Consumers Energy
Count on Us

December 23, 2025

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Hwy., 3rd Floor
Lansing, MI 48917

RE: Case No. U-21870 – In the matter of the application of Consumers Energy Company for authority to increase its rates for the generation and distribution of electricity and for other relief.

Dear Ms. Felice:

Enclosed for electronic filing in the above captioned case please find **Consumers Energy Company's Motion to Exceed Page Limit and Reply Brief**. This is a paperless filing and is therefore being filed only in PDF. Also included is a Proof of Service showing service upon the parties in this case.

Sincerely,

Digitally signed by Gary A. Gensch, Jr.
Date: 2025.12.23 10:57:27 -05'00'

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cc: Parties per Attachment 1 to Proof of Service

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **CONSUMERS ENERGY COMPANY** for authority to increase its rates for the generation and distribution of electricity and for other relief.	))))))	Case No. U-21870

CONSUMERS ENERGY COMPANY'S
MOTION TO EXCEED PAGE LIMIT

In accordance with Rule 432 of the Michigan Public Service Commission's ("MPSC" or the "Commission") Rules of Practice and Procedure, Mich Admin Code R 792.10432, Consumers Energy Company ("Consumers Energy" or the "Company") moves to exceed the 30-page limit established by the Administrative Law Judge ("ALJ") for reply briefs. In support of its Motion, Consumers Energy states as follows:

1. In the July 8, 2025 Scheduling Memo in this proceeding (the "Scheduling Memo"),[1] the ALJ required that reply briefs "shall be limited to 30 pages, exclusive of the table of contents." The Scheduling Memo also stated that "briefs shall comply with the requirements set forth herein except as otherwise permitted by motion granted by the ALJ."

2. The parties other than Consumers Energy filed 13 initial briefs in this case totaling more than 950 pages. The large majority of these briefs involve issues that disagree with some portion of the Company's Application, or propose that the Commission impose new requirements on Consumers Energy. While the Company was able to anticipate and address most of these arguments in its Initial Brief, there were also several new or expanded arguments that the parties'

[1] The ALJ subsequently amended the Scheduling Memo on September 5, 2025 and October 16, 2025, but these amendments did not change the portions of the original Scheduling Memo relevant to this Motion.

presented in their initial briefs. The Company needed to address these arguments in its Reply Brief to ensure that the ALJ and the Commission have a complete understanding of the Company's position on these issues. The ALJ and the Commission should not be deprived of these arguments that will assist in considering these contested issues in a Proposal for Decision or a final order.

3. Consumers Energy worked to be concise in its Reply Brief, and where possible did not address issues that were adequately addressed in its Initial Brief. Despite this effort, the Company's filed Reply Brief totals 66 pages.

4. Consumers Energy requests that the ALJ permit the Company to exceed the 30-page limit for reply briefs established in the Scheduling Memo and to accept the Company's Reply Brief as filed. The Company notes that even at 66 pages, the Reply Brief submitted by the Company in this case is still shorter than any of the reply briefs Consumers Energy has filed in other recent electric rate cases. For example, see Case Nos. U-21585 (86-page Reply Brief), U-21389 (80-page Reply Brief), U-21224 (150-page Reply Brief), and U-20963 (278-page Reply Brief).

WHEREFORE, Consumers Energy Company requests that the Administrative Law Judge grant the Company's motion and permit the Company to exceed the 30-page limit on reply briefs and accept the Company's Reply Brief as filed. Consumers Energy does not request a hearing on the instant motion.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Date: December 23, 2025

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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REPLY BRIEF OF CONSUMERS ENERGY COMPANY

December 23, 2025

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BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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<u>REPLY BRIEF OF CONSUMERS ENERGY COMPANY</u>

I. <u>INTRODUCTION AND OVERVIEW</u>

The record evidence in this case supports final rate relief in the annual amount of approximately $422.8 million, plus an additional $24.3 million for the distribution deferral, a 10.25% Return on Equity ("ROE"), and approval of other important requests detailed in Consumers Energy Company's ("Consumers Energy" or the "Company") Initial Brief. This Reply Brief does not include an exhaustive point-by-point discussion of the issues from the other parties' Initial Briefs, but responds to select issues where additional discussion is needed.

Many of the recommendations made by the other parties in this proceeding understate the level of revenue that is reasonable and constitutionally required for the test year and, if adopted, would result in unreasonable and unlawful rates. See *General Telephone Co v Pub Serv Comm*, 341 Mich 620, 631; 67 NW2d 882 (1954). Some parties argue that Consumers Energy's projected capital expenditures and Operation and Maintenance ("O&M") expenses should be reduced hundreds of millions of dollars based on the contention that the Company's funding should be limited to historical amounts (sometimes including inflation) or based on partial 2025 spending. See, for example, the Association of Businesses Advocating for Tariff Equity's ("ABATE") Initial

Brief, pages 15-16, 19-20, 25-28, 32-35, 60-69; Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan's (collectively "MNSC") Initial Brief, pages 60-73; Michigan Public Service Commission ("MPSC" or the "Commission") Staff's ("Staff") Initial Brief, pages 7-11, 14-19, 109-115. Many of these proposed funding reductions are to the investments necessary to harden and improve the electric distribution system. The evidence presented by Consumers Energy shows that the methodologies used to develop these cost reductions significantly understate the reasonable and appropriate cost amounts, and as a result, understate the Company's necessary revenue requirement. As discussed throughout Consumers Energy's Initial Brief, these unreasonable recommendations should be rejected.

II. RATE BASE

A. Net Utility Plant

1. Distribution Capital Expenditures

a. High Voltage Distribution

At pages 29 through 31 of her Initial Brief, the Attorney General expresses concern related to the treatment of strategic large customers specifically, the costs incurred for large strategic projects and the impact it could have on other customers. The Attorney General recommends that the Commission should direct the Company to "adopt an accounting policy to remove costs from rate base for cancelled projects." Attorney General's Initial Brief, page 31.

The Attorney General's assertions are an attempt to penalize the Company for taking the necessary actions to serve a requesting customer. In this instance, the Company has signed contracts in place. The Commission has regularly determined that having a signed contract with the customer results in the associated investments being reasonable and prudent. Furthermore, this project was presented in Case No. U-21585 and approved by the Commission. It is reasonable that the Company made investments to provide service to the connecting customer.

The Attorney General's arguments overlook the fact that the Company has a duty to serve requesting customers. A public utility "is bound from the very nature of its business to furnish such public service in such quantities as the public may require . . . ." *City of Saginaw v Consumers' Power Co*, 213 Mich 460, 481; 182 NW 146 (1921). This fundamental principle is echoed in the Commission's own Consumer Standards and Billing Practices for Electric and Natural Gas Service. See Mich Admin Code R 460.106. In this case, acting under a signed contract, the Company started making investments on behalf of the customer. These were investments that were reasonably incurred, and the Attorney General has not supported why it would be reasonable not to permit the Company to recover the associated costs.

b. Low Voltage Distribution

(i.) LVD Lines Reliability

As discussed at pages 51-52 of Consumers Energy's Initial Brief, the Commission should reject MNSC's proposal to require the Company to defer and propose to securitize increased low voltage distribution ("LVD") pole replacement expenditures. MNSC argues that Act 142 of 2000 ("Act 142") does not include any limitation on using securitization for capital costs, and that the Company's distinction between capital and O&M costs is "artificial." MNSC's Initial Brief, pages 142-143. The distinction is not "artificial" – O&M is normally not spread over several years, while capital expenditures are depreciated over time and properly allocated across the customers who benefit from the expenditures. See 3 TR 1086. And Act 142 does not authorize the MPSC to "require" the Company to use securitization, but rather makes it available "[u]pon the application of an electric utility." See MCL 460.10i(1). The MPSC should reject MNSC's proposal.

2. Generation Capital Expenditures

a. Response to Staff on Class Cost Estimates

Staff responds in its Initial Brief to Company witness Richard T. Blumenstock's recommendation that the class cost estimate disallowance proposed by Staff should at least be reduced by the 5% contingency amount that has already been removed from generation cost estimates by the Company to avoid double-counting a contingency elimination. Staff acknowledges that the Company has not included "designated contingency amounts in projected capital expenditures in this rate case." Staff's Initial Brief, page 35. Nevertheless, Staff claims that it was "not able to verify every single component that was included in the cost estimate for a project and how the total cost estimate for a project was projected, calculated, and determined." Staff's Initial Brief, page 35. Staff claims that it "cannot be assured that the cost estimate for a project was not inflated within any of its components at any stage of the cost estimate process." Staff's Initial Brief, page 35. This is not a reasonable objection to the Company's request.

Consumers Energy raised this issue in its direct testimony filed at the very outset of this case. 6 TR 3502-3503. Staff was on notice of this issue from the very first day of this case. Staff audited the Company's capital spending plans extensively and made several recommended adjustments to the case based on its audit and discovery. It is not reasonable for Staff to try to justify millions of dollars of reductions that include double-counted dollars. Mr. Blumenstock's testimony regarding the cost estimates for the Company's generation capital was offered as sworn testimony. Mr. Blumenstock offered extensive information in the record to support how cost estimates were developed for each significant generation project in the case. There is no basis for the speculation that the estimates could have been "inflated." If Staff had any reason to believe that there was some improper cost inflation in the estimates, it is illogical that they would not have prioritized investigating that issue ahead of many other issues in the case. Staff's argument seems more like a post hoc rationalization to maintain its originally proposed adjustment amount than a sincere assessment of the merits of the Company's case. Staff's adjustment should be rejected in its entirety for the reasons discussed in testimony and in the Initial Brief. But, there is certainly no good reason for not at least reducing Staff's proposed disallowance to account for the fact that the Company has already removed the 5% contingency amount from its cost estimates and Staff's adjustment improperly double-counts those dollars in its reduction. This would reduce Staff's adjustment from $7.455 million to $3.924 million.[1]

b. <u>Response to Attorney General on Covert Plant LCI-SFC and Netmation</u>

In her Initial Brief, the Attorney General attempts to respond to rebuttal testimony offered by Company witness Blumenstock, which refutes the Attorney General's reasons for proposed disallowances related to two projects at the Company's Covert plant: (i) the Load Commutated Inverter ("LCI") Static Frequency Converter ("SFC"); and (ii) Netmation Station Control System replacement. Mr. Blumenstock's rebuttal indicated, contrary to the Attorney General's claims, that the Company *did* perform reasonable due diligence before purchasing the Covert plant, but advised that the plant was not brand-new and post-purchase maintenance is normal and expected. 6 TR 3599. The Attorney General's only response is to claim that the Company did not provide information the Attorney General requested in discovery on the due diligence performed before plant acquisition. Attorney General's Initial Brief, page 85. But that is a mischaracterization of what she requested in discovery and the Company's response.

