2024 were the result of a combination of excavation damage, natural force damage, or equipment failure. (Fitzhenry 4 Tr 2135.) Furthermore, the PFD already considered and rejected this claim. (PFD at 69.) Taking the Company's claims regarding necessary main replacement into account, the PFD found that a spending cap "appropriately balances affordability concerns with the need for the continued replacement of high-risk mains." (PFD at 78.) Further, such a cap would have a minimal impact on the estimated EIRP completion date, which tradeoff "is acceptable if it moderates spending and helps to keep rates at a reasonable level." (*Id.*)

Thus, the Company's argument that "[r]educing projected expenditures hinders EIRP progress and extends the timeline for removal of outdated and leak-prone pipes," and that the "Company's proposed expenditures are needed to meet the annual installed mileage required to timely complete the program" was considered and addressed. (Consumers Exceptions at 72-78;

PFD at 78.) The PFD properly found a proposed cost cap would balance the extraordinary spending increases in this cost category against the need to take action with regard to pipe that actually needs to be replaced. Furthermore, the Company's additional claims regarding the purported importance of this program are irrelevant to whether its cost projections are reasonable or prudent. Assertions that these projects need to occur do not substitute for evidence demonstrating cost recovery for the specific expenses projected in this proceeding is reasonable or prudent at this time.

Consumers' further claims regarding the mains it plans to replace and the associated costs should also be rejected. Specifically, the Company argued against the spending cap by asserting it "will increasingly need to use higher-cost segment projects to replace vintage main distribution pipe in areas where the Company only has a small amount of EIRP pipe to replace, including projects selected based on risk and replacement of HP steel and TOD pipe," while "costs per mile for EIRP distribution projects are influenced by several factors," meaning "it would be incorrect to assume that the same amount of pipe replaced in 2023 can be replaced at the same cost plus inflation for the remainder of the program." (Consumers Exceptions at 12-17.) This claim contradicts the Company's additional argument that "although the projected test year spending is 38% higher than 2023 levels, there is also a 37% increase in the number of projected miles from 108.9 in 2023 to 149 in the test year" and that Consumers "continues to look for EIRP cost reduction opportunities, which resulted in the 2024 actual plastic pipeline cost per mile to be \$216,500 less than the 2023 cost per mile." (*Id.*) In other words, the Company has claimed both that the recommended cap is unreasonable because Consumers projects costly main replacement projects, while also claiming that it continues to realize cost reduction opportunities. Further, it specifically decries using 2023 spending as a basis for the cost cap, while also using that same year

as an example of how it was able to reduce costs. As these claims are contradictory they should both be given no weight and rejected.

The PFD thus properly reiterated the “concerns of the Attorney General, ABATE, and MEC/SC regarding the sustainability of the significant increases in EIRP spending and its associated effect on rate increases and affordability.” (PFD at 78.) The PFD’s recommended cost disallowances and a spending cap are therefore appropriate. As noted in ABATE’s Exceptions, however, the proposed cap is excessive and the Commission should instead cap EIRP expenditures at the average historical level over the past five years; i.e., \$143 million.

2. The PFD properly found that cost overruns for the Atlas Iron Belle Trail and 9 Mile Road projects should not be recovered.

The Company objected to the PFD recommendation to disallow cost recovery associated with the Atlas Iron Belle Trail and 9 Mile Road projects, asserting that “there is no evidence in this case to support the claim that the increase in costs is due to poor Company management.” (Consumers Exceptions at 6.) This claim is inconsistent with the evidentiary record here and the Commission should adopt the PFD’s proposed disallowance.

Despite its claim that there is no evidence in this case to support the claim that the increase in costs is due to poor Company management, the Company has the burden to prove its requested cost recovery is reasonable and prudent. See *Tortora v General Motors Corp*, 373 Mich 563, 569, n 1; 130 NW 2d 21 (1964) (noting the “general rule of evidence, that the burden of proof lies on the person who wishes to support his case by a particular fact which lies more peculiarly within his knowledge, or of which he is supposed to be cognizant”) (internal citations omitted). By its own admissions the Company has not met that burden for demonstrating it is reasonable to recover these costs.

