

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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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 to Exceptions**

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## I. Introduction and Overview

On August 14, 2025, Administrative Law Judge (ALJ) James Varchetti issued his proposal for decision (PFD) in this case. In the Notice of Proposal for Decision, the ALJ stated that replies to exceptions must be filed by September 4, 2025. Accordingly, the Attorney General files the instant replies to exceptions to respond to or otherwise address arguments made by the other parties in their exceptions to the proposal for decision. The Attorney General's decision not to address certain issues in this Reply to Exceptions is not a waiver of those issues. The Attorney General's briefs, testimony, exhibits and her exceptions should be considered in evaluating her position on the issues appearing in this case.

Consumers Energy Company ("Consumers Energy," "Consumers," "CECo" or "the Company") complains that the rate relief recommended in the PFD if adopted by the Commission would lead to rates that are below a just and reasonable level and that the Company would not be able to deliver quality customer service.<sup>1</sup> The Company argues that its revenue deficiency should be higher than the amount proposed by Michigan Public Service Commission Staff ("Staff").<sup>2</sup> It claims that *many* of the investments proposed in this case are needed, both directly and indirectly to ensure the safety of the Company's natural gas transmission and

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<sup>1</sup> Consumers Energy Company's Exceptions to the Proposal for Decision, p. 1.

<sup>2</sup> *Id.*

distribution system. However, the Company's claims do not justify the amount of rate relief it requests in this case.

Merely spending more is not the answer because capital expenditures place tremendous upward pressure on rates and have a disproportionately negative impact on lower income ratepayers, even with payment assistance. It is not sustainable to simply force rate increase after rate increase on ratepayers. The Attorney General understands that operating a natural gas utility requires investment in capital expenditures. However, reasonable and prudent investment must include proper planning, allocation, and prioritization by the Company of what investments are truly important. As a result, the reasonableness and prudence of these costs must be closely examined and any expenditure not supported by evidence eliminated.

The Attorney General disagrees with the Company on the level of spending needed or justified for the projected test year for some of its expenditures. The investment amount that should be approved depends on the Company's ability to meet its evidentiary burden. The Commission should also consider the financial pain it will inflict on customers.

The Company also criticizes the PFD's recommendation to lower the authorized return on equity to 9.75% arguing that it is well below a level that would incentivize investors to contribute capital.<sup>3</sup> It makes a reference to a 9.80% ROE

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<sup>3</sup> Consumers' Exceptions, p. 2.

that the Commission used for DTE Gas Company in November 2024 as being received forcefully and negatively by the investment community.<sup>4</sup> In addition to being incredibly vague, information about DTE Gas's investors is not in evidence in this case for the parties and Commission to evaluate and thus the reference should be disregarded. As discussed in the Attorney General's briefs and below, the record in this case supports the recommended 9.75% ROE. The Company argues that a "constructive revenue deficiency and ROE" is crucial to enable the Company to accomplish important safety related work. The Company does not explain what it means by constructive, other than perhaps granting it, its preferred ROE and rate increase. But there is no evidence that the 10.25% ROE it is seeking in this case is needed to accomplish the stated goal.

The Company's position seemingly ignores the legal standards that apply in general rate cases before the Commission both as to its burden of substantiating and proving its proposals are reasonable and prudent, and for a reasonable and legally sufficient return. Although presented in the Attorney General's Exceptions to the Proposal for Decision, it is worth repeating that Consumers Energy bears the burden of proof to demonstrate that its rate increase request is reasonable. The obligation of proving any fact lies upon the party who substantially asserts the affirmative of the issue.<sup>5</sup> A plaintiff always has the burden of proving its cause of

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<sup>4</sup> *Id.*

<sup>5</sup> *White v Campbell*, 25 Mich 463, 475 (1872).

action.<sup>6</sup> In administrative cases, a party seeking relief must prove his, her, or its claim by a preponderance of the evidence.<sup>7</sup> Likewise, in MPSC Cases, a utility has the burden of proof by a preponderance of the evidence.<sup>8</sup> Moreover, the MPSC may disbelieve even uncontradicted evidence.<sup>9</sup> When the burden of proving a fact falls on one party, then the other party does not have the burden of proving the opposite fact.<sup>10</sup>

Moreover, the Commission has clearly noted that “[t]he burden is on the utility to prove the accuracy of each and every test year projection.”<sup>11</sup> Indeed, the Commission has reiterated its position on the need for detail and certainty to support projected test year expenses in prior cases.<sup>12</sup>

For future guidance, the Commission’s expectation is that the parties will *fully document the basis of their test year projections by offering into evidence detailed supporting explanations and underlying assumptions rooted in expected business, financial, and economic circumstances.* Rate applications may not rely on undocumented estimates of future ratemaking expenses and revenue criteria. When necessary, parties should provide competing projections, with a similar basis of support. The record thus created

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<sup>6</sup> *Caruso v Weber*, 257 Mich 333; 241 NW 198 (1931).

<sup>7</sup> *Dillon v Lapeer State Home & Training School*, 364 Mich 1, 8; 110 NW2d 588 (1961), and *BCBSM v Governor*, 422 Mich 1, 88-89; 367 NW2d 1 (1985).

<sup>8</sup> *In re Michigan Gas Utilities Co*, MPSC Case No. U-7484, Opinion & Order dated 8-30-83, p 10, and *In re Detroit Edison Co*, MPSC Case No. U-8030-R, Opinion & Order dated 7-9-87, pp 16-17.

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

<sup>10</sup> *S C Gary, Inc v Ford Motor Co*, 92 Mich App 789, 803-804; 286 NW 2d 34 (1979).

<sup>11</sup> Order, MPSC Case No. U-20561, May 8, 2020, p. 12.

<sup>12</sup> *Id.* at 13; *citing* Order, MPSC Case No. U-15645, November 2, 2009, p. 9.

should lend itself to a comparative review of the reasonableness and prudence of the projections. Historical data may play a role, but ordinarily will not be a controlling factor except in circumstances that clearly demonstrate that it is a more fair and reasonable reflection of the utility's cost of service, relative to projected data.<sup>13</sup>

The Commission has also determined that a utility's presentation of substantial evidence on a particular proposal "does not make the reasonableness and prudence of that proposal a foregone conclusion..."<sup>14</sup> It is not enough that a utility's projected capital expenditures be associated with a prudent capital project; instead, the projected capital expenditures must also be adequately supported. It is important to keep these burdens and obligations in mind when examining Consumers Energy's arguments in this case.

The PFD demonstrates that the disallowances that were recommended are justified by the record – if anything it could have recommended even more disallowances as addressed in the Attorney General's Exceptions to the Proposal for Decision.

This Reply to Exceptions will address the following issues:

1. The ALJ was correct in recommending the disallowance or adjustment to capital expenditures as described herein because they were not adequately supported on the record or justified.
2. The Company's proposed equity ratio is not supported by the record.

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<sup>13</sup> Order, MPSC Case No. U-15645, November 2, 2009, p. 9 (emphasis added).

<sup>14</sup> Order, MPSC Case No. U-18014, January 31, 2017, pp. 5-8.

3. Consumers Energy's request for an authorized ROE of 10.25% is not supported by the record.
4. The PFD was correct in recommending disallowance for the Company's proposed O&M expenses described herein.

## **II. RATE BASE.**

### **A. Net Utility Plant**

#### **1. Gas Transmission and Distribution Capital Expenditure.**

##### **a. Regulatory Compliance**

##### **i. Transmission Regulatory Compliance**

##### **Pipeline Integrity (TOD)**

The Attorney General recommends that the Commission reduce the Company's forecasted capital expenditure for the projected test year for TOD Pipeline Integrity by \$4,953,000. This recommendation consists of disallowances of \$2 million for casing assessments and \$2,953,000 for risk mitigation. The PFD recommended removing \$2 million related to two casing projects because they are premature, they are too uncertain in their cost and their timeframe for completion.<sup>15</sup> It also recommended a \$2.953 million disallowance because the

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<sup>15</sup> PFD, p. 48.

significant increase in cost appears excessive.<sup>16</sup> The Company filed exceptions to those recommendations.

Regarding the casing projects, the Company explained its process and argues that the projects are on track and following the normal cadence to meet code requirements.<sup>17</sup> The PFD was correct in recommending the disallowance. As discussed in the Attorney General’s Initial Brief, casing assessments are done every seven years. The Company claims that it based its projections on previous assessments. However, the Company explained that “[t]he level of planning and cost to accomplish for examinations is complex and expensive,”<sup>18</sup> therefore it spread the cost over two years. The Company projected \$2 million for each year (or \$4 million total) and given the Company’s description, it appears that these amounts are likely ballpark amounts with no specific quantification of the forecasted cost. The Company admitted it has very limited experience with the cost of inspecting and remediating casings. Furthermore, it disclosed that the casing projects are still in the planning and scheduling phase, which is in the early phase of project development.<sup>19</sup> The 2026 projects are too premature to include in rate base in this case. Therefore, only the 2025 amount should be approved. The 2026 forecasted

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<sup>16</sup> PFD, p. 49.

<sup>17</sup> Consumers’ Exceptions, pp. 8 – 9.

<sup>18</sup> Id. at p.8 (internal citations omitted).

<sup>19</sup> Exhibit AG-15 (DR AG-CE-0329).

cost should be removed which results in an adjustment of \$2.0 million for the projected test year.<sup>20</sup>

The Company explained that the Risk Mitigation Program expenditures are related to work pertaining to assessing and remediating non-high consequence areas (“HCA”) pipe and that the ramp up in mileage and costs for this program is being done to align non-HCA assessments to HCA assessments.<sup>21</sup> There is no regulatory impetus for increase in work and associated cost increases. For 2026, 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. The large increase in both the number of miles and cost is excessive and has not been supported or justified.<sup>22</sup>

In addition, the Company stated 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.<sup>23</sup> Doubling the number of miles and cost of \$661,000 from 2025 to \$1,322,000 in 2026 is more reasonable. This leads to a \$2,953,000 reduction from the Company’s forecasted capital expenditures for

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<sup>20</sup> Coppola, 4 TR 1900.

<sup>21</sup> Consumers’ Exceptions, p. 9.

<sup>22</sup> *Id.*

<sup>23</sup> Exhibit AG-15 (DR AG-CE-0329).

the projected test year.<sup>24</sup> The Commission should adopt the PFD's recommendation.

### **MAOP Project Expenditures.**

The Maximum Allowable Operating Pressure (MAOP) program projects are related to regulations from the Pipeline Hazardous Materials Safety Administration (PHMSA).<sup>25</sup> The Company claims that it is required to replace or remediate certain pipelines to re-establishing the MAOP due to the lack of traceable, verifiable, and complete (TVC) records that should have been maintained by the Company to establish MAOP.<sup>26</sup> The PHMSA rules provide for procedures and alternative steps that the Company can use instead of replacing the pipeline to develop TVC records, to re-establish the MAOP.<sup>27</sup> However, the Company did not identify any alternatives to replacement for the MAOP projects.<sup>28</sup>

The Attorney General recommended a 50% disallowance for most of capital expenditures for projects designed to remedy noncompliance with regulatory requirements for verification of the MAOP of the Company's transmission and distribution pipelines.<sup>29</sup> The PFD recommended against the 50% reduction

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<sup>24</sup> (\$3,544,000 x 10/12). *See*, Coppola, 4 TR 1901.

<sup>25</sup> *See*, Warriner, 2 TR 76 – 77 for a description of the program.

<sup>26</sup> *Id.* *See also*, Exhibit AG-5 (DR AG-CE-0358 with attachment) and Coppola, 4 TR 1869 – 1870.