[1] This amount can be calculated by dividing each of the values in column (a) of Staff Exhibit S-8.4 by 0.95 to restore the 5% contingency that was removed before filing the case, then applying Staff's adjustments in column (c) of Exhibit S-8.4 to the resulting amounts.

In discovery, the Attorney General did not simply ask for the "due diligence performed before plant acquisition." She asked a compound question in which she asked the Company to "[i]dentify what specific due diligence was performed on the equipment that is being replaced in conjunction with the two projects *and why it could not be determined during technical due diligence that it was obsolete*." Exhibit AG-65, page 2 (emphasis added). Because of the second part of the question, it was clear that the Attorney General erroneously believed that the Company's pre-acquisition due diligence did not identify the LCI-SFC or the Station Control System as obsolete. She was asking the Company to describe its due diligence and explain why *that* due diligence failed. But, the entire premise of her question was incorrect, so the Company couldn't answer it as asked. Contrary to the Attorney General's assumptions, the Company's pre-acquisition due diligence review *did* identify both of those specific systems as needing maintenance or replacement soon after acquisition. Exhibit AG-65, page 2, response a. For the LCI-SFC project, the original equipment manufacturer discontinued both manufacturing and support for these critical components, which required the Company to change its original plans for maintenance. Exhibit AG-65, page 2, response a. But that has nothing to do with the due diligence review. The Attorney General further claimed that "[n]o evidence was provided in this case or prior cases that the equipment the company wants to replace now was identified as needing to be replaced soon after the acquisition was completed." Attorney General's Initial Brief, page 85. That's technically true, but only because it was identified *before* the acquisition was completed.

These arguments from the Attorney General are not accurate and do nothing to undermine Mr. Blumenstock's rebuttal testimony. The Attorney General is apparently searching for some way to rehabilitate an argument for disallowance that was self-evidently weak from the outset. The Covert plant is not a new plant. It had maintenance needs when the Company purchased the plant and those needs were reflected in the price that the Company paid for the plant. 6 TR 3598. Consumers Energy got a good value for the plant, which the Commission recognized when it approved the purchase as part of the Company's last Integrated Resource Plan. The Attorney General's proposed disallowances should be rejected.

c. **Response to MNSC on the Jackson Spare GSU and VIGV Projects**

On pages 16 through 19 of its Initial Brief, MNSC responds to the rebuttal testimony of Company witness Blumenstock related to MNSC's proposed disallowances for the Jackson Generating Station Spare Generator Step-Up Transformer ("GSU") and the Variable Inlet Guide Vane ("VIGV") project. In particular, MNSC argues that Mr. Blumenstock was incorrect when he testified that a portion of the disallowance that MNSC proposed was for funds that the Commission approved in Case No. U-21585. See 6 TR 3619, 3620. In its Initial Brief, MNSC explains that it drew the conclusion that Mr. Blumenstock was wrong from a review of one of the Company's Part III filing requirements – identified as Part III No. 133. See Exhibit MEC-50. MNSC points out that the column entitled "Total Projected Expenditures for Project ($)" is the sum of four columns: (i) under the heading "Capital Expenditures in Last Rate Case ($) U-21585," the columns entitled (a) "Projected Bridge Period ($)" (b) "Projected Test Period ($)," and (ii) under the heading "Capital Expenditures in Instant Rate Case ($) U-21870," the columns entitled (a) "Projected Bridge Period ($)" and (b) "Projected Test Period ($)." In other words, the total spending for the projects appears to add the bridge period and test year from Case No. U-21585 with the bridge period and test year in this case as if there is no overlap between those amounts.

MNSC is correct that the Company has made an error, but MNSC is wrong about *what* error the Company made. Mr. Blumenstock's rebuttal testimony was correct. It was Consumers

Energy's information provided in Part III No. 133 that was incorrect. The column entitled "Capital Expenditures in Last Rate Case ($) U-21585" in Part III No. 133 added the wrong columns together and inadvertently overstated the totals for every project shown on the spreadsheet. Instead of adding the bridge period and test year for both rate cases together, it should have added the columns showing the historical spending to the bridge period and test year of the current case.

The Part III requirement that gave rise to Part III No. 133 is a new Part III filing requirement. See Rate Case Filing Requirements, Attachment 9a, Question 10. This is the first case in which the Company has been required to provide that information.[2] In assembling that Part III response for the first time, the Company simply failed to notice that it made that computational error until reading MNSC's Initial Brief. Therefore, the total from Part III No. 133 that MNSC relies on to make out its argument that there is no overlap in the disallowance that they propose in this case compared to the amount approved in Case No. U-21585 is incorrect.

The bridge period in Case No. U-21585 was the 14-month period from January 1, 2024 to February 28, 2025 and the test year was the 12-month period from March 1, 2025 to February 28, 2026. The bridge period in this case is the 16-month period from January 1, 2025 to April 30, 2026. That means that the entire test year in Case No. U-21585 and the last two months of the bridge period from that case are fully contained in the bridge period of this case. It would be impossible to add those periods together – as Part III No. 133 tried to do – without double-counting the dollars already approved in Case No. U-21585 in the total. Consumers Energy will obviously correct that computational error in its Part III filings when it files its next electric rate case, but the

[2] The portion of the Commission's new Rate Case Filing Requirements that includes Attachment 9a, Question 10 were effective for most utilities in Michigan on May 18, 2024. See MPSC Case No. U-18238, May 18, 2023 Order, page 26, Ordering Paragraph C. However, the Commission subsequently granted a Consumers Energy motion in Case No. U-21585 to further extend the effective date of the new Rate Case Filing Requirements, as applied to Consumers Energy, until the Company's next electric rate case after Case No. U-21585. See MPSC Case No. U-21585, March 15, 2024 Order, page 3, Ordering Paragraph B. This case, is the next filed electric rate case for Consumers Energy after Case No. U-21585.

error does not support MNSC's argument that its proposed disallowance only pertains to new amounts sought for recovery in this case. For both the Jackson GSU and VIGV projects, MNSC's proposed disallowance includes the amounts already approved by the Commission in Case No. U-21585. As Consumers Energy argued in its Initial Brief, there should be no disallowance for either project in this case. However, if the Commission does adopt MNSC's disallowance, it should reduce that proposed disallowance to reflect only the new amounts proposed in this case and not any of the amounts already approved in Case No. U-21585.

3. Facilities and Shared Services Capital Expenditures

a. Control/Dispatch Centers

In its Initial Brief, the Company supported its projected $30.7 million for the Control/Dispatch Center Consolidation project. Company's Initial Brief, pages 128-134. Staff and the Attorney General continue to recommend disallowances for the project. The Company has already responded to most of their arguments, but Staff makes one new argument that requires response. For background, Staff witness Jessica Duell had pointed to the Company's projected spending in Case No. U-21585 and reasoned that "[s]ince the Company underspent by nearly half of what was requested and included in the calculation of rates previously, Staff recommends disallowing half of what the Company is requesting for the bridge period." 6 TR 4400-4401. The Company responded in rebuttal that the Commission rejected the Company's requested cost recovery for this project in Case No. U-21585, so the Company should not be held to planned spending that was not included in rates. 3 TR 2180.

In its Initial Brief, Staff clarified that it would have expected the Company to spend bridge period amounts from Case No. U-21585 in 2024 while the case was ongoing since the Company did not yet know the outcome. Staff's Initial Brief, page 67. What the Company did know at the time, however, was the outcome of Case No. U-21389, and it was spending amounts authorized in that case (for the March 1, 2024 through February 29, 2025 test year in that case) while Case No. U-21585 was ongoing. If Staff had asked how much the Company spent of what was authorized in Case No. U-21389, it may have discovered that the Company spent a larger percentage of what was authorized than it spent of what was proposed in Case No. U-21585. The comparison is not as simple as Staff suggests since the Commission had not yet approved the Company's proposed spending in Case No. U-21585 (indeed, it was eventually rejected), and the Company was spending amounts authorized in Case No. U-21389.

Ultimately, the amount the Company spent or did not spend in 2024 should not control whether the Company is allowed to recover its projected expenditures in this case. Rather, the sound basis for the Company's projection should control whether it is allowed to recover its expenses. See Company's Initial Brief, pages 128-134. To the extent that the Company's 2024 spending is relevant at all, what should stand out about the Company's 2024 spending is that it had a good reason to spend less than projected. Namely, the Company had expanded the scope of the project, which prolonged the design phase as the Company incorporated the expanded scope. 3 TR 2179. The Company urges the Commission to approve the Company's full projected spending based on this expanded scope.

4. Fleet Services Capital Expenditures

In its Initial Brief at pages 98 through 99, the Attorney General recommends that the Commission direct the Company to present a thorough plan in the next rate case that addresses the utilization rate of vehicles and field equipment and the impact on reduced vehicle purchases in future years. Consumers Energy agrees to provide the requested analysis. 3 TR 627.

5. IT and Security Capital Expenditures

a. ARP-Collaboration

Staff recommended reducing the Company's Asset Refresh Program ("ARP") Collaboration capital expenditures by approximately $435,000, and the Company agreed. See Company's Initial Brief, page 143. Staff further pointed out that there was an error in Exhibit A-211 (PDD-66) where the Company did not remove $250,023 in capital expenditures for the bridge period. Staff's Initial Brief, page 48. The Company corrected this error in its Initial Brief. See Company's Initial Brief, Appendix B3. The Commission should approve the corrected amount.

b. ARP-FDAM and ARP-WAM

Concerning the ARP Field Device Asset Management ("FDAM") and Workstation Asset Management ("WAM") projects, Staff agreed with the Company that "using a four-year average and providing the data used to calculate the average is a more specific method for projecting new purchases." Staff's Initial Brief, pages 52. Yet, Staff still took issue with the Company's alleged failure to "provide more detailed information for its new projection method in rebuttal," and Staff said it had not been provided enough information to compare historical and projected new device purchases to historical and projected hires. *Id.* at 52-54, 59-60. But Staff's own brief, and the exhibits it referenced, describe the extensive information the Company did provide. *Id.* The Company identified the specific devices being replaced, see Exhibit A-22 (SHB-7), page 5; it provided the historical costs needed to calculate the four-year average Staff prefers for new purchases, see Exhibit A-183 (SHB-12); and it answered Staff's questions about the projects, including its questions about new hires. See Exhibit S-14.1, pages 5 and 6; Exhibit S-21. The Company more than justified its expenses, as it did in the Company's recent gas rate case when the Commission approved the Company's ARP-FDAM expenses. MPSC Case No. U-21806 September 30. 2025 Order, page 122.

The Attorney General repeated Attorney General witness Sebastian Coppola's arguments about the ARP-FDAM project in her Initial Brief (she does not take issue with the Company's proposed ARP-WAM expenditures). Attorney General's Initial Brief, pages 99-101. In the Company's Initial Brief, it refuted the Attorney General's arguments and recommended an adjustment to the Attorney General's proposed bridge period disallowance. Company's Initial Brief, pages 145-146. The Attorney General agreed with the adjustment. Attorney General's Initial Brief, page 101. Similarly, although there is no merit to the Attorney General's test period disallowance, if it is accepted, the disallowance should at least be offset by the adjustments the Company made when it moved to a four-year average in response to Staff's testimony. 3 TR 803.