The Company acknowledged that the Atlas Iron Belle Trail project experienced cost overruns “due to the initial estimate for the project being lower than the actual scope of work that was needed,” and that the 9 Mile Road project cost “increased due to heavy concrete restoration work that resulted in additional project cost.” (Consumers Exceptions at 7.) In other words, the Company did not reasonably manage its cost projections or the actual work necessary for the projects. Consumers’ claim that these cost overruns should be recovered anyway because the projects are “complex” is inadequate and unavailing. As explained in ABATE’s Initial Brief, explanations such as limited changes in project scope, additional concrete restoration work, and poor project estimates are not adequate justification for such excessive cost increases, especially for projects that are already in service and considered used and useful. (ABATE Initial Br at 31.) Thus, the cost variances for the challenged projects were not adequately justified or explained. As such Consumers failed to meet its burden of proof for cost recovery.

Indeed, as explained by the PFD, “the Atlas Iron Belle Trail and the 9 Mile Road projects have cost overrun explanations that are not justified or otherwise not satisfactory (initial estimate too low, and additional concrete restoration work, respectively), and the cost variances for those projects are very substantial (97.8% and 165.6% over budget, respectively).” (PFD at 46.) As such the PFD properly recommended adopting ABATE’s disallowance with respect to the cost overruns on those two projects, which would total \$10.533 million in the calendar year of 2023. The Company’s further claims that the Commission should approve cost recovery because work is already being undertaken and the projects benefit customers are irrelevant to whether the costs attributable to overruns are reasonable and prudent. (Consumers Exceptions at 6-7.) As with its EIRP expense, assertions that these projects were necessary or beneficial do not substitute for

evidence demonstrating cost recovery for the specific expenses requested in this proceeding is reasonable or prudent.

The Company has therefore failed to meet its burden to demonstrate cost recovery for these expenses is reasonable or prudent. The Commission should therefore reject Consumers' exception on this issue and adopt the PFD's recommended cost recovery disallowance.

C. The PFD's recommendation regarding productivity increases offsetting inflation is reasonable.

While the PFD's recommendation regarding inflation factors is unreasonable and should be rejected as set out in ABATE's Exceptions, its recommendation that the Company provide more detailed evidence to demonstrate whether it is in fact offsetting inflation with productivity increases is prudent. (PFD at 417.) The Company's objection to this proposal is unreasonable and should be rejected.

The Company argued that it "is concerned with being able to isolate and quantify the precise impact of productivity gains as an offset to inflationary pressures, especially for productivity gains that have not been realized at the time of filing the rate case." (Consumers Exceptions at 111.) First, to the extent this type of accounting is complex the impact of productivity gains should be determined in favor of ratepayers by adopting lower inflationary factors. Further, as the PFD stated in response to this same argument, this "course of action is consistent with previous Commission precedent" and "the Commission already required the company to do so in its last electric rate case." (PFD at 417.) Furthermore, Consumers "argues that it already considers productivity or other cost reductions in its cost projections, so this direction should not be overly burdensome because it simply requires the company to more transparently highlight how such considerations are taken into account." (*Id.*) Indeed, applying "a productivity factor offset to

inflation would certainly be simpler, easier, and less burdensome, but it may be a more appropriate approach to allow the company to demonstrate how it accounts for productivity gains.” (*Id.*)

The Commission should therefore reject the Company’s exception on this point. The PFD’s recommendation regarding accounting for productivity gains is reasonable, although the Commission should adopt the lower specific inflation factors proposed by ABATE in this case.

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, and its Exceptions and Reply to Exceptions.

Respectfully submitted,

CLARK HILL PLC

By: **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: 2025.09.04 14:08:44 -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: September 4, 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 September 4, 2025, he did cause to be served the *Association of Businesses Advocating Tariff Equity's Reply to Exceptions*, 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: 2025.09.04 14:08:58 -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>