<sup>27</sup> Exhibit AG-6 includes a copy of PHMSA rules.

<sup>28</sup> *See*, Exhibit AG-5 (DR AG-CE-0357 with attachment).

<sup>29</sup> *See*, Attorney General's Initial Brief, pp. 32 – 39.

proposal,<sup>30</sup> and the Attorney General filed exceptions to that recommendation.<sup>31</sup> However, the PFD did agree with the Attorney General's recommendation related to currently unknown MOAP projects.<sup>32</sup> The Company also confirmed that capital expenditures of \$2,564,000 for the projected test year pertain to unknown projects.<sup>33</sup> This amount should be removed because it is a placeholder amount, and the Commission has rejected the inclusion of placeholder or contingency amounts in rate base.<sup>34</sup>

The Company excepted from that recommendation arguing that it failed to recognize how projects are identified under this program. It claims that MAOP projections are based on previously completed work orders of similar magnitude and requirements. It also explains that future projects will be identified based on the Standardized Engineering Analysis.<sup>35</sup> None of the Company's arguments address the reasons for the disallowance. The Company skips the fact the expenditure recommended for disallowance is for yet to be identified projects. The fact that the Company bases projections for *identified* projects on previously completed projects

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<sup>30</sup> PFD, p. 57.

<sup>31</sup> Attorney General's Exceptions to Proposal for Decision, pp. 8 – 10.

<sup>32</sup> PFD, p. 58.

<sup>33</sup> Coppola, 4 TR 1902.

<sup>34</sup> See, November 19, 2015 order in Case No. U-17735 (November 19 order), pages 7-11; December 11, 2015 order in Case No. 17767, pages 19 – 20; April 12, 2018 order in Case No. 18370, page 5; September 13, 2018 order in Case No. U-18999, page 5, September 26, 2019 order in Case No. U-21322 (page 41); and December 22, 2021 order in Case No. U-20963, page 11.

<sup>35</sup> Consumers' Exceptions, p.10.

does not change the nature of expenditures for unknown and contingent projects. It is unfair and unreasonable for ratepayers to bear the cost (including any return) for projects that may not occur. The Company can always seek cost recovery after projects are identified. The PFD was correct in disallowing the \$2.564 million in capital expenditures requested by the Company for unidentified projects.

**b. Material Condition Program**

**i. Material Condition Non-Modeled Program**

**High Pressure Waterway Crossing Project.**

The Attorney General recommended that \$500,000 for the 10 months ending September 2025 and \$5 million for the projected test year be disallowed because eight of the HP main water crossing projects are still in the scoping phase and two projects are just beginning to enter the design phase.<sup>36</sup> The PFD agreed with the Attorney General's position that "these projects are premature to include in rate base given that they are still in the "scoping" phase and have no design or engineering work started such that their timing and cost are currently too uncertain to include in rate base."<sup>37</sup> The Company excepted the PFD's recommendation.

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<sup>36</sup> Coppola, 4 TR 1885 and Exhibit AG-10 (DR AG-CE-0787).

<sup>37</sup> PFD, p. 63.

According to the Company the projects are important to mitigate risks and are not premature.<sup>38</sup> It provided its usual response to questions of premature cost recovery – that the projects are progressing through the design phase and following the Company’s standard cadence before construction planned in 2026.<sup>39</sup> It notes its intention to complete the projects as presented in the case, and there is no evidence indicating the projects will not be completed as planned.

As discussed in the Attorney General’s brief, since these projects are still in the early stage of development, it is premature to include them in rate base in this case.<sup>40</sup> The Attorney General is not foreclosing future recovery or recommending no recovery, but it is an issue of timing of recovery for certain costs that are premature in this case. And contrary to the Company’s position, it has the evidentiary burden to support the timing of the cost recovery. Merely stating that it is following some cadence or the Company intends to complete the work is not enough. Therefore, the \$500,000 and \$5.0 million should be removed from the Company’s forecasted capital expenditures for the applicable forecasted periods.<sup>41</sup>

### **Enhanced Infrastructure Replacement Program**

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<sup>38</sup> Consumers’ Exceptions, p. 11.

<sup>39</sup> *Id.*

<sup>40</sup> Attorney General’s Initial Brief, pp. 46 – 47.

<sup>41</sup> Coppola, 4 TR 1885.

The Enhanced Infrastructure Replacement Program (“EIRP”) was designed to replace the Company’s lowest performing mains, including all cast iron, wrought iron, threaded and coupled, oxyacetylene welded, copper, cathodically unprotected and bare steel distribution main with lower maintenance plastic and steel main, and replace or tie over services to the new main, among other things.<sup>42</sup>

When the EIRP was introduced, the Company predicted that it would be able to achieve the 25-year replacement target with an annual capital spending level of \$70 million. The Company had targeted replacement of 2,869 miles of mains, which over the 25-year plan period would have resulted in an annual replacement rate of 115 miles at an average annual capital spending level of \$70 million, or \$609,000 per mile.<sup>43</sup> However, the EIRP has proceeded at a much slower pace than originally planned and at a much greater cost. The Attorney General recommended that the Commission disallow \$84,889,000 for the spending category for the projected test year. She also recommended that the Commission establish a spending budget of \$197 million for the projected test year to be adjusted by the CPI rate of inflation in future years.<sup>44</sup>

The PFD agreed with the Attorney General’s recommendation to disallow \$84.9 million. It recommended in the alternative that if the Commission did not

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<sup>42</sup> *Id.* at 4 TR 1876 – 1877.

<sup>43</sup> *Id.* at 4 TR 1877.

<sup>44</sup> *See*, Attorney General’s Initial Brief, pp. 40 – 45 for her complete analysis.

agree with the disallowance, it should set a \$197 million cap.<sup>45</sup> It found that the seven EIRP projects for which the Company had not yet started design work, were too premature for recovery in rates because they are too uncertain in both cost and their timeframe for completion.<sup>46</sup> It also shared intervenors concerns regarding the sustainability of the significant increases in EIRP spending and its associated effect on rate increases and affordability.<sup>47</sup>

The Company filed an exception to the PFD's recommendations. First, the Company argued that all seven projects are on track for construction in the test year, and no evidence suggests that they will not be constructed as planned. It claims that the projects are individual phases of larger EIRP projects, and if they are there could be negative impacts if they are not constructed as planned, or if any essential phases are skipped.<sup>48</sup> It also claims to have completed more miles than agreed at slightly lower costs in the most recently completed gas rate test year.<sup>49</sup>

Other than making general statements regarding the projects being on track consistent with standard engineering cadence before construction, the Company has not demonstrated that the projects will be completed in the timeline proposed.<sup>50</sup>

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<sup>45</sup> PFD, pp. 77 – 79.

<sup>46</sup> *Id.* at pp. 77 – 78.

<sup>47</sup> *Id.* at p. 78.

<sup>48</sup> Consumers' Exceptions pp. 13 – 14.

<sup>49</sup> *Id.* at p. 14.

<sup>50</sup> *Id.* at p. 13.

The Company provides a list of tasks that must be completed before construction takes place – order creation, design commencement, environmental review, ordering long lead-time materials, coordinating with gas control to determine optimal timing for project execution, and finalizing construction schedule. As of March of 2025, the design work had not commenced.<sup>51</sup> The Company has not provided specific evidence of negative impacts from any delays on project sequencing.<sup>52</sup> While the Company highlighted greater than anticipated activity in the most recently completed gas rate test year, until recently, the retirement rate per year on the old, targeted mains had been 85 miles of main instead of the planned 115 miles per year.<sup>53</sup> Further, this is a question of whether something is ready for inclusion in rate base. Any reasonable and prudently incurred expenditure can be recovered in future rate cases.

Second, the Company argued against placing a \$197 million cap on recovery of costs, disputing the accuracy of the statement that it would only add three to five years on the EIRP program.<sup>54</sup> According to the Company the reference to three to five years was based on the same pipe replacement pace as in 2023, not the same capital expenditure level as 2023.<sup>55</sup> However, Mr. Coppola anticipated that lower

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<sup>51</sup> See, Exhibit AG-80, page 1.

<sup>52</sup> See, Exhibit AG-80, page 1.

<sup>53</sup> Coppola, 4 TR 1877.

<sup>54</sup> Consumers' Exceptions, p. 16.

<sup>55</sup> Id.

cost would mean a lower pace than projected by the Company for the projected test year.<sup>56</sup> The Company is making a distinction without a difference. Both the pace in 2023<sup>57</sup> and cost<sup>58</sup> are lower than what the Company is projecting for the test year.

The Company discusses mitigating hazards and argues against replacing high-risk vintage pipes at a slower pace.<sup>59</sup> Concerns that this approach will necessarily lead to riskier pipes being left in the ground should be assuaged by the fact that the risk-based approach to pipe replacement employed by the Company over most of the past 12 years, should have resulted in high-risk mains and services already being replaced.<sup>60</sup> The Company has not provided any compelling evidence that the planned increase in spending is tied to any increased safety risks. Therefore, extending completion of the EIRP program a few more years past the current 2035 date, is a reasonable trade-off to balance against customer affordability from uncontrolled capital spending on the program.<sup>61</sup>

The biggest problem leading to the escalation in costs for ratepayers is the cost per mile. Under the original proposal it would cost on average \$609,000 to

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<sup>56</sup> Coppola, 4 TR 1881.

<sup>57</sup> Exhibit AG-9, p. 5 (AG-CE-0781) and Exhibit AG-7.

<sup>58</sup> *Id.* See also, Coppola, 4 TR 1880.

<sup>59</sup> Consumers' Exceptions, pp. 15 and 16.

<sup>60</sup> Coppola, 4 TR 1882.

<sup>61</sup> *Id.* at 1882 – 1883.

replace a mile of main.<sup>62</sup> However, the actual average cost over the past 12 years has been \$1.2 million per mile, or nearly two times the original estimate.<sup>63</sup> The Attorney General is concerned about the direction and escalating cost of this program. What may have been considered a reasonable program with finite goals and a modest price has evolved into a program with no end in sight at a projected cost of over \$251 million for the projected test year.

To stop the escalating cost of the EIRP and hold the Company accountable to meet its cost projections, the Commission should set a maximum spending level or a cap for the EIRP. That spending level would be adjusted for the CPI rate of inflation for future years. Hopefully, it will also incentivize the Company to reduce the cost per mile of main installed.<sup>64</sup> Finally, the Attorney General's recommendation was an "and" not an "or." The Commission should reduce the capital expenditures as recommended by the Attorney General *and* implement a \$197 million spending cap.

### **Vintage Service Replacement Program**

The Vintage Service Replacement (VSR) program began in 2017 to replace all the Company's copper and bare steel vintage service materials. This program replaces deteriorating service lines both in conjunction with the EIRP and outside of

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<sup>62</sup> *Id.* See also, Coppola, 4 TR 1878 - 1879.

<sup>63</sup> *See*, AG-7.

<sup>64</sup> *Id.* at 4 TR 1881 – 1882.

the EIRP.<sup>65</sup> The Company is forecasting capital expenditures for the Vintage Service Replacement Program of \$18.7 million for 2024, \$25.9 million for the ten months ending October 2025, and \$42.5 million for the 12 months ending October 2026.<sup>66</sup> The Company spent \$11.4 million on this program in 2023. In recent years (2022 through 2024) there has been a decline in VSRs, nonetheless,<sup>67</sup> the Company is forecasting more than twice the number of services to be replaced. For 2025 it forecasts 4,194 services and for 2026, the forecasted number of services to be replaced increases further to 5,913.<sup>68</sup> The Attorney General recommended that the Commission remove capital expenditures of \$11,631,000 for the 10 months ending October 2025 and \$23,875,000 for the 12 months ending October 2026 based on actuals from 2024.<sup>69</sup> The PFD agreed with the Attorney General that setting the forecast of services replaced to actual levels achieved in 2024 is reasonable and that the Company's projected increase appears somewhat ambitious. It recommended adopting the Attorney General's disallowances.<sup>70</sup>

In response, the Company focuses on total vintage replacements across the VSR and EIRP/Other programs. It claims that the projected increase in the VSR

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<sup>65</sup> See, Pascarello, 3 TR 414 – 416.