The Company's ARP FDAM expenditures are reasonable and prudent and should be approved.

c. <u>Projects in the Investment Planning Phase</u>

The Attorney General's brief largely repeated arguments from Mr. Coppola about Consumers Energy's IT projects in the investment planning phase, which the Company has already addressed. The Attorney General also made one new argument concerning the Company's Integrated Energy Management Platform Optimization project claiming that because the Company would not be willing to risk an investment in the project if it were disallowed than the Company must not be confident in the value of the project. Attorney General's Initial Brief, pages 106-107. The Company's response in Exhibit AG-75 indicates the opposite of what the Attorney General states, which is that the Company is confident that the project will lower costs for the Company and is crucial to the Company's provision of utility service and therefore believes that the expense should be approved by the Commission. As Company witness Megan L. Jerore stated "PCI provides software the Company uses to fulfill the Federal Energy Regulatory Commission ("FERC") requirement of communicating unit availability to the Midcontinent Independent System Operator, Inc. ("MISO") to efficiently buy and sell electricity in the wholesale market." 3 TR 1795. In rebuttal, Ms. Jerore explained that the project will lower operational costs. 3 TR 1801. The project will provide cost savings as part of an expense that is necessary for the Company to meet a FERC requirement and therefore should be approved by the Commission.

III. CAPITAL STRUCTURE AND RATE OF RETURN

A. Equity Ratio and Credit Quality

The Attorney General continues to argue that the Commission should set an equity ratio of 50% in this case rather than the 50.75% equity ratio proposed by the Company. Although the Company addressed most of the Attorney General's and other parties' arguments against the 50.75% equity ratio in its Initial Brief, the Attorney General makes one argument in her Initial Brief that warrants a brief discussion in this Reply Brief. On page 126 of the Attorney General's Initial Brief, she argues that, if Consumers Energy is "truly concerned about future [credit rating] downgrades" as a result of not having a sufficiently supportive equity ratio, the Company could simply reduce its debt with "a more moderate capital expenditure program" to "alleviate those concerns." This is a flippant response that ignores the extensive testimony in this case detailing the necessity and the customer benefits of the significant capital investments that the Company has planned.

Much of the Company's capital spending in this case is targeted at hardening and modernizing the Company's distribution system and improving distribution reliability for customers, which the Commission itself has identified as a vital goal. See e.g. 3 TR 1809-1818. The Company will also need to commit significant capital to its electric generation fleet over the next several years in order to complete its Clean Energy Plan and comply with the clean and renewable energy requirements of Public Act 235 of 2023. See e.g. 3 TR 1818. These objectives cannot be simply abandoned or delayed to avoid the need for a supportive equity ratio. The Company must move forward with these investments and it will need a strong credit rating to raise the necessary funds and achieve the most affordable and reasonable price for customers. The Commission should not be misled by the Attorney General's short-sighted argument into believing that the short-term rate impact of a low equity ratio or low ROE won't have a detrimental impact on customers in the longer term. The capital work that the Company has ahead is too important. It must be properly supported with a strong return and strong credit quality in order to deliver the outcomes that customers expect and deserve.

B. Capital Structure Cost Rates

1. Return on Common Equity

a. Response to Various Parties' General Comments on ROE

Most of the discussion in the parties' Initial Briefs on the topic of ROE pertain to the quantitative models used to estimate an appropriate ROE. The Company addresses any new issues raised by the Initial Briefs about the quantitative ROE models below. However, several parties also offered general commentary about the Company's ROE proposal in this case, some of which also warrant further response in this Reply Brief. The Company addresses those general comments first before turning to the arguments related to the quantitative models.

Walmart, Inc. ("Walmart") did not perform any of the traditional quantitative analyses as part of its presentation in this case. Instead, Walmart offered only a few broad observations on the issue of ROE and expressed its general preference for a lower ROE than the Company proposed. See Walmart's Initial Brief, pages 3-7. Most of its observations have been addressed in response to other parties and need not be addressed further here, but the Company believes it is worthwhile to respond very briefly to one of Walmart's comments that "it is clear the 10.25 percent ROE requested by the Company is contrary to recent Commission decisions on ROE." Walmart's Initial Brief, page 7. It should go without saying that the issue of the appropriate ROE is one of the most important issues in each rate case, and it is highly dependent on the economic and market conditions of each case. Although the Commission reasonably exercises caution making any large changes in ROE from one case to the next, ROE is not the type of issue where "recent Commission decisions on ROE" impact the current decision in anything like a precedential way. Consumers Energy submits that economic and market conditions, as demonstrated through the qualitative and quantitative analysis performed by Company witness Ann E. Bulkley, support an increase in the Company's ROE in this case. Accordingly, the Commission should decline to assign any weight to Walmart's arguments to the contrary.

The Company also responds briefly to Staff's claim on page 92 of its Initial Brief that "[t]he Commission's previous approval of risk-reducing cost recovery mechanisms and regulatory upgrade programs, as well as surcharge authorization for the various programs, practically gives the Company 100% risk-free investment." There is absolutely no basis for the claim that the Company enjoys anything resembling a "100% risk-free investment." Consumers Energy frequently experiences significant costs and sales fluctuations, particularly driven by adverse weather and other unexpected events, that exceed the levels assumed in making rates. As detailed in Ms. Bulkley's testimony, the Company is also susceptible to financial market risks driven by global events beyond the Company's control. It is absurd to suggest that investment in Consumers Energy is risk free. Furthermore, all of the "risk-reducing" mechanisms that Staff describes have been in place for some time prior to this case and, to the extent they have reduced any of the Company's business risk at all, have already been incorporated into the Company's previously approved ROE. They do not present "new" reasons to reduce the Company's ROE.

The Attorney General offered three general comments that the Company believes merit responses in this Reply Brief. First, on pages 161-162 of her Initial Brief, the Attorney General criticizes the fact that Company witness Bulkley recalculated each witness's quantitative analyses consistent with the issues that she identified as problematic in their original analyses. The Attorney General concludes with the claim that "[i]t was clearly her intention to conform the other witnesses' testimony to the Company's preferred outcome, and the extent of her efforts belie any claims otherwise." Attorney General's Initial Brief, page 162. There is no merit to that claim. The Attorney General cannot reasonably proclaim to know what Ms. Bulkley's "intention" is. Ms. Bulkley is an independent expert on cost of capital analysis and ratemaking matters with an extensive resume. 4 TR 2770-2790. Undoubtedly, her professional reputation and credibility are important. Consumers Energy submits that Ms. Bulkley's testimony is aimed at one over-arching goal: to provide the most analytically rigorous and defensible analysis of the current and expected cost of capital to assist the Commission in reaching a sound decision on the ROE to use in setting Consumers Energy's rates in this case.

Second, the Attorney General criticizes Ms. Bulkley for including updated versions of her own ROE quantitative models using the most current information available as part of her rebuttal to the other witnesses. Attorney General's Initial Brief, page 163. The Attorney General argues that is "not the same thing as rebutting a witnesses [sic] testimony" and claims that the Commission should reject the updated calculations as inappropriate. That argument is ironic given that Attorney General witness Coppola claimed that one of the supposed defects in Ms. Bulkley's quantitative analyses was "stale" inputs. See 3 TR 2542. Furthermore, by definition, when a more current – and, hence, more accurate – input is available compared to an input used by another party, identifying the more current input is a rebuttal of the other parties' presentation. There is nothing inappropriate about updating market data that is subject to change based on changing market conditions. Ms. Bulkley's methods remained the same. She only used the most current inputs to ensure that her final recommendation remained the most reasonable.

Third, in response to Ms. Bulkley's testimony that the Commission should not include distribution-only electric utilities in its review of recent ratemaking ROE trends nationally because ownership of generation assets is riskier than ownership of only distribution assets, the Attorney General argues that Mr. Bulkley's premise "may be true if the utility owns merchant power generation plants with sales subjected to market dynamics and related price risk." Attorney General's Initial Brief, pages 162-163. Ms. Bulkley cited Moody's Investors Service's Rating Methodology: Regulated Electric and Gas Utilities (August 2024, page 14) in support of her position that utilities with generation ownership are regarded as riskier than utilities without generation. In contrast, the Attorney General failed to cite any support for its counter-position that the heightened risk of generation ownership only pertains to merchant power generation plants. Consumers Energy does not agree. Electric generation plants are extremely capital intensive compared to other parts of the electric utility business. They require a significant amount of financial risk as well as execution risk to plan, contract, and construct projects that require long lead times. Furthermore, maintenance often requires outages that put the Company at risk to replace the lost generation production in the marketplace at potentially heightened costs. Unplanned outages are a common source of disallowances in Power Supply Cost Recovery proceedings. These are all risks that a regulated utility that owns generation faces that are not faced by distribution-only utilities. None of these risks are unique to merchant plants. The Commission should disregard the Attorney General's unsupported attempt to discredit Ms. Bulkley's recommendation.

Finally, MNSC argues that Consumers Energy's proposed ROE of 10.25% would cost customers $71 million more annually than MNSC's proposed 9.22% ROE. MNSC's Initial Brief, pages 35-36. MNSC claims that "[t]his amount dwarfs the cumulative $152 million over 18 years that Consumers suggests ratepayers saved in reduced borrowing costs because of its credit rating, which amounts to just $8.4 million per year." MNSC's Initial Brief, page 36. However, MNSC's claim misstates the information shown on Consumers Energy's Exhibit A-32 (MRB-13). Exhibit A-32 (MRB-13) does <u>not</u> show a *cumulative savings over 18 years* of $152 million based on the Company's improvement in its credit rating since 2006 as MNSC claims. It shows that the cumulative effect of the savings the Company has experienced as a result of all of its new bond issuances as its credit rating has improved is an *annual savings* of $152 million as of 2024. Contrary to MNSC's argument, that annual savings of $152 million dwarfs MNSC's supposed savings of $71 million annually. The Company's ability to achieve those annual savings is, at least in part, the result of constructive ratemaking ROEs that have helped the Company improve and then maintain its credit ratings well above the BBB- rating the Company experienced in 2006. MNSC's recommended ROE would recklessly undermine that ROE support and would likely have a significantly negative impact on the Company's credit quality and credit ratings, which would begin to roll back the annual savings reflected in Exhibit A-32 (MRB-13). The Commission should reject MNSC's reckless invitation.

b. <u>Proxy Group</u>

On pages 91-92 of its Initial Brief, Staff took issue with Company witness Bulkley's criticism of Staff's net-plant criteria for selecting its proxy group. Staff argues that its net-plant criteria "was used to better reflect comparable companies to the size and footprint of Consumers

Electric division." Staff's Initial Brief, page 92.[3] Furthermore, Staff disagreed with the alternative approach that Ms. Bulkley testified Staff could have used if it was concerned about capturing the impact of company size on ROE results. Staff's Initial Brief, page 92. Staff's Initial Brief seems to suggest that Ms. Bulkley's alternative proposal to apply a "small size premium" to Staff's ROE results was somehow inconsistent with Ms. Bulkley's criticism of Staff's net-plant proxy criteria. The Company responds further about proxy groups in this Reply Brief solely to address that point.