<sup>66</sup> Exhibit A-82 (KAP-4), page 1.

<sup>67</sup> Coppola, 4 TR 1888 – 1889.

<sup>68</sup> Pascarello, 3 TR 419, Table 9. *See also*, Coppola 4 TR 1889.

<sup>69</sup> Coppola, 4 TR 1889 – 1990.

<sup>70</sup> PFD, p. 882

program corresponds to the reduction in vintage services replaced under the EIRP. However, it does not appear to be a one-to-one increase and reduction. It notes that “when considering total Company replacements, the planned increases are more modest”<sup>71</sup> than the percentage increase referenced in the PFD. Instead, it claims that a more apt comparison would be to pre-2022 replacements which ranged from 5,056 to 9,381 services replaced.<sup>72</sup> The Company argues that using the 2024 actuals results in fewer replacements in 2025 and 2026 which would leave outdated and leak-prone services in use longer than necessary.

As discussed in the Attorney General’s initial brief, the Company began to align the replacement of vintage services with the replacement of mains under the EIRP in 2022 to avoid duplicating work by replacing services before the associated mains were replaced. This effort appears to have resulted in fewer non-EIRP services replacements in 2022, 2023 and 2024.<sup>73</sup> While, the Company replaced more services under the VSR program annually before 2022; the Company reported that the actual number of services replaced in 2023 was only 1,228 and it only replaced 2,564 services in 2024.<sup>74</sup> Presumably that was consistent with the replacement of associated mains.

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<sup>71</sup> Consumers’ Exceptions, p. 18

<sup>72</sup> *Id.*

<sup>73</sup> Attorney General’s Initial Brief, pp. 49 – 50. *See also*, Pascarello, 3 TR 419, Table 9.

<sup>74</sup> Exhibit AG-11 (DR AG-CE-0793).

It is not clear why the reversal in the number of services being replaced is necessary.<sup>75</sup> While the gas leak data provided by the Company shows a slight uptick in the number of gas leaks in 2024 over 2023, this follows a period of decline for all types of gas services over the prior three to four years.<sup>76</sup> The higher number of service replacements is not adequately supported and like the EIRP, need to be scaled back. The Commission should adopt the PFD's recommendations.

**c. Capacity/Deliverability Program – Transmission  
Capacity/Deliverability Program**

**i. Deliverability Base Field Measurement.**

According to the Company the purpose for this program is improving gas measurements accuracy and reducing lost and unaccounted for gas.<sup>77</sup> The Company is forecasting capital expenditures for Field Measurement projects of \$6.8million for 2024, \$10.3 million for ten months ending October 2025, and \$19.9 million for the projected test year.<sup>78</sup> The Company provided a list of projects that comprise the total capital expenditures.<sup>79</sup> Most of the listed projects are in the early stage of design or design work has not yet started and will not start until later in 2025 or 2026, and no cost/benefit analyses were prepared for any of the projects.

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<sup>75</sup> See, Attorney General's Initial Brief, p. 50 and Coppola, 4 TR 1889.

<sup>76</sup> Coppola, 4 TR 1889.

<sup>77</sup> Griffin, 4 TR 1286.

<sup>78</sup> Exhibit A-61 (MPG-5), page 1, line 3.

<sup>79</sup>Coppola 4 TR 1904. *See also*, Exhibit AG-18 (WP-MPG-3).

Consequently, the Attorney General recommended disallowances.<sup>80</sup> The PFD recommended that the Commission adopt two of the Attorney General's recommendations related to the Rose Center Meter Replacement and six premature projects (B-GM-0042, B-GM-00043, B-GM-00045 through B-GM-00048).<sup>81</sup> The Company excepted from those recommendations.<sup>82</sup>

B-GM-00041 Rose Center Meter Replacement: According to the Company, it is replacing a meter on the premise that the current meter is at the end of its useful life.<sup>83</sup> The forecasted capital expenditures for this project are \$302,000 for the 10 months ending October 2025 and \$818,000 for the projected test year. The Company identifies generic potential issues with the meter,<sup>84</sup> however no specific problems were identified with the current meter. No cost/benefit analysis was performed, and no other benefits have been quantified for LAUF gas accuracy improvements. According to the Company, design for this project was set to occur at the end of the second quarter of 2025.<sup>85</sup> Contrary to the Company's claim this project is not reasonable, and it is premature. The project is still at the early stage of development and along with all the related uncertainty with cost and timing of

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<sup>80</sup> See, Attorney General's Initial Brief, pp. 51 – 55 and Exhibit AG-18 (DR AG-CE-0332).

<sup>81</sup> PFD, p. 86.

<sup>82</sup> See, Consumers' Exceptions, pp. 20 – 21.

<sup>83</sup> Consumers' Exceptions, p. 20.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

capital expenditures that such an early-stage project entails, the project has not been adequately justified.<sup>86</sup> Therefore, the Commission should adopt the PFD's recommendation to remove the forecasted capital expenditures of \$302,000 for the 10 months ending October 2025 and \$818,000 for the projected test year from this rate case.

The six projects: B-GM-00042, B-GM-00043, and B-GM-00045 through B-GM-00048. The total capital expenditure forecasted by the Company for the six projects is \$8,369,000 for the projected test year. According to the Company all of the referenced projects are progressing and have activities that are commensurate with projects that will be constructed in 2026.<sup>87</sup> It claims that pre-engineering work is occurring, which includes survey work, SAP order creation, design commencement, environmental reviews, real estate evaluation, scoping, and long lead-time material ordering.<sup>88</sup> As discussed in the Attorney General's initial brief,<sup>89</sup> design work is not completed and the reference to design commencement does not indicate if it has started yet. The Company has not demonstrated that costs will be incurred as projected in the test year. Given the early stage of development, it is premature to include the capital expenditures for these projects in rate base in this case. The

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<sup>86</sup> Coppola, 4 TR 1907.

<sup>87</sup> Consumers' Exceptions, p. 20.

<sup>88</sup> *Id.* at p. 21.

<sup>89</sup> Attorney General's Initial Brief, pp. 54 – 55.

Attorney General recommends that the Commission remove this amount from the forecasted capital expenditures in this rate case.

The Attorney General recommends that the Commission adopt the PFD's recommendation.

ii. **Deliverability Base Pipeline Program**

This category of capital expenditures pertains to projects to increase transmission pipeline capacity by installing new facilities or replacing existing pipelines. The Company has forecasted capital expenditures for Deliverability Base Pipeline projects of \$18.2 million for 2024, \$19.4 million for the ten months ending October 2025, and \$25.0 million for the 12 months ending October 2026.<sup>90</sup> It provided a list of proposed projects along with the related capital expenditures, reason for each project and status as of early April 2025.<sup>91</sup> The Company has also identified 11 projects where no work has yet been done, and no design work has been initiated or completed. The 11 projects are: B-GL-00259 through B-GL-00267, B-GL-00280, and GL-03047.<sup>92</sup> The total capital expenditures for the 11 projects for

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<sup>90</sup>Exhibit A-61 (MPG-5), page 1, line 4.

<sup>91</sup> See, Exhibit AG-19, which includes WP-MPG-4 and AG-CE-0333.

<sup>92</sup> See, Exhibit AG-19 (DR AG-CE-0333).

the projected test year are \$18,466,000. The Attorney General recommended disallowances for those projects.<sup>93</sup> The PFD agreed with the Attorney General.<sup>94</sup>

The Company disagrees with the PFD and argues that the PFD's recommendation ignores the fact that these projects are progressing and have activities commensurate with projects that will be constructed in 2026. To the contrary, the PFD does not appear to ignore the status of the projects. The prematurity of these projects for inclusion in rates can be seen in the Company's explanation how the project proceeds. It states the engineering costs are being accumulated for these projects and that engineers primarily manage projects being constructed in the current year up until late spring when these projects start to be released for construction. After that, work begins on next year's project including pre-engineering work, design commencement environmental reviews, alignment with gas control, and long-lead time ordering. Based on this description, these projects are still in the early phase of development with no assured timeline and thus premature to include in rate base in this rate case.<sup>95</sup>

In his rebuttal, Mr. Griffin claimed that the disallowance of the 11 projects may undermine compliance with the Michigan Gas Safety Standards.<sup>96</sup> However,

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<sup>93</sup> Attorney General's Initial Brief, pp. 55 – 57.

<sup>94</sup> PFD, p. 88.

<sup>95</sup> Coppola, 4 TR 1909.

<sup>96</sup> Griffin Rebuttal, 4 TR 1314.

he subsequently confirmed that that is not the case. The 11 projects are not the only projects that support the Company's operations in accordance with the Michigan Gas Safety Standards.<sup>97</sup> The Commission should disallow \$18,466,000 of capital expenditures for the projected test year.

iii. **TED-I Remote Control Valves**

The Company is forecasting capital expenditures for Remote Control Valve ("RCV") projects of \$8.7 million for the 10 months ending October 2025, and \$18.1 million for the 12 months ending October 2026.<sup>98</sup> While no capital expenditures were forecasted for this subprogram for 2024, the Company spent \$2.3 million in 2023. The Company provided a list of projects with the related cost.<sup>99</sup> It also provided additional details, including the number of units installed in prior years and planned for future years, as well as the current phase of development as of early April 2025 for projects in \$1 million or greater in size. According to the Company, the 2025 planned projects were currently in the design and procurement phase. However, the seven projects planned for 2026 of \$1 million or greater size are still in the planning and scoping phase which makes them too premature to include in rates.<sup>100</sup> Therefore the Attorney General recommended disallowing

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<sup>97</sup> See, Exhibit AG-76, page 4 (DR AG-CE-0964).

<sup>98</sup> Exhibit A-62 (MPG-6), page 1, line 3.

<sup>99</sup> Exhibit AG-21 includes WP-MPG-8

<sup>100</sup> *Id.*, includes DR AG-CE-0336.

\$14,145, 000 for the seven projects.<sup>101</sup> The PFD recommended disallowing the \$14.145 million stating that “project without engineering or design work started are premature to include in rate base because their costs and timeframe for completion are currently too uncertain.”<sup>102</sup>

The Company disagrees with the PFD claiming that it ignores that these projects are in the normal phase for projects that will be constructed the following year.<sup>103</sup> However, the Company’s description of the project process supports the Attorney General and PFD’s conclusions –

The creation of the project scope documents, and potential surveying and material selection typically occur the year prior to construction...The year of construction (2026) includes site survey work not completed in the prior year, the receipt of materials, the engineering and design work, release of the design packages, contractor bidding and selection, and finally construction and project closeout.<sup>104</sup>

This means they are still in the early stage of development with no engineering/design yet started or completed. It is premature to include the seven projects in rate base since the forecasted costs are preliminary due to the incomplete design work.<sup>105</sup> Customers should not be charged for costs that may not be incurred during the projected periods. The Commission should adopt the PFD’s

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<sup>101</sup> See, Attorney General’s Initial Brief, pp. 60 – 62 and Reply Brief, pp. 11 – 12.

<sup>102</sup> PFD, p. 92

<sup>103</sup> Consumers’ Exception, p. 22.

<sup>104</sup> *Id.* at p. 23, quoting 4 TR 1318.

<sup>105</sup> Coppola, 4 TR 1912 – 1913.

recommendation to disallow \$14,145,000 for the projected test year from the Company's forecasted capital expenditures.

**d. Gas Operations Other Program.**

**i. Enterprise Corrective Action Program**

The Company has proposed capital spending for the Enterprise Corrective Action Program (ECAP) of \$49,000 in 2023, \$204,000 for 2024, \$200,000 for 2025 and \$33,000 for the projected test year.<sup>106</sup> According to the Company this program relates to implementation of a corrective and preventive action system to collect information, identify issues, and take timely action to resolve and sustain resolutions in various departments of the Company. Because it was not clear from the Company's description, what problems exist that the Company is trying to resolve by implementing a new system to gather information it should already have, the Attorney General recommended that the Commission remove all capital expenditures from 2023 through the projected test year. These amounts include \$49,000 for 2023, \$204,000 for 2024, \$167,000 for the 10 months ending October 2025 (\$200,000 x 10/12), and \$33,000 for the projected test year.<sup>107</sup>

The PFD recommends adopting the Attorney General's proposed disallowance noting that the "company provided fleeting testimony of a general

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<sup>106</sup> Pacarello, 3 TR 421, Table 10.

<sup>107</sup> Attorney General's Initial Brief, pp. 64 – 65.

nature about the ostensible positive effects of this program, but it remains unclear what specifically this program does, how exactly it operates or what specific problems it addresses. Even in rebuttal and briefing, the company largely repeated the same vague generic descriptions that were presented in its direct testimony (i.e. that the program aids in managing processes, analyzing data, and informing operational decisions, etc.).”<sup>108</sup>

The Company filed an exception to the PFD’s recommendation. While the Company attempts to better explain the ECAP claiming it will enable the Company to identify compliance or safety issues and trends and to address any identified concerns by implementing correct actions and controls.<sup>109</sup> It describes four phases. The Company claims that in Phase I ECAP was used to support Gas Operations, Engineering, and Regulatory’s adherence to Gas Safety Management System standards, although it does not explain how. Phases 2 and 3 implemented the program for the electric operations and supply side of the business, but it does not explain how or what was implemented.<sup>110</sup> The Company explains that Phase 4 extends ECAP to Corporate Safety and Health and Environmental which it expects to contribute to cost savings through a reduction in lost time and expense. Again, it

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<sup>108</sup> PFD, p. 94 referencing 3 TR 456.

<sup>109</sup> Consumers’ Exceptions, p. 24.

<sup>110</sup> Id.

does not explain how this will occur and how it is measured.<sup>111</sup> The Company's explanations remain vague, full of generalities, and unsubstantiated achievements.

The Company failed to support its forecasted spending for this program and the Commission should adopt the PFD's recommendation.

ii. **Advanced Methane Detection**

The Company is forecasting capital expenditures for the ADM system of \$4,650,000 for 2024, \$265,000 for 2025, and \$3,181,000 for the projected test year.<sup>112</sup> According to the Company, the ADM system will be able to detect very small gas leaks compared to the current equipment.<sup>113</sup> The Attorney General questions the value of the system at a cost of more than \$15.0 million because there is insufficient evidence that the new system will detect significant additional gas leaks of a threatening nature that are currently missed by existing equipment.<sup>114</sup> Additionally, the Company states that it has not had problems identifying true gradable gas leaks using its existing traditional leak detection tools. And the ADM will not be replacing existing leak detection equipment because ADM identifies only general areas where a leak may exist. The Company must still use traditional leak detection equipment to pinpoint if and where an actual leak is occurring. Given the

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<sup>111</sup> *Id.*

<sup>112</sup> Pascarello, 3 TR 421, Table 10.

<sup>113</sup> *Id.* at 3 TR 421 – 428.

<sup>114</sup> Coppola, 4 TR 1891 – 1893.

uncertainties of what quantifiable benefits the AMD system will create and the high cost of the project, the Attorney General recommends that the Commission reject the Company's proposed capital expenditures of \$4,650,000 for 2024, \$221,000 for the ten months ending October 2025, and \$3,181,000 for the 12 months ending October 2026.<sup>115</sup>

The PFD recommended adopting the Attorney General's proposed disallowances noting that it is not clear that the AMD equipment will be required to meet a legal or regulatory requirement due to PHMSA's LDAR rule being placed on hold. And that absent a legal requirement to purchase and utilize equipment, which only supplements and does not replace existing leak detection equipment.<sup>116</sup>

In response, the Company argues that AMD technology provides significant safety and environmental benefits.<sup>117</sup> It claims that AMD enables the Company to find and prioritize higher risk leaks and improve public safety. The Company describes its use in its "Super Emitter Program" which addresses the largest methane emitting leaks and identification and quantification of "large emission sources." It also claims that AMD is more effective at finding below ground leaks and detecting above ground leaks.

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<sup>115</sup> *Id.* at 4 TR 1893 – 1894. See also, Attorney General's Initial Brief, pp. 62 – 64.

<sup>116</sup> PFD, p. 97.

<sup>117</sup> Consumers' Exceptions, p. 25.

Asked to provide quantifiable evidence of the value proposition of the new system, the Company provided a general statement that the AMD increases public safety without providing any evidence to support that statement and stating that value propositions have not been quantified. Finally, the Company does not rebut the Attorney General's reasons for opposing the AMD discussed above.<sup>118</sup>

The Commission should adopt the PFD's recommendation.

## **2. Gas Compression and Storage Capital Expenditures**

### **a. Lyon 29/24 (Northville Storage) Dehydration Project**

The Company is forecasting capital expenditures for the Northville Storage Field at \$8.5 million for 2024, \$25.4 million for the ten months ending October 2025, and \$4.7 million for the 12 months ending October 2026.<sup>119</sup> The Lyon 29/34 project involves the construction of a dehydration unit because of the Company's concerns regarding the moisture content of the gas withdrawn from the Northville gas storage field not meeting the 7bl. per Mcf required for delivery to customers.<sup>120</sup> The Lyon 29/34 is a metering station feeding gas to a transmission line and the Northville storage compressor station. While the Company identified a few incidents of excessive moisture in the gas stream between 2019 and 2021, beginning

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<sup>118</sup> See, Coppola, 4 TR 1893 – 1894 for complete analysis..

<sup>119</sup> Exhibit A-12 (TKJ-5), Schedule B-5.7, page 2, line 10.

<sup>120</sup> Joyce, 4 TR 1511.

in 2021, the Company changed the utilization of the Northville storage fields to be a peaking storage facility to be used only during days in the winter when customer gas demand reaches near peak demand.<sup>121</sup> To resolve the occasional excessive moisture content of the gas stream, originating from the Northville storage field during the gas withdrawal period, the Company wants to install a gas purification/dehydration facility near the Northville compressor station.<sup>122</sup>

The total cost of this project from 2022 to the end of 2026 is estimated to be \$37.4 million.<sup>123</sup> The Company incurred expenditures of \$1,149,000 for 2022, \$1,191,000 in 2023, \$6,122,000 in 2024, and it forecasted \$8,028,000 for 2024, \$25,249,000 for the ten months ending October 2025, and \$3,649,000 for the 12 months ending October 2026.<sup>124</sup> These amounts totaling \$39.3 million are included in this case.<sup>125</sup> The Lyon 29/34 Northville Gas Dehydration is rarely used and the Company has not adequately considered alternative to the proposed work, therefore the proposed expenditure is not a cost-effective or a reasonable or prudent use of ratepayer funds. The Attorney General recommended that the Commission remove the capital expenditure proposed for this project from this rate case.<sup>126</sup>

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<sup>121</sup> Exhibit AG-25 includes DR AG-CE-0315 ATT 3.

<sup>122</sup> Coppola, 4 TR 1914.

<sup>123</sup> Exhibit AG-22 (DR-AG-CE-0506).

<sup>124</sup> See, Exhibit AG-22 (DR AG-CE-0506 with ATT 1; and WP-TJK-6 for Northville).

<sup>125</sup> Coppola, 4 TR 1914 – 1915 and footnotes 76 and 77. The forecasted 2024 capital expenditures were included in the Company's filed case instead of the actual 2024 capital expenditure amount.

<sup>126</sup> See, Attorney General's Initial Brief, pp. 68 – 70 for the complete analysis.

The PFD agreed with the Attorney General's and recommended disallowance of all capital expenditures from 2022 through the projected test year. The PFD agreed with the Attorney General's concerns about the cost of the project compared to the infrequent use of the Northville facility.<sup>127</sup> While noting the importance of peaking facilities in helping the Company meet demand and supporting a reliable gas system, it noted that the evidence demonstrated that the Company met peak demand in 2023 and 2024 without use of the Northville field and was able to meet peak demand in 2022 with limited use of Northville.<sup>128</sup> It also noted that the Company did not provide information regarding testing that it purportedly did and while the Company claims that it would use the fields more frequently if the dehydration project was installed, it provides no information on the nature of the post-project use of the field.<sup>129</sup> According to the PFD, the Company suggested that it evaluated other alternatives, except gas blending, for the dehydration project, but did not discuss them in testimony. The PFD concluded that the Company did not demonstrate that the extensive cost of the dehydration project is reasonable and prudent.<sup>130</sup>

The Company excepted from the PFD's recommendation. It claims that to ensure safe and reliable service to customers, it needs to be able to utilize the

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<sup>127</sup> PFD, p. 109.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at p. 110.

Northville storage field when demand is high, but due to moisture issues, during the coldest winter conditions there were multiple times where the water content in the gas exceeded the regulatory threshold and the Company ended withdrawal from the well prematurely.<sup>131</sup> However, the history of the storage field belies that testimony. The Company was able to meet its peak day demand although it withdrew gas from the field only once in 2021 in March and perhaps once in 2022, and none in 2023 and 2024. The Company argues that this is not a valid reason for the PFD's proposed disallowance because it relies on unsupported assumptions.<sup>132</sup> It argues that one of the reasons for the Lyon 29/34 dehydration project is that it is less expensive than firm transportation contracts for the equivalent pipeline deliverability and that the Company will continue to require more expensive "equivalent pipeline deliverability." It is not clear if this analysis includes consideration of all project costs and the additional return that would be recovered due to increase in rate base. In addition, the Company references page 14 of Exhibit AG-22 as support for this proposition, but that is simply a page from a presentation that provides no supporting information regarding the cost of "equivalent pipeline deliverability."

The Company argues that merely observing that the Company managed to get through 2023 and 2024 without using Northville for peaking does not mean that

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<sup>131</sup> Consumers' Exceptions, p. 27.

<sup>132</sup> *Id.* at 28.

conditions are satisfactory for utilizing its peaking fields most efficiently and at the lowest reasonable cost. “The ALJ failed to recognize that the inability to use Northville to design specifications necessarily means using some other resource to ensure continued service. The PFD take no account of what those alternative resources are or what they cost.”<sup>133</sup> The fault for any failure to consider alternatives rests with the Company, as noted above, the PFD discussed that the Company failure to present that information. The Company claims that contrary to the ALJ’s claim, alternatives were presented in this case and that the ALJ apparently overlooked this evidence.<sup>134</sup> It would not be hard to overlook this “evidence” as it is literally a presentation with brief almost conclusory information on three slides.<sup>135</sup> There was no real details or analysis presented of the alternatives, and the focus of the presentation is mostly on supporting the Company’s preferred choice of installing the dehydration unit.<sup>136</sup>

The Company also discusses a series of suppositions related to the operation of other peaking plants, but it did not provide evidence in this case to support these speculative claims.<sup>137</sup> The Company also claims that the Northville hydration project is needed for “improved system resiliency” and points to the Ray

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<sup>133</sup> Consumers’ Exceptions, p. 29.