To the extent that Staff suggested these positions were inconsistent, there is no inconsistency. Staff's methodology actually excludes comparable companies from the proxy list entirely. In contrast, Ms. Bulkley's "small size premium" methodology would retain a proxy group that is similar to Consumers Energy in all material ways, but would still allow Staff to account for any impact company size has on ROE estimates. That is a material difference between the two methods. Furthermore, to be clear, Ms. Bulkley was not necessarily endorsing the use of the "small size premium" approach. She was comfortable that her proxy group and her quantitative analyses adequately reflected the market cost of equity for Consumers Energy. She was simply trying to offer a more sensible way for Staff to incorporate consideration of company size into its analysis if Staff remained concerned about its impact on ROE results. There is no merit to Staff's criticism of Ms. Bulkley's observations about the proper way to incorporate a company-size-based adjustment into the ROE analysis.

c. <u>Discounted Cash Flow Model</u>

(i.) <u>Response to Staff</u>

Staff offered very little criticism of the Company's Discounted Cash Flow ("DCF") model in its Initial Brief. See Staff's Initial Brief, pages 87-88. However, the lone criticism Staff offered

[3] That claim is not correct, as the Company discussed in its Initial Brief. See Consumers Energy's Initial Brief, pages 238-239.

merits additional response. Staff's sole criticism of the Company's DCF analysis was to observe that two of the three growth rates used for one of the companies in Consumers Energy's proxy group (Dominion Resources, Inc. ("Dominion")) were around 13.0% while the third was only 3.5%. Staff's Initial Brief, page 88. Staff claimed that these "wildly divergent" growth rates "had the consequence of unduly boosting the Company's average and median ROE estimate." Staff's Initial Brief, page 88. That does not make sense for several reasons.

First, Staff ignores the fact that of the three estimates, the *low* estimate is the outlier – not the two *high* estimates. The growth estimates from *S&P Capital IQ* and *Zacks* are consistent with one another in both the Company's original DCF calculations (See Exhibit A-14 (AEB-1), Schedule D-5, pages 3-5) and its updated DCF calculations (See Exhibit A-206 (AEB-2), pages 2-4). If anything, the use of all three is artificially *reducing* the mean results of Ms. Bulkley's analyses compared to running the same analysis without the *Value Line* outlier.

Second, Staff ignores the fact that, while the *S&P Capital IQ* and *Zacks* growth rates of around 13% for Dominion remained relatively consistent when Ms. Bulkley updated them in her rebuttal, *Value Line*'s growth rate had nearly doubled by the time of Ms. Bulkley's update from 3.5% to 6.0%. See e.g. Exhibit A-206 (AEB-2), page 2, column [5]. Clearly, in the time between the Company's direct testimony and its rebuttal testimony, even *Value Line* recognized that Dominion is expected to experience stronger growth than *Value Line* originally estimated. This suggests that there is probably some sound basis for *S&P Capital IQ*'s and *Zacks*' stronger growth estimates in the first place. It is also noteworthy that *S&P Capital IQ*'s and *Zacks*' earnings per share ("EPS") growth forecasts are based on consensus estimates from multiple sources. 4 TR 2837. *Value Line*'s forecast is not.

Third, Staff fails to acknowledge that, for each of her three DCF analyses, Ms. Bulkley performed a model run using the minimum growth rate, the maximum growth rate, and the mean growth rate from the three sources. See Exhibits A-14 (AEB-1), Schedule D-5, pages 3-5 and A-206 (AEB-2), pages 2-4. So, eliminating Dominion's three growth rate projections from the data set entirely could *increase* the results of Ms. Bulkley's minimum growth rate model run. For example, removing Dominion from Ms. Bulkley's original 180-Day Constant Growth DCF would increase the mean ROE result from 9.16% to 9.19% and the median ROE result from 9.79% to 9.81%.[4] Staff's claim that the inclusion of Dominion had the effect of "unduly boosting" the Company's results is demonstrably false for at least some of the results.

Even for the maximum growth rate and the mean growth rate runs, simply removing the Dominion results from Ms. Bulkley's model does not significantly lower the results. For example, removing Dominion from Ms. Bulkley's original 180-Day Constant Growth DCF would change the mean ROE result from 10.47% to 10.20% and the median ROE result from 10.43% to 10.41% for the mean growth rate run.[5] For the maximum growth rate run of the same model, it would change the mean ROE result from 11.42% to 11.01% and the median ROE result from 11.01% to 10.97%.[6] Even without Dominion, these results remain consistent with Ms. Bulkley's recommended ROE in this case. The same type of results hold consistent if Dominion is removed from all of Ms. Bulkley's various DCF model runs.

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[4] To calculate the new mean, simply add all of the values in Exhibit A-14 (AEB-1), Schedule D-5, column [9], except the value for Dominion, and divide by 18 (the remaining number of proxy companies). To calculate the new median, simply arrange the values in Exhibit A-14 (AEB-1), Schedule D-5, column [9], except the value for Dominion, in order from lowest to highest and then select the value that is exactly in the middle. Since the new list would have an even number of values, the middle value is the average of the two values on either side of the middle point (i.e. the average of 9.79% for Southern Company and 9.83% for Ameren Corporation).

[5] The process for calculating the new mean and median is the same as described above for the minimum growth rate run except that it uses the values from Exhibit A-14 (AEB-1), Schedule D-5, column [10].

[6] The process for calculating the new mean and median is the same as described above for the minimum growth rate run and the median growth rate run except that it uses the values from Exhibit A-14 (AEB-1), Schedule D-5, column [11].

This issue highlights the importance of using objective criteria in the selection of the proxy group and not arbitrarily excluding any of the inputs for the proxy companies while running the models merely based on some subjective perception that the inputs appear to be outliers. The use of a large group of proxy companies, multiple different sources of growth forecasts for each, and numerous variations of the DCF model runs produces results that give a fuller picture of a true market-based ROE estimate. It tends to moderate and control for outliers, while still incorporating appropriate consideration of all the comparable companies in a scientific manner that is not driven by a predetermined conception of the desired outcome. In contrast, Staff's criticism of the Company's DCF is entirely subjective and outcome-driven. Staff's criticism is not sound and it must be rejected.

(ii.) <u>Response to MNSC</u>

MNSC's Initial Brief responds to three aspects of Company witness Bulkley's rebuttal testimony related to MNSC's DCF analysis that warrant further discussion in this Reply Brief. First, MNSC responds to Ms. Bulkley's observation that her constant growth DCF is more appropriate than MNSC's two-step DCF because, among other things, the utility industry is a mature industry, which is better suited to the constant growth DCF, and the two-step DCF introduces more opportunity for error due to requiring more variables based on more assumptions. MNSC's Initial Brief, page 48. MNSC responds by arguing that "the constant growth DCF model is not a default" and that because it has fewer variables, the constant growth DCF is more sensitive to any bias that may influence one of the variables. MNSC's Initial Brief, page 49.

Consumers Energy never claimed that the constant growth DCF was a "default" model. Instead, Company witness Bulkley clearly explained *why* the constant growth DCF was the *appropriate* model for application in Consumers Energy's case. It is appropriate because Consumers Energy is a "mature compan[y] with a stable history of growth and stable future expectations." 4 TR 2842 (quoting Eugene F. Brigham & Joel F. Houston, *Fundamentals of Financial Management*, Eleventh Edition, 2007, at 298); see also 4 TR 2838. Consumers Energy is not a new start-up business that might be expected to have a period of exceptionally high initial growth followed by a future leveling out of growth. The two-step DCF is not an appropriate fit for the utility being analyzed here – Consumers Energy.

With respect to MNSC's claims regarding the sensitivity of the model to any single variable, that claim is also not valid because it ignores that Ms. Bulkley used multiple data sources for her DCF inputs specifically to reduce or eliminate any potential bias in her variables. She calculated three different dividend yields (4 TR 2740) and used EPS growth forecasts from three different sources (4 TR 2742) for each of her proxy companies. The EPS growth forecasts that she used were from consensus forecasts (4 TR 2837), which means that even those were gathered from multiple analysts' evaluation of growth. So, she used fewer variables but made sure to draw those variables from numerous sources to ensure that there was no single-source bias.

Second, after Consumers Energy undermined the theory supporting MNSC's two-step approach by demonstrating that there is good evidence showing that utilities can sustain long-term growth greater than gross domestic product ("GDP") (see 4 TR 2842-2843), MNSC argued that it is "reasonable to presume" that the studies Consumers Energy cited are probably flawed because "less productive utilities were acquired or replaced by more productive utilities." MNSC's Initial Brief, page 49. That claim is pure speculation and there is nothing "reasonable" about that presumption. MNSC offered no evidence to substantiate that there are any meaningful numbers of failed utilities disappearing from the market. An article from the Energy Law Journal in 2001 identified four "major electric utilities . . . that filed for protection under Chapter 11 of the Bankruptcy Code since the end of the Depression era." Mabey & Malone, *Chapter 11*

Reorganization of Utility Companies, 22 (No.2) Energy L J 277, 283 (2001). The article further identified four "smaller electric utilities which have filed for bankruptcy in recent years." *Id*. at 283, n 20. Electric utility failure does not appear to be a common occurrence. The betas for utility companies suggest that they are lower risk than the overall market, indicating that there is less volatility in this industry than the market as a whole. But, even MNSC's claims of a "survivorship bias" in the data were true, it does not support MNSC's case. When investors choose to invest their money in a utility, it is not reasonable to assume that they benchmark their expectations for growth against failed companies. Intentionally including data from failed utilities would underestimate investor expectations and improperly hamper the capital attraction objective of the ratemaking ROE. There *should* be a survivorship bias in the analysis.

Third, MNSC claims that Ms. Bulkley disagrees with MNSC's DCF calculation using dividend per share ("DPS") growth but failed to "address [MNSC witness] Bandyk's testimony regarding the advantages of using DPS growth rates." MNSC's Initial Brief, page 49. The only "advantage" that MNSC witness Matthew Bandyk claimed for using DPS was to cite the opinion of the Massachusetts Department of Public Utilities ("DPU"), which claimed that "firms tend to keep their dividend growth stable over time, as opposed to EPS growth rates, which may vary based on firm-specific events and economic conditions." 6 TR 3969. Company witness Bulkley did not directly address Mr. Bandyk's claim in rebuttal because she already addressed it in her direct testimony and she provided an example as to how companies manage dividends in response to Mr. Walters. Ms. Bulkley stated that "due to the economic effects of COVID-19, more than 40 companies in the S&P 500 temporarily suspended their dividends. Counter to Mr. Walters's assumption, a company's management will alter dividend policy to respond to changes in earnings and therefore dividend growth will not always reflect earnings growth." 4 TR 2758. In her direct testimony, Ms. Bulkley explained that "over the long run, dividend growth can only be sustained by earnings growth . . . ." 4 TR 2741. She further explained that "changes in a company's dividend payments are based on management decisions related to cash management and other factors," which means that "dividend growth rates are less likely than earnings growth rates to accurately reflect investor perceptions of a company's growth prospects." 4 TR 2741. As an example, she explained that "a company may decide to retain earnings rather than pay out a portion of those earnings to shareholders through dividends." 4 TR 2741. This information directly contradicts the Massachusetts DPU's claim – adopted by MNSC's witness – that "firms tend to keep their dividend growth stable over time" because it explains a variety of reasons businesses may choose to vary their dividend payments even while trying to steadily grow their earnings. Accordingly, Ms. Bulkley testified that "projected EPS growth is the appropriate measure of a company's long-term growth." 4 TR 2741. It was MNSC witness Bandyk who failed to offer any independent expertise from finance professionals or academics to adequately respond to Ms. Bulkley's testimony.

d. <u>Capital Asset Pricing Model</u>

(i.) <u>Response to Staff and the Attorney General</u>

On page 88 of Staff's Initial Brief, Staff argues that the Company's Capital Asset Pricing Model ("CAPM") "uses an over-inflated projected market risk premium (MRP) that renders the ROE estimate unreasonable." On page 153 of the Attorney General's Initial Brief, the Attorney General argues that the Company's approach to calculating a projected market risk premium "is not academically or practically sound." Consumers Energy addressed the parties' criticism of its equity risk premium used in the CAPM in rebuttal testimony and in its Initial Brief. See 4 TR 2844-2847; Consumers Energy's Initial Brief, pages 256-257, 261-265. The Company responds further here only to draw attention to the fact that Staff's and the Attorney General's claims regarding the market risk premium developed by the Company continue to ignore the well-documented inverse relationship between risk-free rates and the market risk premium. Both Staff and the Attorney General fail to cite any academic or professional sources that refute that inverse relationship. Neither party ever responds to Ms. Bulkley's testimony about the inverse relationship between risk-free rates and the market risk premium. It is disingenuous for the Attorney General, in particular, to claim that the Company's method for developing the market risk premium is "academically" unsound, when Company witness Bulkley cited several sources supporting the existence of the inverse relationship and the need for a methodology that accounts for it (4 TR 2849), whereas the Attorney General has cited no source supporting the opposite view. There is an inverse relationship between risk-free rates and market risk premiums. The Company's approach correctly recognizes that relationship in order to develop an appropriate market risk premium for use in its CAPM analyses.

(ii.) <u>Response to MNSC</u>

MNSC makes a number of arguments against the Company's CAPM analyses in its Initial Brief that warrant a response in this Reply Brief. First, MNSC attempts to respond to Ms. Bulkley's rebuttal regarding MNSC's use of an inappropriate risk-free rate. MNSC claims that Mr. Bandyk's risk-free rate based on 10-year U.S. Treasury bonds is superior to Ms. Bulkley's risk-free rate based on 30-year U.S. Treasury bonds. MNSC's Initial Brief, page 50. MNSC argues that the 10-year U.S. Treasury "more closely matches the duration the rates set in this case will be in effect, while remaining sufficiently long-term to mitigate volatility." *Id*. However, the risk-free rate doesn't need to match the duration of times that rates will be in effect. It needs to match the duration of the underlying investment. 4 TR 2848. Utility investments are long-term and the risk associated with those investments is a long-term risk. If the investors' money will be tied up in utility assets that depreciate over 30 years or more, then they will compare the potential return on that investment to other alternatives of a similar duration, like 30-year U.S. Treasury bonds. An investor does not expect to make a 30-year investment to earn a return that is commensurate with a 10-year investment.

Next, MNSC tries to respond to Ms. Bulkley's rebuttal testimony demonstrating that MNSC witness Bandyk's market risk premia were flawed. Ms. Bulkley demonstrated that Mr. Bandyk's equity risk premia were below the historical average equity risk premium even though his risk-free rates were also below the historical average risk-free rates. 4 TR 2857-2858. Because of the well-documented inverse relationship between the risk-free rate and the market risk premium, when one goes up the other should go down and vice versa. When both move in the same direction (as they did in Mr. Bandyk's analysis) then there is self-evidently something wrong in the analysis. MNSC claims that there are two defects in Ms. Bulkley's reasoning. First, MNSC claims that historical estimates are "meaningless" because they are "extremely sensitive to the historical time period selected . . . ." MNSC's Initial Brief, page 51. Second, MNSC claims that the historical estimates are "meaningless" – once again – because of survivorship bias. MNSC's Initial Brief, page 51. Consumers Energy has already addressed MNSC's claims regarding survivorship bias above. MNSC's argument remains incorrect for the same reasons here. With respect to MNSC's claims about the historical time period chosen, the Company agrees with the principle that MNSC articulates here, but MNSC fails to recognize that the objective way to address that problem is to use the entire historical data set, which is exactly what Ms. Bulkley did. 4 TR 2854-2855. That way, the analyst does not make any subjective choice about the time period. In fact, that was one of Ms. Bulkley's criticisms of Staff's historical CAPM analysis. Ms. Bulkley developed the long-term market risk premium using the entire historical data set from *Kroll* as a response to Staff, who subjectively and without any explanation used a shorter time period from within the available data. 4 TR 2854-2855. Because Ms. Bulkley used all of the available data to make the comparison, there was no opportunity for her to introduce any analyst bias in her calculation. MNSC's criticism has the right idea, but MNSC applied it incorrectly to Ms. Bulkley's rebuttal analysis. Therefore, there is no merit to MNSC's argument.

Next, MNSC attempts to respond to Ms. Bulkley's observation in her rebuttal testimony that Mr. Bandyk's market risk premia are inconsistent with his own DCF results. Ms. Bulkley pointed out in her rebuttal that the return on the overall market implied by Mr. Bandyk's DCF results should be higher than the overall market return that would be implied by his market risk premia for the proxy group, since the proxy group is less risky than the overall market. 4 TR 2860. Nevertheless, Mr. Bandyk's risk premia (most of which he adopted from work by Professor Aswath Damodaran from New York University Stern School of Business) are consistent with implied market returns for the proxy group that are lower than the results from his DCF analysis in most cases (even using his faulty DPS methodology for DCF). 4 TR 2860-2861.

MNSC's only response to Ms. Bulkley's analysis is to claim that she is making "an apples-to-oranges comparison by comparing market risk premia calculated by Dr. Damodaran using a DCF analysis for the S&P 500 to a DCF analysis for Consumers performed by Mr. Bandyk." MNSC's Initial Brief, pages 51-52. MNSC argues that "[d]ifferent results from different analyses performed by different analysts do not invalidate the results of either analysis." MNSC's Initial Brief, page 52. First, it is not truthful to claim that these were different analyses. Dr. Damodaran's values were the result of DCF analyses (see 6 TR 3958-3960) and Ms. Bulkley was comparing those results to the results of Mr. Bandyk's DCF analyses. Mr. Bandyk even admitted that Dr. Damodoran was essentially using "the <u>same discounted cash flow model Ms. Bulkley and I use</u> to estimate the cost of equity for a single company and applies it to value the expected return of a broad market index, the S&P 500." 6 TR 3958 (emphasis added). It was the same analysis except that Dr. Damodaran's DCF was for the whole S&P 500, with a beta of 1.00, and Mr. Bandyk's was for the proxy group, with a beta of 0.92 (*Value Line*) or 0.68 (*Bloomberg*). 4 TR 2860. So, Mr. Bandyk's results should have been lower and Dr. Damodaran's results should have been higher, but they weren't. Second, even if MNSC were correct that these were different analyses (which they were not), different results from different analysis performed by different analysts *do* invalidate the results of one or both analyses *if* both analyses claim a different result for the same market at the same time. That's exactly how MNSC is trying to use these inconsistent results. Thus, there is an inescapable problem with the inputs Mr. Bandyk used for his CAPM analysis and, hence, a problem with his CAPM results. Based on his DCF results, his market risk premia for his CAPM should have been significantly higher and should have produced higher CAPM results. That doesn't even take into account that the Company has shown that Mr. Bandyk's DCF results were also too low. Obviously, the higher the DCF results, the higher his CAPM risk premia should have been and the higher his CAPM results. MNSC cannot explain away this fundamental inconsistency in its CAPM analysis with inaccurate statements in its Initial Brief.

Finally, MNSC claims in its Initial Brief that Ms. Bulkley "offers no support" for her observation that Blume adjusted betas in the CAPM "better reflect the true beta of the utility sector inclusive of interest rate risk." MNSC's Initial Brief, page 52. That is not correct. Ms. Bulkley testified that "the utility sector is not only correlated to the broader market, but is also sensitive to changes in interest rates." 4 TR 2861. She explained that raw betas, such as those used by Mr. Bandyk in his CAPM analyses, do not factor interest rate risk into their calculation. 4 TR

2861. In her direct testimony, Ms. Bulkley explained exactly how betas are calculated. She provided the following formula:

$$\beta = \frac{Covariance\ (r_e, r_m)}{Variance\ (r_m)}$$

Where *Variance* (r_m) represents the variance of the market return, which is a measure of the uncertainty of the general market and *Covariance* (r_e, r_m) represents the covariance between the return on a specific security and the general market, which reflects the extent to which the return on that security will respond to a given change in the general market return. 4 TR 2744. Clearly, interest rate risk is not incorporated into the beta formula.