<sup>134</sup> *Id.* at p. 31.

<sup>135</sup> The Attorney General is not agreeing that the ALJ overlooked any evidence.

<sup>136</sup> See, Exhibit AG-22, pp. 12 – 28.

<sup>137</sup> *Id.* at p. 29.

Compression station fire and purported system pressure stabilization provided during the Ray fire incident. Since the foregoing observation is literally the extent of a point on a presentation slide with no support or explanation, the Company has not supported the claim.<sup>138</sup> In addition there may be other options that can help the Company address its moisture issue without the dehydration project being done. The Attorney General has repeatedly inquired whether the Company had performed an analysis to see if gas withdrawn occasionally from the Northville storage fields with higher moisture content could be blended with drier gas from other sources as an effective solution to prevent a moisture problem before delivering the gas to customers. The Company responded that it had not performed such an analysis because it does not recognize gas blending as a competent means for ensuring gas quality.<sup>139</sup> It claims that the design of its system prevents it,<sup>140</sup> but without any supporting studies, the veracity of that claim cannot be evaluated.<sup>141</sup> In limited volumes, gas blending can be an effective strategy. DTE Gas utilizes gas blending temporarily when it experiences failures with its gas dehydrating equipment at or near its gas storage fields with no negative effect on customers' gas burning equipment.<sup>142</sup> Further, the natural gas delivered to customers will be at

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<sup>138</sup> See, Exhibit AG-22, p.14.

<sup>139</sup> See also, Exhibit AG-77 (DR AG-CE-0975, 0977 and 0978).

<sup>140</sup> Joyce, 4 TR 1512.

<sup>141</sup> See, Exhibit AG-77, p. 4.

<sup>142</sup> Coppola, 4 TR 1917.

moisture content well below the 7 lb. per Mcf standard measure at the customer meter.<sup>143</sup>

The Company also claims that disallowing project costs dating back to 2022 including pre-bridge period costs would result in an immediate write-off and permanent loss of those historical cost. It claims that sunk cost do not add incremental rates. The last two gas rate cases were settled and this issue has not gone to a Commission order. The reasonableness and prudence of this project and associated costs, including 2022 costs, have not been determined before this case. However, if as the Attorney General argues and the PFD agrees that the Company has not demonstrated that the project and therefore associated are reasonable and prudent, all related costs should be disallowed.

The Commission should adopt the PFD's recommendation.

### **3. Gas Operations**

#### **a. Security**

##### **i. Forward Web Proxy**

This project is being proposed to replace a web proxy system currently in place with a third-party vendor.<sup>144</sup> The Forward Web Proxy Services system is a filtering process to direct customer internet inquiry traffic to different subsystems

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<sup>143</sup> Coppola, 4 TR 1916. *See also*, Exhibit AG-22 (DR AG-CE-0506 ATT 4.

<sup>144</sup> Baker, 4 TR 738 – 739.

in the Company's web server. According to the Company, it has experienced ongoing operational issues related to web filtering and connectivity with its current service.<sup>145</sup> It plans to develop its own software at a cost of \$4.5 million with \$1.2 million assigned to the gas business for the projected test year, which was adjusted down to \$939,000 after the ROM adjustment for inclusion in this rate case.<sup>146</sup>

Information provided by the Company for 2022 through 2024 shows that the number of incidents for its current system declined significantly in 2024 from prior years with few incidents and impacts on non-critical functions and no incidents and impact on Company operations.<sup>147</sup> The Company also reported that it has been working with the vendor and acknowledged service improvement overall in the past year although some issues lingered. The Company's financial analysis for the new proposed project shows a cost/benefit ratio of negative 1.0, meaning that no financial benefits have been identified to undertake this project. The Attorney General disagreed that the new software development project was needed at this time. Therefore, she recommended that the Commission disallow the \$939,000 from the forecasted capital expenditures for the projected test year along with the \$180,000 of O&M expense.<sup>148</sup>

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<sup>145</sup> Consumers' Exceptions, pp. 42 – 43.

<sup>146</sup> Coppola, 4 TR 1931.

<sup>147</sup> See, Exhibit AG-31 (DR AG-CE-0630).

<sup>148</sup> Attorney General's Initial Brief, pp. 86 – 87.

The PFD adopted the Attorney General’s proposed disallowance for both capital expenditures and O&M expense (which was corrected by the Company to \$149,967).<sup>149</sup> It explained that “[t]his PFD is not persuaded that the company’s rationale for this project is fully supported by the underlying facts as the company acknowledges that its current vendor has resolved many issues with the current proxy service and the number of incidents relating to the proxy system has declined dramatically from 2022 through 2024.”<sup>150</sup>

The Company disagreed with the PFD and asks the Commission to reject its recommendation. According to the Company, it is replacing the current web proxy service platform because of consistent *operational* issues that have made it unreliable. Acknowledging that there has been a reduction in incidents from 2022 to 2024, it claims that there were still seven issues in 2024 affecting individual users or groups who could not perform work and resulting in 111 impacted days.<sup>151</sup>

The Company overstates the impact from the current web proxy service. Exhibit AG-31, page 4 includes a table indicating that non-critical function incidents have decreased from a high of 22 in 2022 to 7 in 2024. Likewise, non-critical function impact days have decreased from 228.5 in 2022 to 111.2 in 2024. Further it is not clear if this refers to calendar days or if this is a cumulative

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<sup>149</sup> PFD, p. 145.

<sup>150</sup> *Id.*, referencing Exhibit AG-31, p. 4.

<sup>151</sup> Consumer’s Exceptions, p.43, referencing to Exhibit AG-31, pages 3 – 4.

numbers of days counting the impacts on multiple people by one incident.

Importantly, Company Ops Incidents have decreased from 44 in 2022 to zero in 2024 and there were no Company Ops Impacted days in 2024. Whatever glitches remain, they do not appear to impact the company's operations in a critical way.

The Commission should adopt the PFD's recommendations for this project.

ii. **Physical Access Management and Alarm Response**

The Company is proposing the replacement of the current physical access management system that manages user identity, authentication, access to facilities, and reports on user activities. The Company finds the current system out of date, with inconsistent behavior, and some glitches in its operation, which allegedly create work inefficiencies. For the projected test year, the Company has included \$678,000 of capital expenditures after the ROM adjustment and \$102,000 of O&M expense for the gas side of its business.<sup>152</sup> The Company also identified a dozen or so technical glitches during 2024 which were quickly resolved. The current system was upgraded in 2024. The financial analysis prepared by the Company shows no cost savings or financial benefits from the implementation of the new system despite claims of cost savings from reduced equipment purchases and waste

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<sup>152</sup> *Id.* includes DR AG-CE-0631 with ATT\_1.

reductions.<sup>153</sup> The Attorney General recommended that all costs for this project be disallowed.

The PFD recommended adopting the Attorney General's proposed disallowances for this project stating that it "is not fully persuaded that the problems identified by the company justify the expense of an entirely new system."<sup>154</sup> The PFD noted that the Company had only identified 14 operational issues with its current system in the last two years.<sup>155</sup>

The Company disagrees with the PFD. According to the Company, "[n]ot only does the current system have operational issues, but it does not support the adoption of new physical access control methods that will avoid costs and improve control and responsiveness."<sup>156</sup> According to Exhibit AG-31, the implementation of the use of mobile devices will depend on the selected vendor and solution and will be distributed to mobile devices supported by smart phones.<sup>157</sup> In other words, the functionality of a hypothetical new system is unknown, so there is no basis for the Company's claims that mobile device badges will avoid costs and improve control and responsiveness. Further, the Company has not done a cost comparison between

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<sup>153</sup> Coppola, 4 TR 1933 – 1934. See also, Attorney General's Initial Brief, pp. 88 – 89 for her analysis of this project.

<sup>154</sup> PFD, p. 168.

<sup>155</sup> *Id.*

<sup>156</sup> Consumers' Exceptions, p. 45 referencing Exhibit AG-31, p. 9.

<sup>157</sup> Exhibit AG-31, p. 9.

continuing to use the current system and adopting a new system.<sup>158</sup> So purported savings have not been documented. The claim that the use of mobile device badges will reduce future purchases of badge printers and associated consumables is not true, if as the Company states “[t]he Company will realize cost savings by reducing the purchases of badge printers and associated consumables, while still requiring identification badges.”<sup>159</sup> The claim is contradictory. The Company has not provided the type of information needed to demonstrate that the new system will provide better functionality or savings because it is still at in the early stages of development with no specific system or vendors evaluated.

The Commission should approve the PFD’s recommendation for this project.

**b. IT/Digital Foundation**

**i. Operational Technology Datacenter Migration.**

The Company is proposing to relocate servers and systems which monitor some of the Company’s electric and gas operations, from the current location at the Parnell building to another location.<sup>160</sup> The Company has experienced some problems with climate and water infiltration into the building and claims that the

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<sup>158</sup> Id. at p. 8.

<sup>159</sup> Id.

<sup>160</sup> Baker, 4 TR 723 – 724.

situation is unrepairable.<sup>161</sup> The cost of the relocation and associated equipment upgrades is \$11 million between capital expenditures and O&M development costs, of which \$3.6 million would be assigned to the gas business. The amount of capital expenditures included in this rate case is \$1,441,000 after the ROM adjustment with \$716,000 of O&M development costs for the projected test year.<sup>162</sup> Because it is not clear why these problems cannot be fixed at a lower cost than proposed for the relocation, and the current location made safe and workable, the necessity for the project has not been shown. In addition, the project is currently in the investment planning phase, which indicates that it is in the early stage of development.<sup>163</sup> Therefore, the Attorney General recommended that the proposed costs be disallowed.<sup>164</sup>

The PFD adopted the Attorney General's proposed disallowances for this project.<sup>165</sup> It agreed with the Attorney General that it is not clear whether certain issues with the Parnell building cannot be remediated at a lower cost than relocating the data center.<sup>166</sup> The PFD also noted that it was not clear that the Company performed a cost comparison for staying at Parnell and addressing

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<sup>161</sup> See, Exhibit AG-31, p. 1.

<sup>162</sup> Coppola, 4 TR 1933.

<sup>163</sup> See, Exhibit AG-31 (DR AG-CE-0621).

<sup>164</sup> See, Attorney General's Initial Brief, pp. 88 and 89 – 90.

<sup>165</sup> PFD, pp. 165 – 168.

<sup>166</sup> PFD, pp. 168 – 169.

outstanding issues and the substantial cost of migrating the entire data center.<sup>167</sup>

It further stated that “the company did not adequately explain why the presence of a railway line in the vicinity of the Parnell building makes it an inappropriate site to house the company’s servers.”<sup>168</sup> While the PFD posits that this project (along with the Access Management Project), could be shown to be reasonable and prudent, it is not adequately justified on this record.<sup>169</sup>

The Company argues that the Commission should reject the recommended disallowance because relocating the data center is the most reasonable option to address the several risks associated with the Parnell location.<sup>170</sup> According to the witness testimony, the Company performed an analysis of alternatives to expand capabilities and address constraints, including remaining at the current Parnell location. The Company claims that the new location vendor is able to provide the building and other amenities not present at the Parnell location and that the current data center would require extensive work to modernize.<sup>171</sup> Other than a providing a short summary of alleged risk that it claims cannot be addressed with modernization of the Parnell location,<sup>172</sup> the Company did not provide an analysis

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<sup>167</sup> *Id.* at p. 169.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> Consumers’ Exceptions, p. 51.