MNSC also claims that Ms. Bulkley failed to address the reasons that Mr. Bandyk offered to explain why the use of adjusted betas is supposedly inappropriate for regulated utilities. However, the Company contends that his reasons are self-evidently invalid. Mr. Bandyk claimed that "[r]ate regulation protects investor-owned utilities like Consumers Energy from the risks of rising expenses, commodity price risk, and competitive risks, and they enjoy natural monopolies that mitigate market risks associated with the customer base." 6 TR 3964. He claimed that "commodity prices tend to be passed through directly to customers, and utilities can request a rate increase if sales decline." 6 TR 3964. This is an overly simplistic view of how rate regulation works in practice. Public utilities, like Consumers Energy, still face risks associated with rising expenses, commodity price risk, and competitive risks. Although utilities certainly try to address those risks in rate cases, it is not a foregone conclusion that the results of rate cases will result in rates that fully address those concerns. Utilities do not typically obtain the full amount of the rate relief they seek and are forced, like any other business, to find efficiencies and other mechanisms to manage uncovered risk. Furthermore, Consumers Energy frequently experiences disallowances in its Power Supply Cost Recovery cases, such that it seldom gets full recovery of its commodity costs for electricity. Certainly a utility can "request" a rate increase if sales decline, but unregulated businesses can increase their prices without a lengthy regulatory proceeding if their sales decline or costs are rising. Consumers Energy understands the need for and the proper role of rate regulation in this industry, but it is not the risk-free panacea that MNSC claims. To the extent that rate regulation does make utilities slightly less risky than other businesses in the marketplace, that is reflected in adjusted betas that are below the market beta of 1.00. As Ms. Bulkley pointed out in her rebuttal testimony, both Staff witness Kirk D. Megginson and Attorney General witness Coppola use Blume adjusted betas in their CAPM analyses. 4 TR 2862. It remains the standard for CAPM analyses notwithstanding Mr. Bandyk's novel claims that it is inappropriate. The Commission should disregard MNSC's argument.

e. <u>Empirical CAPM</u>

On page 89 of Staff's Initial Brief, Staff closes its arguments on the Empirical CAPM ("ECAPM") by stating, "The Commission, *as it has in the past*, should reject all ECAPM estimates." (Emphasis added.) Similarly, MNSC claims, on page 52 of its Initial Brief, that although Company witness Bulkley defends the ECAPM as being consistent with academic literature, she does not "contend with the fact that the MPSC has consistently declined to recognize it." These claims are inaccurate and misleading. The Commission has never expressly rejected or declined to recognize the ECAPM as an appropriate model for consideration in making an ROE determination. In fact, the Commission traditionally has not endorsed or rejected any particular quantitative ROE model proposed by the parties.[7] Instead, the Commission typically considers all of the evidence presented to it and makes a determination about the proper ROE based on an evaluation of all the facts and circumstances. In addition to the academic support for the model acknowledged by MNSC's Initial Brief, several jurisdictions have expressly considered the ECAPM in making ROE determinations, so it is evident that the model is not generally regarded as invalid. 4 TR 2882-2883; see also Consumers Energy's Initial Brief, pages 269-270. The Commission should consider the results of Ms. Bulkley's ECAPM analysis together with the results of the other reasonably performed quantitative ROE models for making its ROE determination in this case.

2. Short-Term Debt Rate

In its Initial Brief, Staff attempts to respond to Company witness Marc R. Bleckman's rebuttal testimony, which explained the reasons why Staff's proposal to remove the costs associated with the ScotiaBank Revolver in the Company's next electric rate case should be rejected. Among other problems with Staff's proposal (see Consumers Energy's Initial Brief, pages 296-299), Mr. Bleckman explained that Staff's proposal to simply move the existing letters of credit that are backed by the ScotiaBank Revolver to be backed by the Company's JPMorgan Revolver is not a viable option because (i) the JPMorgan Revolver has a limit of $100 million for

[7] One rare case in which the Commission expressly endorsed a quantitative ROE methodology was Case No. U-16794, June 7, 2012 Order, page 65, in which the Commission stated that it "considers and gives weight . . . to [Consumers Energy witness] Rao's Value Line Book Value method." One rare case in which the Commission expressly rejected two quantitative ROE methodologies was Case No. U-20940, December 9, 2021 Order, page 91. In Case No. U-20940, the Commission agreed with the ALJ's observation that "the Commission has consistently taken a traditional approach to establishing ROE, focusing on the most commonly used, fundamental approaches to determining a just and reasonable ROE, consistent with the principles of *Hope Natural Gas* and *Bluefield Waterworks*." On that basis, the Commission explicitly rejected application of the "ATWACC [i.e. the after tax weighted-average cost of capital] or Hamada adjustment" proposed by DTE Gas Company in that case because they "may excessively inflate ROEs, stock prices, and market-to-book ratios for utilities." *Id*. Notably, DTE Gas Company also used an ECAPM analysis in Case No. U-20940. See *Id*. at 80. However, the Commission did not identify the ECAPM as one of the methodologies that it was rejecting in that case. Rather than grouping ECAPM with the ATWACC or Hamada adjustment, which the Commission rejected, the Commission appears to have regarded it as one of the "most commonly used, fundamental approaches to determining a just and reasonable ROE" that it considered in that case.

letters of credit and (ii) the letters of credit associated with the ScotiaBank Revolver ($58 million) exceed the remaining limit of $50 million on the JPMorgan Revolver. 3 TR 892.

Staff's Initial Brief responds by claiming that this information is "novel and unsubstantiated" and that this is the "first time the Company has brought up or even mentioned a so -called letter of credit limitation with the JPMorgan facility." Staff's Initial Brief, pages 85-86. However, there was no reason for Mr. Bleckman to mention that particular term of the Company's JPMorgan Revolver prior to Staff's unworkable recommendation to use it in that way. That information was not material to the development of the cost rate proposed in this case. Absent Staff's unworkable recommendation, it would have just been a random and unnecessary fact in an already lengthy and dense record. It only became relevant when Staff raised the issue.

Staff also claims in its Initial Brief that it "seems implausible" that the terms of the Company's ScotiaBank Revolver "has more letter of credit capacity" than the terms of the JPMorgan Revolver, given that the JPMorgan Revolver overall has a significantly higher credit limit. Staff's Initial Brief, page 86. Contrary to Staff's claim, it is not "implausible" because Staff fails to understand that the ScotiaBank Revolver is a bilateral arrangement where ScotiaBank alone funds the letter of credit if it is ever drawn on; whereas, the JPMorgan Revolver is a syndicated arrangement, which means that JPMorgan is actually fronting the letter of credit for other banks that would be required to fund the underlying letters of credit if they are ever drawn upon. JPMorgan would have to cover the entire amount of the letters of credit and then go to the other banks to get compensatory funding. Under that type of arrangement, the fronting bank must also hold more risk-weighted capital, which places additional pressure on its balance sheet that the bilateral arrangement bank need not carry. However, as interesting as that additional information may be, it is not even the most important reason that Staff is wrong. The underlying assumption behind this supposedly "implausible" situation was that the ScotiaBank Revolver has a higher letter of credit capacity than the JPMorgan Revolver, but that is not true and there is no support for Staff's claim in the record. The record only indicated that letter of credit capacity under the JPMorgan Revolver, which was $100 million. 3 TR 892. The record also indicates that the Company had $58 million of letters of credit committed under the ScotiaBank Revolver, but did not say what the letter of credit capacity on that revolver was. See 3 TR 892. In fact, the letter of credit capacity under the ScotiaBank Revolver was only $75 million at the time the record closed in this case, so it was *lower* – not higher – than the letter of credit capacity for the JPMorgan Revolver. It is also important that Mr. Bleckman specified that the $58 million of outstanding letters of credit supported by the ScotiaBank Revolver "pertain to MISO." 3 TR 892. That is significant because MISO has a requirement related to letters of credit in its tariff that requires same-day funding under certain circumstances. See MISO, FERC Electric Tariff, Attachment L, Exhibit II (FERC Docket No. ER24-340-000). That requirement is not common for companies and creates additional risk for the funding banks that support the letters of credit. As a result, many banks – including JPMorgan – generally refuse to issue MISO-related letters of credit. There are only a few banks willing to do it. ScotiaBank is one that will.

Finally, Staff claims that Mr. Bleckman's Exhibit A-39 (MRB-20), which shows that the Company's short-term credit facilities are in line with its peer group companies' short-term credit facilities, should be "view[ed] . . . with caution." Staff's Initial Brief, page 87. Staff offers no reason why it should be viewed with caution and the Company does not agree that it should be. Instead, Staff encourages the Commission to ignore all of the peer utilities shown on Exhibit A-39 (MRB-20) and focus solely on DTE Energy Company's ("DTE") short-term credit facilities. That does not make sense. DTE is tied for the third lowest ratio of revolver capacity to property, plant, and equipment ("PP&E") among the 15 peer utilities shown on Exhibit A-39 (MRB-20). Put another way, 11 of the 15 peer utilities have a higher revolver-to-PP&E ratio than DTE. If anything, the exhibit shows that DTE is an outlier. There is no valid reason to disregard every other peer utility and rely solely on DTE to evaluate the reasonableness of Consumers Energy's revolver-to-PP&E ratio. In contrast, Consumers Energy's revolver-to-PP&E ratio is slightly below the average of 5.4%. If Consumers Energy were included in the list, 9 of the other 15 companies would have a higher ratio than Consumers Energy and only 5 would have a lower ratio. The data speaks for itself. The Company's portfolio of short-term credit facilities is reasonably sized. Staff's recommendation relative to the Company's ScotiaBank Revolver should be rejected.

IV. <u>ADJUSTED NET OPERATING INCOME</u>

A. <u>Sales Forecast</u>

In its Initial Brief, the Company supported its projected jurisdictional electric deliveries of 33.919 GWh for the test year based on the testimony of Company witness Eugène M.J.A. Breuring. Staff's Initial Brief sought to support a higher forecast based on Staff witness Paul R. Ausum's testimony. Both witnesses highlight different aspects of their regression modeling, and while the regression modeling is critically important, it is also important not to get lost in the modeling weeds. Modelers' own expert opinions about trends and the overall economic landscape allow them to see and test model results without getting lost in the weeds. The Company applied these principles when forecasting its overall electric deliveries, including its commercial bundled deliveries. Staff said that the Company did not demonstrate that its hybrid approach produced an accurate forecast for commercial sales, see Staff's Initial Brief, pages 102-104, but the Company did demonstrate this by showing that its forecast is consistent with historical trends and makes sense of the economic landscape. See Company's Initial Brief, pages 302-303.

Respectfully, Staff's position is internally inconsistent. After acknowledging that a variable's statistical significance is measured using its p-value and t-statistic, Staff's Initial Brief, page 103, n22, Staff observed that "[s]tatistical significance, while important, is not the primary concern of a forecasting model." *Id.* at 103. Yet, Staff also said that "[a]n ideal model is one that is both highly accurate and uses variables [to] explain what causes variation in either load or customers with a high degree of certainty (*as measured by t-statistics and p-values*)." *Id.* at 103 (emphasis added). In one breath Staff said that statistical significance is not a primary concern, while in the next breath it said that an ideal model must use statistically significant variables. Staff's latter point is correct.

Staff's portrayal of an ideal forecasting model describes the Company's models. The Company's models are accurate and statistically significant, as demonstrated by the models' Mean Absolute Percent Error and their variables' strong "p-values" and "t-statistics," which showed that the models and their variables are accurate and relevant. 3 TR 939-941, 963. Further, the Company's models explain variation in load, as evidenced by the Company's conclusion – from the models and its expert's independent judgment – that electric vehicle growth and energy waste reduction savings are the two primary factors driving changes to commercial bundled deliveries. 3 TR 957-958.

The Company's forecast is based on solid modeling assumptions and expert opinion and should be adopted.

B. Other O&M Expense

1. Line Clearing O&M Expense

No party opposed the Company's proposal to move to a five-year line clearing cycle for its LVD system by the end of the 2030-2031 test period. Staff supported both the Company's line clearing expense and the five-year cycle, although it continued to take issue with some aspects of the Company's plan. For example, Staff wants more aggressive line clearing – i.e., canopy removal – beyond the more aggressive practices the Company proposed, and it argues the line clearing expenses the Company requested should be enough to cover both the move "towards a 5-year line clearing cycle *and* removal of 100% of overhang in the first zone." Staff's Initial Brief, page 140 (emphasis added). Staff did not attempt to estimate how much it will cost to remove 100% of overhang in the first zone or the benefits it will yield. Still, the Company is not necessarily opposed to Staff's proposal *if* it is first allowed to evaluate the costs and benefits. See 3 TR 2241. If the Commission approves the Company's more targeted proposal to remove 5,500 miles of canopy – both within and outside the first zone – the Company will have a better data set from which to evaluate the costs and benefits of additional canopy removal.

Staff also characterized the Company's plan as a "proposal to clear 10% or 5,500 miles of three phase overhead primary tree overhang removal in everything outside of the first zone." Staff's Initial Brief, page 140. Staff was mistaken as to the scope of the Company's plan, which is not limited to miles outside of the first zone and certainly does not cover all miles outside of the first zone. The Company is proposing canopy removal on targeted three-phase lines considering the impact that outages would have on customers served downstream and whether the conductor is within the path of a substation-to-substation connection that enables switching if needed, reducing the impact of outages that may occur regardless of cause. 3 TR 2206. Approving the Company's plan as proposed will deliver the most benefits to customers for the cost.

Concerning future line clearing spending, Staff recommended that "the Company spend the entire amount of line clearing expenses approved in each rate case they file and complete all line miles that are being proposed to be trimmed each year." Staff's Initial Brief, page 142. The Company is not opposed to a requirement that it spend its approved line clearing expenses. Indeed, the Company's proposed Distribution Deferral Mechanism, as a continuation of the previously approved mechanism, is already contingent on test year line clearing spending. See 3 TR 1075; 6 TR 4447. As it currently does, the Company should continue to have operational flexibility to accelerate or postpone plans to clear some line miles.

Staff was concerned about the timing of the Company's spending – whether the Company had spent everything it projected it would spend in the Case No. U-21585 test year and the 2024 calendar year. Staff disagreed with the Company that it spent over what was authorized in the Case No. U-21389 rate case for the test year, Staff's Initial Brief, page 141, but the Company does not understand how Staff can disagree with the numbers. As for calendar year spending, the Company answered Staff's questions to the best of its ability and, even after reading Staff's Initial Brief, still does not understand what information Staff believed was withheld.[8] The Company will seek to better understand Staff's concern before its next case.

Finally, Staff wants the Company to perform an analysis of a four-year line clearing cycle in its next case that includes several specific elements. Staff's Initial Brief, page 144. Although the Company has already analyzed a four-year cycle, it is certainly open to further analysis in the future. The next rate case is likely too soon though. The Company should be allowed to make progress toward its proposed five-year cycle, which is itself an immense undertaking, before further analyzing a four-year cycle. Once the Company achieves a five-year cycle, it will be far easier to estimate what it takes to move from a five-year cycle to a four-year cycle in the future.

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[8]Staff points out that the Company spent $5,876,252 less on LVD line clearing in 2024 than it projected in Case No. U-21585. The Company nonetheless spent everything it committed to spending in the U-21585 test year (keeping in mind that the Case No. U-21585 test year did not include several months of 2024 and included two months of 2025), so no funding was reallocated. This is why, when Staff asked about the $5,876,252, the Company responded that it "did not redeploy these funds." Exhibit S-18, page 1. Since no funds were redeployed, there was nothing further to say about them.

The Commission should approve the Company's ambitious plans to move to a five-year cycle and to aggressively remove canopy on targeted three-phase primary lines, while giving the Company space and time to execute these plans before requiring it to analyze the projected costs and benefits of an even shorter cycle and more aggressive canopy removal. The Company's proposal for its Line Clearing Program is more aggressive than ever before, made possible by the most aggressive crew resourcing plan it believes is feasible.

As discussed at pages 334-336 of Consumers Energy's Initial Brief, the Commission should reject the Attorney General's and MNSC's proposals to dramatically reduce the baseline amount for the LVD line clearing ramp up deferral. In its Initial Brief, page 138, MNSC argues that using historical amounts to set the baseline is supported by the Commission's preference for historical test years adjusted for known and measurable changes as stated in Case No. U-13898. But the Commission's "preference" stated in the April 28, 2005 Order in Case No. U-13898 ("U-13898 Order") was because, at that time, Michigan had no "statutory mandate to utilize a particular type of test year." U-13898 Order, page 4. In its November 2, 2009 Order in Case No. U-15645, page 6, the Commission recognized that with the passage of 2008 PA 286 and the use of a projected test year, "the dynamics of determining costs requires a certain degree of forward projections that is not solely dependent on historical data," and that "[w]hat is gained by dealing with data that is 'known and measurable' can be lost in forcing a utility to operate with outdated numbers." The baseline amounts proposed by MNSC and the Attorney General are "outdated" because they disregard the fundamental shift in operations to transition to a five-year LVD line clearing cycle and the increased cost necessary to support the future steady-state five-year cycle. 3 TR 1083-1084. Those outdated baseline amounts should be rejected.

2. <u>Generation O&M Expense – Emergent Reliability Expense</u>

In its direct testimony, Staff incorrectly assumed that Consumers Energy's $2.849 million of Emergent Reliability expense, which is part of the Company's Base O&M for its generating fleet, was an increase on top of the Emergent Reliability expense that was included in the 2024 historical amount of $8.346 million. 6 TR 4471. Company witness Blumenstock testified unequivocally that the Company's test year O&M expense is <u>not</u> derived by simply taking the 2024 historical amount and inflating it. 6 TR 3614-3615. The test year O&M forecast <u>does not</u> include the historical $8.346 million for the Emergent Reliability expense at all; the test year amount represents only *known* O&M work that will occur during the test year. 6 TR 3554, 3614-3615. Mr. Blumenstock explained the Company's process for developing the O&M cost as follows: "Personnel at the plants provide information on maintenance for each site or specific units. Once costs to operate and comply with regulations are prioritized, the Asset Strategy and Generation Planning organizations evaluate the plans required to maintain and/or improve the condition of the plant – weighing the estimated benefit to the customer for each project. Using this combination of information, a preliminary plan is prepared and reviewed to ensure high-priority issues are addressed and adequate resources and funding are available. After all appropriate levels of management have reviewed and approved the maintenance plan, a schedule is created." 6 TR 3554. In contrast, the Company budgets a modest amount for Emergent Reliability expense to address *unknown* O&M costs that will occur during the test year. 6 TR 4470. As a result, the only amount being included in the rate case for the Emergent Reliability expense during the test year is the $2.849 million explicitly designated for that expense. Staff's disallowance would leave the Company with no Emergent Reliability funding, despite the fact that the historical expense over the last few years has significantly exceeded that modest amount.

Staff's response in its Initial Brief was essentially to claim that none of Mr. Blumenstock's testimony on this issue is true. See Staff's Initial Brief, page 118. Staff simply says that it "disagrees" with the Company. Staff's Initial Brief, page 118. But, the Company's testimony didn't state any opinion. Mr. Blumenstock's testimony was factual testimony. The Company **does not** forecast its test year O&M for generation by taking historical amounts and inflating them.

In an apparent attempt to justify its disagreement with the Company's factual testimony, Staff calculates that the Company's total generation O&M for the test year is higher than its total generation O&M in 2024 (after excluding J.H. Campbell O&M). Staff's Initial Brief, page 119. Even though Staff's calculation of the difference does not correspond in any way to the amount of the Emergent Reliability expense (either historical or test year), Staff dubiously concludes that the historical Emergent Reliability expense amount must be in the test year in addition to the $2.849 million projected amount merely because the total amount of O&M went up. That inference doesn't pass any type of logic test. Say, for example, that a car owner budgeted $1,000 for a known need to get new tires in 2024 and $100 for any other unforeseen car maintenance costs (total: $1,100). But, during 2024, the owner needed a new battery for $150 (going slightly over budget). Then in 2026, the car owner budgeted $5,000 for a known need to replace the transmission and again $100 for any other unforeseen car maintenance costs that might occur in 2026 (total: $5,100). Staff's logic is that because the total cost in 2026 is higher than the cost in 2024, then the 2026 budget *must* include both the $100 of emergent car cost in 2026 and the $150 emergent car costs from 2024. As this illustration shows, that conclusion is not justified. The conclusion does not follow from the premises.

Finally, Staff prepares a table to compare (i) the 2024 historical Emergent Reliability expense by plant to (ii)(a) an inflated version of those historical amounts and (ii)(b) the test year expenses projected for each plant. Staff's Initial Brief, page 120. Again, Staff concludes that because the total amount for those plants collectively in the test year is higher than the total amount for those plants collectively in 2024, the historical Emergent Reliability expense amount must be in the test year in addition to the $2.849 million projected amount. This is the same faulty logic discussed above, but applied to a smaller subset of the Company's generation O&M costs. Staff's own table conclusively proves Staff's theory wrong. If the Company's test year O&M were simply an inflated version of the Company's 2024 O&M amount, then columns (c) and (d) of Staff's table should perfectly match. They don't. Even if Staff assumed (again, contrary to Mr. Blumenstock's factual testimony) that the Company may be inflating the 2024 O&M, but then adding some additional O&M on top to derive its test year amount, then none of the values in column (d) should be less than its corresponding value in column (c) and certainly not lower than its corresponding value in column (b). That reasoning is also disproven by Staff's own table. Both the Jackson and D.E. Karn test year amounts are *less than* the inflated version of the 2024 historical actual amounts for those plants. The amount for the Jackson plant is even lower than the 2024 historical amount. Staff disproved its own theory.

The Company's Emergent Reliability expense forecast for the test year is very conservative compared to its recent actual expense amounts and, contrary to Staff's position, there is no double-inclusion of any Emergent Reliability expense amount from the historical year in the projected test year. The Commission should reject Staff's unreasonable disallowance and approve the full amount of the Company's Emergent Reliability expense.

3. <u>Customer Experience and Operations O&M Expense</u>

The Company's Customer Experience and Operations O&M expense consist of Customer Interactions and Billing and Payment. The Company's Customer Interactions O&M expenses ensures that all customers are equipped to seamlessly connect with the Company in their preferred channel (phone, Interactive Voice Response (IVR), website, mobile app, or digital correspondence– such as text messages). 3 TR 967.8. Customer Interactions is responsible for the ownership and execution of the various channels of customer interactions. 3 TR 967.9. The work of the Customer Interactions group includes: Digital Customer Operations ("DCO"), Customer Contact Center, Business Customer Care ("BCC"), Credit and Assistance, and Analytics and Outreach. These business areas are aligned to the larger department goals of: (i) providing customers the opportunity to obtain service in their channel of choice; (ii) facilitating program enrollment and product selection to meet customer energy needs; (iii) providing support and guidance to the Company's business customers; (iv) supporting the Company's most vulnerable customers with information and enrollment in assistance programs; and (iv) achieving the Company's clean energy goals. *Id*.