<sup>171</sup> *Id.* at p. 52.

<sup>172</sup> See, Exhibit AG-31, p. 1.

or other supporting information documenting the reasonableness and prudence of its preferred alternative of moving the data center. Whether this project can be shown to be reasonable is unknown at this time, however, the Attorney General agrees with the PFD that it is not demonstrated on this record.

The Commission should adopt the PFD's recommendation.

### **III. Rate of Return and Capital Structure**

As usual, the Company continues to seek an inflated return on equity and equity ratio in this case. Therefore, it disagrees with the PFD's reasonable rate of return and capital structure recommendations.<sup>173</sup> According to the Company "[i]t is essential that Consumers Energy receives and authorized rate of return for ratemaking purposes that will support the Company's access to financing and favorable financing rates to fund quality utility service for its customers."<sup>174</sup> The Company asks the Commission to adopt its proposed overall cost of capital for 6.22%, authorized ROE of 10.25% and equity ratio of 50.75%. It claims that the PFD's recommended 5.97% overall rate of return is not sufficiently supportive to attract necessary investment and should be rejected. Invoking the U.S. Supreme Courts holding in *Bluefield Water Works and Improvement Company v Public Service Commission of West Virginia* (the "Bluefield Case"), Federal Power

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<sup>173</sup> See, Consumers' Exceptions, pp. 52 – 95.

<sup>174</sup> *Id.* at 52.

Commission v Hope Natural Gas Co (“Hope”), *Banton v Belt Lines Ry Corp*, 268 US 413, 422-23 (1925), and *Michigan Bell Tel Co v Michigan Public Service Comm*,<sup>175</sup> the Company presses its case for higher than reasonable or required rate of return.

The United States Supreme Court set the standard for utility returns in its opinion in *Bluefield*,<sup>176</sup> in which it stated:

“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 and in the *same general part of the country* 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. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.”

The principals of the *Bluefield* Case were re-affirmed by the U.S. Supreme Court in *FPC v Hope Natural Gas Company*:<sup>177</sup>

“By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be

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<sup>175</sup> *Bluefield*, 262 U.S. 679, 692 – 693 (1923), *FPC v Hope* 320 US 591 (1944), *Banton v Belt Line Ry Corp.*, 268 US 413 (1925), and *Michigan Bell Tel Co v Mich Pub Svc Comm*, 322 Mich 7 (1943).

<sup>176</sup> 262 U.S. 679, 692 – 693 (1923). (emphasis added).

<sup>177</sup> 320 U.S. 591, 603 (1944).

sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.”

The Commission does not have an absolute duty to “ensure” the financial soundness of the Company. The Supreme Court did not require it because the utility has a role in making that happen through the efficient and economical management of its business. Inflating the rate of return to shield the Company from the risk of its own operation is not constitutionally required nor reasonable to ratepayers. The Company has no right to an exorbitant return. The return should help the Company to maintain and support its credit and for reasons discussed below, and in the Attorney General’s briefs, the PFD’s recommendation attempts to do that.

The Company quotes from *Banton v. Belt Line Ry Corp*, 268 US 413, 422 – 23 (1925) and *Michigan Bell Tel Co v Michigan Public Serv Comm*, 332 Mich 7, 43 (1952) implying that a higher rate may be approved than is required to meet the constitutional requirements.<sup>178</sup> Neither of these cases support the proposition for which the Company appears to quote them for.

First, *Banton* is not a true rate of return case that considers investors’ return. In the underlying case a street railway company was required by the New York Public Service Commission (which was succeeded by the Transit Commission) to service transfer customers under a joint fare. The Court found that the joint fare

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<sup>178</sup> Consumers’ Exceptions, page 113.

was confiscatory and that the continued enforcement of the rate would operate to take appellee's property without just compensation. "[T]he requirement that transfer tickets be given and received by carriers were for the purpose of giving to the passenger the additional transportation without additional payment."<sup>179</sup> After discussing the Commissions subsequent increase in the joint rate and whether that amounts to a finding that the joint fare of 5 cents was confiscatory, the Court stated that "clearly, the language properly may be taken to mean that the rate is too low and violates the Constitution. That is the plain import of the words used."<sup>180</sup> In a fit of dicta it then makes the comments quoted by the Company.<sup>181</sup> The reason why it made the statement since it found the rates in question to be too low for the service provided, is unclear. It provided no explanation for when higher rate is justified and should not be relied upon by the Commission in this case.

In *Michigan Bell*, the issue was concerns about the alleged confiscatory character of the rates involved.<sup>182</sup> The Supreme Court held that Michigan Bell did not carry its burden of proof that they were.<sup>183</sup> While acknowledging that it is possible that a higher rate than required to avoid confiscation may be reasonable,

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<sup>179</sup> *Banton*, 268 US 419.

<sup>180</sup> *Id.* at 422.

<sup>181</sup> *See*, Consumers' Exceptions, p. 53.

<sup>182</sup> *Michigan Bell*, 332 Mich at 43.

<sup>183</sup> *Id.*

that was not the holding of the case.<sup>184</sup> As part of its analysis, the Court reviewed a number of cases and noted that the lowest reasonable rate is one that is not confiscatory in the constitutional sense. It assumes that there is a zone of reasonableness in which a rate higher than a confiscatory rate may be set. Likewise, it states that the Commission is also free to decrease a rate which is not the lowest reasonable rate which is consistent with constitutional requirements.<sup>185</sup>

The conclusion from the Court's analysis is that to a certain extent, a reasonable rate is fact based, and the Company has not demonstrated the need to increase its rate of return as it proposes in this case. While the Company acknowledges that the ratemaking process involves a balancing of investor and consumer interest, it focuses almost entirely on the investors' interest.<sup>186</sup> The Company claims that the PFD did not properly balance the interests of customers and investors.<sup>187</sup> After reviewing the Company's exceptions it is clear how closely aligned Consumers is with the interest of its shareholders (or more likely, its Shareholder CMS Energy) and not ratepayers when it comes to the cost of capital and its capital structure. It argues that the "ALJ's reasoning in support of the PFD's recommended authorized equity ratio and ROE is unsound. Rather than seeking a balance between customer and investor interest, the PFD unreasonably

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<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at 36.

<sup>186</sup> Consumers' Exceptions, pp. 53 and 54.

<sup>187</sup> *Id.* at p. 54.

dismisses the validity of solid analysis expressed from an investors' perspective in the Company's testimony and briefs."<sup>188</sup> It goes on to argue that the record of this proceeding does not demonstrate that the Company's request would be a burden to customers.<sup>189</sup> Unless you take into consideration the over \$217 million increase in rates that the Company is seeking from ratepayers to run the Company, including 10.25% profit (if the Company has its way) on the use of the Company's assets that have been funded by ratepayers. More importantly, the rate impact difference between a 50% equity ratio and a 50.75% equity ratio is approximately \$8 million. That is a considerable burden on ratepayers.

The Company also claims that the PFD made significant errors in reasoning, alleging that it failed to recognize that the ROE and equity ratio used in the ratemaking process are essentially just inputs to determine the overall rate of return and to determine a final revenue requirement.<sup>190</sup> The Company's claim misconstrues the PFD and is inconsistent with the Company's presentation of its case, which focused on setting an equity ratio and ROE that it claims was supportive of its credit in particular the impact on the FFO-to-Debt ratio of the various rating agencies.

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<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

The Company discusses the use of the equity ratio and ROE used by the Commission in setting rates and purportedly the independent they may have to investors.<sup>191</sup> It claims that “they are correlated such that a decrease in one offsets an increase to the other in the rate of return and vice versa. Further, a decrease in one is compounded with a decrease to the other.”<sup>192</sup> To the extent the Company is trying to assert that for ratemaking purposes, the Commission has an obligation to offset an increase in either measure with a decrease in the other measure, it should be rejected. Different considerations underly each measure and they must be evaluated on their own merits.

The Company also claims that courts evaluating whether the ratemaking process has resulted in constitutionally sufficient rates seldom evaluate inputs like the ROE or equity ratio in isolation or independently. It claims that courts look at the overall return allowed in the cases.<sup>193</sup> It further claims the “[m]ore than a hundred years of regulatory case law focuses attention there because it is the overall rate of return, not the individual components of the calculation, that ultimately applies to a utility’s rate base to determine the rates the Commission intends to allow the utility.”<sup>194</sup> This is a novel argument, and not born out in the leading cases on the legal sufficiency of return that a utility is entitled to. In

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<sup>191</sup> Consumers’ Exceptions, p. 54.

<sup>192</sup> *Id.* at pp. 54 – 55.

<sup>193</sup> Consumers’ Exceptions, p. 55.

<sup>194</sup> *Id.* citing to a string of cases in fn. 5.

*Bluefield* and *Hope*, the Supreme Court refers to a rate of return or fair return, but the Court does not appear to discuss an “overall rate of return” or the companies’ equity ratio. The Company attempts to stretch *Hope* to fit its analysis.<sup>195</sup> It argues that “the courts’ frame of reference for ensuring that the rates established by commission are “commensurate with returns on investments in other enterprises having corresponding risks” will look at the overall return allowed in the case and the overall return of comparable utilities (relative to time and risks).”<sup>196</sup> However, in *Hope* the Supreme Court discusses, investor interest and the return to the equity owner, which is what ROE provides.<sup>197</sup> Further, as discussed below, the Company does not use truly comparable equity ratios for its peer group, so its unable to show its overall rate of return is commensurate with anything because of inconsistencies between the companies it uses for its equity ratio peer group and its ROE proxy group.

While no single method is dispositive, ROEs are usually calculated with reference to certain quantitative models that are not used to determine the equity ratio. And, the Commission has taken a different approach to evaluating the equity ratio. The Company misconstrues *Hope* which is discussing the methodology for determining ROE in an attempt to support its arguments regarding consideration of

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<sup>195</sup> Consumers’ Exceptions, p. 55.

<sup>196</sup> *Id.*

<sup>197</sup> *Hope*, 320 US 603. *See also, Bluefield*, 262 US 692 – 693.

the overall rate of return.<sup>198</sup> The Company assertion that the equity ratio and ROE are codirectional variables such that if one increases the other must necessarily decrease is pure fiction.<sup>199</sup> The Company cites to no authority requiring this result. And the Commission has not approved or adopted this argument. The Commission should give no weight to the Company's arguments.

The Company attempts to find fault with the PFD by arguing that while it did not deny the relationship between the ROE and equity ratio, it failed to correctly apply them consistently throughout the ALJ's analysis. To the contrary, the PFD determined and recommended a reasonable equity ratio of 50% and a reasonable and legally sufficient ROE of 9.75% and the Commission should adopt its recommendations.

#### **A. Test-Year Capital Structure – Consumer Equity Balance**

The PFD found “that the most reasonable course of action supported by the evidence presented in the case is to maintain 50/50 capital structure that equity balances debt with equity.”<sup>200</sup> After reviewing all of the evidence provided by the parties, the ALJ appeared to weigh the evidence while addressing the risk to the

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<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> PFD, p. 232.

Company and cost to ratepayers.<sup>201</sup> Consumers Energy takes exception to the PFD's recommendation.

The Company claims that the PFD includes numerous analytical errors.<sup>202</sup> To the contrary, the PFD contains extensive analysis, it speaks well for itself. Considering the Attorney General's treatment of the issue in her Initial Brief, Reply Brief and witness testimony, she will incorporate them herein by reference.<sup>203</sup> The Attorney General will touch briefly on a couple of issues raised by the Company in its Exceptions.

First, the PFD claims that the PFD failed to appropriately consider peer utility equity ratios and equity ratios of ROE proxy utilities. It essentially argues that the trend in equity ratios and ROEs is increasing, while the PFD rejected its request to increase its equity ratio to 50.75%. The Company characterizes its proposed equity ratio as not an outlier noting to "a median that exceeds 51.00%.<sup>204</sup> There is no basis for the Company's claim that the PFD did not appropriately consider its equity ratio presentation. It recounted the Company's testimony and briefing on the issue along with the testimony and arguments of the other parties and balanced the interest of the competing perspectives and evidence. Its conclusions were reasonable. Nothing has occurred to justify a nearly 1 percentage

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<sup>201</sup> PFD, pp. 204 – 232.

<sup>202</sup> Consumers' Exceptions, p. 56.

<sup>203</sup> See, Attorney General's Initial Brief, pp. 105 – 125, Attorney General's Reply Brief, pp. 22 – 35, and 4 Coppola 1947 – 1966.

<sup>204</sup> Consumers' Exceptions, p. 58.

point increase in the Company's equity ratio. Increasing the equity ratio just to match a trend without considering the specific circumstances for the Company is not justified or reasonable.

The Company points to its Exhibit A-32, which includes equity ratios for various gas and electric utilities supposedly decided in rate cases from 2020 to 2024, claiming that its equity ratio of a peer group of utilities is 54.05% using its preferred criteria.<sup>205</sup> It complains that the PFD focused on three of the Company's on the list but not others and that it is more reasonable to give weight to the peers with equity ratios higher than the Company. The Commission should not take this exhibit at face value since more than half of the companies shown in the exhibit are not in the Company's peer group. Mr. Coppola testifies to problems with the information included in the exhibit because it is neither comprehensive nor accurate.<sup>206</sup>

First, many of the companies listed in Exhibit A-32 have their equity ratios set by their commissions solely by reference to long-term debt and common equity capital. However, short-term debt is employed as a permanent financing tool by several companies in Mr. Bleckman's exhibit, which when considered in the

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<sup>205</sup> See, Exhibit AG-84, page 6 (DR AG-CE-1021).

<sup>206</sup> Coppola, 4 TR 1963 – 1965.

calculation of the capital structure as permanent debt by the regulatory agencies results in a lower equity ratio.<sup>207</sup>

Spire Missouri provides an example of how ignoring short-term debt distorts the equity ratio. The workpaper for the exhibit shows the capital structure from the rate case with 49.66% common equity, 41.83% long-term debt and 8.51% short-term debt. For purposes of Exhibit A-32 (MRB-10), Mr. Bleckman recomputes a 54.28% equity ratio at the bottom of workpaper #39 by looking only to common equity and long-term debt. This recalculation is not necessary because the short-term debt is a permanent layer of the capital structure. While Consumers uses short-term debt strictly as a seasonal financing tool, many other utilities use it both to meet short-term and long-term capital needs. While a permanent layer of short-term debt can reduce financing costs, it also exposes utilities to greater financial risk due to fluctuating interest rates requiring a thicker layer of common equity capital. This is not the situation faced by Consumers Energy.<sup>208</sup>

Second, other companies on this exhibit are smaller operating units. For example, line 10 of the exhibit shows Cheyenne Light Fuel and Power with a 52% equity ratio. This small company sells gas and electricity to approximately 80,000 customers in Wyoming compared to Consumers' 1.8 million gas customers. Another

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<sup>207</sup> Coppola, 4 TR 1963.

<sup>208</sup> *Id.* at 4 TR 1964.

small company unit is CenterPoint's Arkansas operation (line 11) with a capital base of only \$658 million according to Mr. Bleckman's workpapers, compared to Consumers rate base of nearly \$11 billion. Higher equity ratios for these smaller companies and operating units may be warranted because small companies have less financial flexibility and debt borrowing limitations. That is not Consumers' situation.<sup>209</sup>

The utilities and related equity ratios in Exhibit A-32 are not comparable to Consumers Energy. The Commission should disregard this flawed and misleading information in setting the Company's equity ratio.

The Company noted that the PFD acknowledged concerns raised by the Attorney General regarding Exhibit A-32, but that the Attorney General misunderstood that the makeup of a proposer equity ratio peer group does not need to be and likely is not going to be the same as for a proper ROE proxy group. This argument is inconsistent with the Company's claim that the overall rate of return is the key measure for a sufficient return. It is not possible to take into consideration commensurate overall rate of return when there is a mismatch of components from different groups of companies. It provides a disjointed picture when the peer group for the equity ratio is different from the proxy group for ROE. Further, using different groups, it allows the Company to pick and choose companies for each that

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<sup>209</sup> See, 4 TR 1964 – 1965 for further analysis regarding smaller utilities.

is most advantageous to creating higher equity ratios and ROEs and consequently fictional overall rates of return.

Second, the Company claims that given the evidence and analysis presented on peer utility equity ratios and equity ratios of ROE proxy utilities, while considering the Commission's state 50% equity ratio goal for utilities, the PFD's equity ratio is too low.<sup>210</sup> The gist of this argument appears to be that the Commission is not bound to order a 50% equity ratio just because that was the stated goal in previous rate cases. While the Commission is not bound to do so, it has a strong preference for a balanced equity ratio, with the burden on the Company to support any deviation. No deviation is warranted in this case.

The Company then discusses concerns about lower debt to equity ratios, difficulties in the utility industry, headwinds to credit, other macro issues such higher interest rates and that the Commission should consider the Company's equity ratio and ROE in the context of the current market condition.<sup>211</sup> For the reasons provided in the Attorney General's brief, these issues do not justify an increase in the Company's equity ratio.

Third, the Company argues that the PFD inappropriately dismissed trends in the Company's FFO-to-Debt ratio, market conditions, the nationwide utility

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<sup>210</sup> Consumers' Exceptions, p.62.

<sup>211</sup> Id. at pp. 63 – 64.

industry, and the regulatory environment. In this section of its exceptions, the Company provides a list of alleged failures by the PFD, that for reasons provided in the Attorney General's briefs are not failures. However, it appears that the gist of this section is the proposition that there should be some cushion above credit downgrade levels.<sup>212</sup> This would necessarily entail higher equity ratios and ROEs than recommended by the PFD. The Company has not demonstrated that it does not have sufficient financial cushion without increasing its equity ratio, when the Company's credit ratings remain strong with a 50.0% equity ratio. As noted in the Attorney General's briefs, the Company's financials also remain strong.

The Company has not proven that it needs a common equity ratio of 50.75% to maintain certain cash flow ratios in support of its credit metrics. The ratings agencies report that the Company's performance in recent years have been above their respective thresholds for downgrades.<sup>213</sup>

The remaining issues raised by the Company are meritless criticisms of the PFD and are also addressed in the Attorney General's briefs, which is incorporated into this reply as discussed above. The Commission should not be swayed from requiring the Company to have a completely balanced capital structure.

## **B. Cost Rates – Return on Equity**

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<sup>212</sup> Consumers' Exceptions, pp. 65 – 71.

<sup>213</sup> See, Exhibit AG-51 for credit agency reports. See also, Attorney General's Initial Brief, pp. 108 – 114.

1. **Consumers Energy's request for a 10.25% ROE is excessive based on the record in this case.**

The PFD rightly rejected the Company's request for an excessive ROE of 10.25%. Its recommendation of a 9.75% ROE is consistent with the record and the Attorney General's position.<sup>214</sup> The Attorney General's recommendation of a ROE of no more than 9.75% is also supported by the evidence.<sup>215</sup> It provides the Company's investors with an ample return on their investment given the Company's risk profile and is consistent with the returns on investments authorized for similar utilities.<sup>216</sup> Further, it should not hinder the Company's ability to obtain debt at competitive rates.<sup>217</sup>

The Company cites the holding in Bluefield as the basis for establishing a constitutionally sufficient ROE.<sup>218</sup> The Company claims that the PFD made numerous errors in its analysis. There is no merit to the claims as the PFD painstakingly worked through the parties' various positions and evidence and applied the appropriate standards in reaching appropriate ROE recommendations. Likewise, the claims the PFD incorrectly limited the weight of its qualitative models

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<sup>214</sup> Proposal for Decision, pages 236 – 303.

<sup>215</sup> See, Attorney General's Initial Brief, pp. 126 – 146 for the Attorney General's complete analysis.

<sup>216</sup> See, Exhibit AG 48.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.* at 113.

and therefore its quantitative analyses support a ratemaking ROE of 10.25 are meritless.<sup>219</sup>

The Attorney General extensively covered this issue in her briefs, which are responsive to the Company's exceptions and rather than just repeat those documents, she incorporates them herein by reference.<sup>220</sup> However, she will respond to the Company's criticism of the PFD's use of Exhibit AG-48.

The Company criticizes the PFD's use of Exhibit AG-48. As discussed in the Attorney General's initial brief, the exhibit was compiled using decisions by state regulatory commissions for U.S. gas utilities in 2023 and 2024 to show that her recommended ROE was not some outlier. However, the Attorney General's recommended ROE is based on her application of quantitative models using her selected proxy group.<sup>221</sup> She also includes information in that exhibit regarding other natural gas utilities that have assessed capital markets at competitive interest rates after receiving authorized ROEs near or below 9.5%.<sup>222</sup> It is evidence that the Commission can give whatever weight that it chooses. The Company claims that it was used improperly to limit the PFD's range of recommendations for a forward-looking ROE. It claims that the ALJ adjusted the parties' model results or significantly reduced the weight that the ALJ assigned to unadjusted results and

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<sup>219</sup> Consumers' Exceptions, pages 84 – 91.

<sup>220</sup> See, Attorney General's Initial Brief, pages 126 – 146. See also, Attorney General's Reply Brief, pp. 35 – 47.

<sup>221</sup> See, Attorney General's Initial Brief, pp. 142 - 143

<sup>222</sup> *Id.* at p. 144.

therefore does more than look at the data for general comparison. The Company's claims appears misguided. The PFD discussed all of the quantitative model results, so it did not change the model results, it just picked and chose which ones to give the greatest weight. I assume all ALJ's do that in some manner. The Attorney General did not present the Exhibit as some kind of litmus test on what is a legally sufficient ROE, and it does not clear to the Attorney General that the PFD intentionally used it that way.

#### **IV. Adjusted Net Operating Income.**

##### **A. Other O&M Expense**

##### **1. Gas Engineering**

##### **a. Project Management and Quality Lean O&M Expense**

The Company forecasted O&M expenses of \$1,259,000 for Quality Lean Office for the gas portion of the department for the projected test year.<sup>223</sup> According to the Company, the key responsibilities for the Quality Lean Office are to develop and implement policies, process, and procedures, among other tasks, to improve business efficiencies, reduce waste and errors, enhance customer satisfaction and create company-wide value streams.<sup>224</sup> There are 24 employees assigned to the gas side of the business within the total Quality Lean Office. However, the Company

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<sup>223</sup> Exhibit AG-57 (DR AG-CE-0373 and 0378).

<sup>224</sup> Pascarello, 3 TR 360 – 361.

could not provide any pertinent information regarding accomplishments, cost savings or beneficial impacts for the office. Instead, it provided a general statement that the Quality Lean Office itself does not achieve improvements but provides support to other Company personnel.<sup>225</sup> Therefore, the Attorney General recommended that the Commission remove the \$1,259,000 of O&M expense from this rate case.<sup>226</sup>

The PFD agreed with the Attorney General that the company did not adequately demonstrate that the costs for the Quality Lean Office are justified. While it was encouraged by two CE Way examples provided in rebuttal testimony, it ultimately determined that they were also insufficient to meet the Company's burden to show the requested expenses were reasonable and prudent.<sup>227</sup> The PFD recommended that the \$1.259 million for O&M expense be removed, but it posit that if the Company provided a more robust explanation of the program and a more systematic and quantifiable demonstration of the benefits of the Quality Lean Office compared to its cost that the project may be approved in a future rate case.<sup>228</sup>

The Company argues that the Commission should reject the PFD's recommended disallowance of the salaries and expenses of these Company

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<sup>225</sup> *Id.*

<sup>226</sup> See, Attorney General's Initial Brief, pp. 160 – 161.

<sup>227</sup> PFD, p. 327.

<sup>228</sup> *Id.* The Attorney General does not necessarily with that sentiment.

employees.<sup>229</sup> It describes the Quality Lean Office as “a department whose purpose is to provide tools to other departments throughout the organization to identify ways to improve work processes to ensure regulatory compliance, provide better service to customers, and become more efficient.”<sup>230</sup> Which is similar to the vague description that the Company has provided before. The Company compares the Office to other support organizations in the Company, in particular examples within the Corporate service area.<sup>231</sup> It explains that “[i]nstead of expertise in things such as communications or finances or human resources, the Quality Lean Office personnel have expertise in helping other departments develop improved capabilities to work more efficiently and effectively and to identify and solve problems, all while pursuing continuous improvement.”<sup>232</sup> This appears to be an extra layer of people above those involved in the actual operational areas who the ratepayers already fund – the opposite of lean.

The Company provides examples where the CE Way (influenced by the Quality Lean Office) presumably helped in achieving performance results.<sup>233</sup> There is no supporting documentation, calculations or other information to support this claim. There is nothing encouraging about these “examples.” There is no evidence

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<sup>229</sup> Consumers’ Exceptions, p. 100.

<sup>230</sup> Id.

<sup>231</sup> Id.

<sup>232</sup> Id. at pp. 100 – 101.

<sup>233</sup> Id. at p. 101.

that the cost paid by customers for this function is having a significant beneficial impact, reducing costs or achieving other financial benefits. The Commission should adopt the PFD's recommendation disallowing the forecasted expense.

### **b. Gas Engineering Support**

The Attorney General recommended removal of capital expenditures for the AMD program. Related to the capital expenditure, the Company forecasted \$1,969,000 of O&M expense to implement the AMD program.<sup>234</sup> Consistent with the Attorney General's recommendation related to the AMD capital expenditures section, she also recommended that the Commission remove the O&M expense of \$1,969,000 from this rate case.

Consistent with its recommendation to disallow all capital expenditures associated with the AMD program, PFD also recommended disallowing the \$1.969 million in O&M expense.<sup>235</sup> The Company disagreed for reasons that it provided in its Exceptions to the recommended disallowance of the AMD capital expenditures.<sup>236</sup> The Attorney General recommends that the Commission adopt the PFD's recommendation for the reasons provided in section II.A.1.d.ii of this reply.

## **2. Regulatory Compliance O&M Expense**

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<sup>234</sup> Exhibit AG-57 (DR AG-CE-0422 with attachments).

<sup>235</sup> PFD, p. 330.

<sup>236</sup> Consumers' Exceptions, p. 101.

**a. MAOP Transmission**

The Maximum Allowable Operating Pressure (MAOP) program projects are related to regulations from the Pipeline Hazardous Materials Safety Administration (PHMSA).<sup>237</sup> The Company claims that it is required to replace or remediate certain pipelines to re-establishing the MAOP due to the lack of traceable, verifiable, and complete (TVC) records that should have been maintained by the Company to establish MAOP.<sup>238</sup> Therefore, the Company plans to incur expenses to identify deficiencies with traceable, verifiable, and complete records to reestablish the MAOP for transmission, storage, and distribution pipelines.<sup>239</sup> It forecasted \$1,122,000 to perform the MAOP records review in projected test year.<sup>240</sup> The Commission ruled in a previous rate case that recovery of only 50% of this expense should be allowed and the remaining 50% should be disallowed under similar circumstances.<sup>241</sup> Therefore, the Attorney General recommended that \$561,000 of expense be removed from the Company's forecasted O&M expense consistent with the Commission's approach for a sharing of the cost between the Company and ratepayers.<sup>242</sup>

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<sup>237</sup> See, Warriner, 2 TR 76 – 77 for a description of the program.

<sup>238</sup> *Id.* See also, Exhibit AG-5 (DR AG-CE-0358 with attachment) and Coppola, 4 TR 1869 – 1870.

<sup>239</sup> Griffin 4 TR 1276. See also, Pascarello, 3 TR 364.

<sup>240</sup> Exhibit AG-59 (DR AG-CE-0380 and 0778).

<sup>241</sup> Order dated November 7, 2024, Case No. U-21291, page 148.

<sup>242</sup> Coppola, 4 TR 2010 and Exhibit AG-75 (AG-CE-0958).

The PFD recommended adopting the Attorney General’s proposed disallowance of \$561,000 which it stated is consistent with Case No. U-21291. Further it noted “the Commission stated that, as far back as Case No. U-20940, the Commission determined that the 2019 revisions to federal pipeline safety regulations and the 2011 advisory bulletin are not new record keeping requirements and that *utilities* were required previously by the Michigan Gas Safety Standards to perform strength tests, including MAOP tests, and to maintain those records for the life of the pipeline.”<sup>243</sup>

The Company disagrees that the order in Case No. U-21291 is applicable to it.<sup>244</sup> It claims that it was a DTE Gas case and it appears that the Commission had previously questioned DTE Gas’s recordkeeping. While the quoted information came from DTE Gas’s case, it notes that “utilities” were subject to the Michigan Gas Safety Standards and therefore the 2019 requirements are not new. That includes for the Company. The Company implies that the required MAOP work is a result of the new requirements and not historically poor record keeping by the Company.<sup>245</sup> This argument is dubious given the Company’s request for \$3.0 million in the projected test year to remedy noncompliance with the regulatory requirement for verification of the MOAP. The Company also argues that the expenses it seeks to

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<sup>243</sup> PFD, p. 354, citing November 7, 2024, Order in Case No. U-212191, p. 148 (emphasis added).

<sup>244</sup> Consumers’ Exceptions, p. 102.

<sup>245</sup> Id. at p. 103.

recover are directly related to PHSMA’s new pipeline safety regulations that require pipeline operators to reconfirm MAOP and to remediate line segments for which the operator’s records do not meet PHMSA’s new requirements for “traceable, verifiable, and complete records.”<sup>246</sup> It implies that it is not the same regulation at issue in Case No. U-21291. However, the same 2019 revisions to the federal pipeline regulations became effective on July 1, 2020.<sup>247</sup> They are one in the same and equally applicable to the Company.

It is the Company’s responsibility to keep and maintain accurate and complete records of various specifications and pressure testing performed with the installation of new pipelines and related equipment. The missing or incomplete records have now resulted in additional operating and capital costs which the Company seeks to recover in rates in this rate case. The Commission should adopt the PFD’s recommendation.

### **3. Voluntary Separation Program [CECo pp 110-111].**

The Company had a Voluntary Separation Program (VSP) from 2023 to 2024 for the purpose of downsizing its workforce. According to the Company, there is \$7,989,000 of cost savings for the projected test year.<sup>248</sup> However, the Company did not provide the underlying calculations showing how the cost savings were

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<sup>246</sup> Id.

<sup>247</sup> Exhibit AG-6 includes the PHSMA rules

<sup>248</sup> Exhibit AG-63 (DR AG-CE-0372 with ATT\_1).

calculated. The Company also did not provide any workpapers or supporting schedules that would show the cost savings were actually included in the forecasted periods and the projected test year in each exhibit for each of the affected departments. The result is that the cost savings cannot be traced back to the various departments and the referenced exhibit lines and validated. There is no certainty that the cost savings were incorporated in the projected test year forecasted O&M expense of each of the affected departments.<sup>249</sup> Therefore, the Attorney General recommended that the Commission remove the entire \$7,989,000 of VSP cost savings from the Company's forecasted O&M expense for the projected test year to ensure that the cost savings are appropriately reflected in rates in this rate case.

The PFD adopted the Attorney General's recommendation, agreeing that "the company has not demonstrated that the VSP savings were specifically incorporated into the O&M expenses for the test year and consequently has not sustained its burden to show that \$7,989,000 of its O&M expenses are reasonable and prudent."<sup>250</sup>

The Company claims that the PFD erred in recommending the removal of \$7,989,000 for the projected test year.<sup>251</sup> The Company agrees that it did not

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<sup>249</sup> Coppola, 4 TR 2019 – 2020.

<sup>250</sup> PFD, p. 380.

<sup>251</sup> Consumers' Exceptions, p. 110.

provide calculations of the savings because they were actual amounts. It claims that it disclosed to the Attorney General the number of employees by area and the dollar value of the savings associated with their departure. But, it admits that specific workpapers identifying the VSP savings for each witness's exhibits were not provided. The Company claims that these undocumented savings were *considered* by each witness when developing their O&M expense projections.<sup>252</sup> However, there is no evidence that proper credit was given to the savings for the benefit of ratepayers.

The PFD was correct in determining that the Company had not sustained its burden of proof. It has not been shown that the VSP savings were specifically incorporated into the O&M expense projections. The Commission should adopt the PFD's recommendation.

#### 4. Inflation Rate

In Exhibit A-13, Schedule B-5.1, the Company presents inflation and merit adjustments totaling to \$3.7 million from 2024 to the end of the projected test year. The calculation of these inflationary adjustments was based on forecasted CPI rates of 3.2% for 2024, 2.4% for 2025, and 2.5% for 2026. However, these adjustments apply to only a portion of the Company's historical O&M expenses. For other O&M expenses, the Company used inflationary increase and wage increases of 3.5% or

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<sup>252</sup> Consumers' Exceptions, p. 111.

higher. The Company's reasoning is that these other costs are increasing at rates higher than the CPI forecasted inflation factors and should be accorded higher cost increases for 2024 through the end of the projected test year.<sup>253</sup>

Because, the assumed rates of increase are not always disclosed clearly and are excessive, the Attorney General recommended that the Commission direct the Company going forward to clearly disclose by operating unit and cost function the forecasted inflationary cost increases it has included in the bridge period and the projected test year for specific expense items if those increases are different than the CPI forecasted inflation rates reported separately.<sup>254</sup>

The PFD adopted the Attorney General's recommendation.<sup>255</sup> The Company argues against the PFD's recommendation, asserting that it fails to recognize that the Company's expenses are not based on inflation and that the inclusion of the Attorney General's recommendation will not provide the comparison that the PFD appears to be trying to achieve. The Attorney General is not sure of the veracity of the Company's claims that inflation is not considered at all in projecting expenses. The point of the Attorney General's recommendation is to identify the use of assumed rates of increase when used. If there is truly no rate of inflation or other rate of increase used in projecting an expenditure, the Company can indicate

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<sup>253</sup> Attorney General's Initial Brief, pp. 192 – 193.

<sup>254</sup> *Id.* at p. 193.

<sup>255</sup> PFD, p. 416.

that in its testimony. However, the Commission should adopt the PFD's recommendation for better transparency.

## **RELIEF REQUESTED**

The Attorney General respectfully requests the Commission issue an order that is consistent with the positions set forth in the Attorney General's initial brief, reply brief, exception and this reply to exceptions.

Respectfully submitted,

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Dated: September 4, 2025

**PROOF OF SERVICE - U-21806**

The undersigned certifies that a copy of the *Attorney General's Reply to Exceptions to the PFD* was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 4<sup>th</sup> day of September 2025.

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