In its Initial Brief at pages 115 through 117, the Urban Core Collective ("UCC") argues that the funds for the Company's DCO and Analytics and Outreach work should be disallowed, contending that the Company has not shown how these expenses benefit customers. However, the Company has supported the reasonableness of these costs. The Company's Analytics and Outreach group incorporates customer feedback and data into the Company's operations. This contributes to improving customer experience. 3 TR 967.41. This group allows the Company to use its resources more efficiently, target communications to precise customer segments, and select programs that are most likely to provide customer value. Some of the work undertaken by this group includes all MPSC reporting, customer Estimated Time of Restoration, data quality, and data automation. 3 TR 367.42. Analytics and Outreach efforts allow the Company to more efficiently utilize its resources, target communications to precise customer segments, and select, develop, and implement programs that are most likely to provide customer value.

Additionally, the DCO expenses are reasonable and provide benefits to customers. This team is responsible for the operation and continuous improvement of the Company's customer-facing digital applications, including its website and mobile application. The team leads the design, development, and launch of the Company's technologies, as well as ensuring that the technologies are responsive to customer needs and requested changes. 3 TR 967.10. The DCO team keeps the website and mobile app running, accessible for and responsive to Consumers Energy customers. 3 TR 967.11. The DCO team is critical to the success of the Company's objective to digitize transactions to better serve customers on the website, which is a more cost-effective means of serving customers than other channels. The costs of these groups are reasonable and should be recovered in rates.

4. Corporate Services O&M Expense

a. Corporate Memberships

As part of the Company's Corporate Services O&M Expense it includes $830,705 of O&M in dues it pays for corporate memberships. The Company described this expense on pages 356-358 of its Initial Brief. UCC argues "the Company has failed to provide sufficient evidence to prove that it has not included any expenses associated with advocacy, lobbying, or activities that undermine the interests of ratepayers in its request for recovery." UCC's claims are false and misleading.

First, UCC argues that the Company has not shown the corporate memberships expenditure to be reasonable and supported by competent, material, and substantial evidence. UCC fails to show that the Company did not meet this standard. UCC acknowledges that the costs were represented in testimony and exhibits and further detailed in a workpaper that all parties have access to. See UCC's Initial Brief, page 123. UCC attempts to make it appear that Company witness Matthew J. Foster couldn't adequately justify the expenses. For example, UCC makes a false claim that "[t]he Company did not convert the specific figures in Workpaper WP-PDD-18 to the test year to account for inflation, which Company Witness Foster said in cross examination was the reason for differences between Workpaper figures and requested recovery amounts" See UCC's Initial Brief, pages 124-124. This is clearly not true as Mr. Foster explains "Consumers Energy uses … inflation rates to project Corporate Services O&M. Company witness Patrick D. Daly supports the inflation rates used." 5 TR 3357. Simply put, in translating the amounts from the workpaper to the O&M exhibit Mr. Foster adjusted for inflation. This example shows UCC failed to adequately review the information presented to them. Further, UCC admits it did not review the full application when they note "[i]t was not until the Company provided its rebuttal testimony that it pointed intervenors to a spreadsheet containing historic membership dues calculation methodology and a breakdown of historic dues expenses, Workpaper "WP-PDD-18." See, UCC's Initial Brief, page 123. This workpaper was part of the Company's initial filing and UCC's statement makes it clear that it did not fully review the information provided in the Company's initial filing before UCC had already made its arguments related to the corporate memberships expense. The Company should not be penalized for UCC's failure to fully review the filing the Company made.

UCC next claims the corporate membership dues should be disallowed because "Consumers has failed to provide sufficient, concrete benefits to ratepayers which would justify recovering costs from ratepayers." UCC's Initial Brief, page 125. UCC provided no case law or prior Commission orders that articulate a standard of providing "sufficient concrete benefits" to ratepayers. In the very next sentence to justify this standard UCC articulates a different standard based on the Commission ordering DTE to provide a detailed description of how corporate memberships in organizations "specifically impact/benefit customers". UCC's Initial Brief, page 126 (quoting the Commission's December 1, 2023 Order in Case No. U-21297). There are several issues with UCC's argument. First "sufficient concrete benefits to ratepayers" is not the same standard as "specific impact or benefit to customers". Second, this was an order issued to DTE instructing DTE on what it must include in its next filing. This directive was specifically issued to DTE and cannot be interpreted as a requirement for Consumers Energy. Further, the Commission approved DTE's corporate membership expense in that case, showing that the lack of specific impacts or benefits then was not a valid reason for a full disallowance, indeed the Commission still found that the expense for DTE was reasonable. The Company has in this filing explained the benefits and thus, UCC's recommendation for full disallowance would be unreasonable and should be rejected. Additionally, Consumers Energy has stated that it believes it is a reasonable directive to include information about the benefits of its corporate memberships and will include this information in its next filing and has included it as part of its rebuttal filing. 5 TR 3371.

UCC's final argument is that dues paid to organizations that engage in advocacy that allegedly undermines customers' interests violates customers' constitutional rights. It is well established that the Commission has no inherent or common law powers. *Union Carbide Corp. v Public Service Commission*, 431 Mich 135, 146; 428 NW2d 322 (1988). As a creature of the Legislature, the Commission possesses only that authority bestowed upon it by statute. *Id*. A "statute that grants power to an administrative agency must be strictly construed and the administrative authority drawn from such statute must be granted plainly, because doubtful power does not exist." In Re: Telecommunication Tariffs, 210 Mich App 533, 539; 534 NW2d 194 (1995). The Commission has been bestowed no authority with regard to administering the U.S.

Constitution. However, while the Commission cannot issue a declaratory ruling as to the constitutional issues discussed by UCC, UCC's recommendation related to this issue was for the Commission to "establish a concrete standard barring recovery where trade associations dedicate significant resources to political advocacy". UCC's Initial Brief, page 143. The Company has already clearly shown in its Initial Brief (page 357) that this is redundant because recovery related to political advocacy is already excluded from this expense. UCC still claims "The 33 percent disallowance should be considered a baseline, or floor, upon which the Company needs to justify any requested recovery of corporate memberships for entities that are contrary to ratepayer interests." UCC's Initial Brief, page 141. Mr. Foster explained that the 33% is just that, a baseline, the total amount the Company excludes is 46%. 5 TR 3374. The Company already excludes a significant amount of the Corporate Memberships expense from rates, the remaining amount that is included has been clearly supported and the Company has explained the tangible benefits to customers. The Commission should approve the Corporate Memberships expense.

5. Information Technology O&M Expense

The Company's Information Technology ("IT") O&M expenses include $15,178,194 in O&M expenses for its new SAP enterprise solution called S/4HANA. 3 TR 740. The Attorney General opposed these O&M expenses, along with their deferral and the Company's proposed capital expenditures for the S/4HANA Implementation project. Attorney General's Initial Brief, pages 101-105. In its Initial Brief, the Company refuted the Attorney General's arguments in the "Accounting Request" and "IT and Security Capital Expenditure" sections. Company's Initial Brief, pages 150-153, 458; see also 3 TR 796-799, 1068-1070. The Company is now addressing this issue in the "Information Technology O&M Expense" section in this Reply Brief to clarify that the same arguments the Company made in response to the Attorney General's proposed capital expenditure adjustments apply equally to her proposed $15,178,000 O&M expense adjustment.

The Company is also addressing one other issue from the Attorney General's Initial Brief. The Attorney General seemed to suggest that the Company can purchase support for its current SAP system indefinitely for a reasonable fee. Attorney General's Initial Brief, page 103. This is not true. Extended support for the Company's current SAP version is only available for a limited time. 3 TR 744.

The Commission should approve the Company's proposed S/4HANA O&M expenses, which would then, if approved, be deferred as the Company proposed.

6. Incentive Compensation Expense

a. Response to the Attorney General

The Company requested $2.2 million in O&M expense for the expected Employee Incentive Compensation Plan ("EICP") costs in the projected test year. Staff and the Attorney General have proposed reductions to the EICP expense, and the Company has responded to those in its Initial Brief at pages 374-385. The Attorney General argues the Company has failed to meet the standard established by the Commission in its December 22, 2005 Order in MPSC Case No. U-14347 ("U-14347 Order") for allowing recovery of incentive compensation pay: "[E]xecutive bonus and employee incentive plans require a showing that the benefits to ratepayers from the bonus and incentive plans, at a minimum, will be commensurate with the programs costs. Moreover, the utility has the burden of establishing how the proposed programs benefit ratepayers." Attorney General's Initial Brief, pages 185-186 (quoting the U-14347 Order, page 34.) The Company has clearly met the standard established by the Commission in Case No. U-14347. Not only has the Company quantified benefits accruing directly to customers at a much higher amount than the cost of the plan, the Company also presented extensive evidence showing how customers benefit. See Consumers Energy's Initial Brief, pages 371-374.

Additionally, the Attorney General's claim that "[t]he EICPs, as designed by the Company, are heavily weighted toward achieving and rewarding financial measures that benefit shareholders" mischaracterizes what the Company is seeking recovery for. See Attorney General's Initial Brief, page 186. Given how the Company's goals are weighted and recovered, the Attorney General's claim that the Company's "inclusion of financial metrics in the EICPs is clearly intended to focus employee[s] on achieving the Company's financial goals" misrepresents the goals of the EICP. See Attorney General's Initial Brief, page 186. The goals are banded to ensure that employees are motivated to achieve each goal separate from one another. 3 TR 1025-1026. That means that the design of the EICP ensures that Company employees are not solely focused on financial achievement but are motivated to hit each goal, operational or financial, individually. Because shareholders cover the costs associated with financial metrics, then the Company's request is clearly in line with the Commission's statement from the U-14347 Order: "If Consumers wishes to have an incentive compensation plan that rewards its employees for achieving financial goals that chiefly benefit shareholders, it may do so" as long as shareholders pay the costs. U-14347 Order, page 35. If the Company recovers none of the costs associated with the financial metrics through customers, then there is no issue with having individual goals rewarding employees based on financial metrics because the Company is only seeking recovery for the cost related to the operational goals and not the financial metrics.

For the reasons in the record and evidence presented by the Company, Consumers Energy requests the Commission approve the full portion of the EICP expense tied to the Company's operational goals.

V. COST OF SERVICE, RATE DESIGN, AND TARIFF ISSUES

A. Cost of Service

1. EAC Report & Distribution Cost Allocation

MNSC's Initial Brief incorrectly claims that Consumers Energy "proposes to change the methodology by which the Cost of Service Study (COSS) allocates the costs of distribution assets" in this case because the Company is using a new Electric Asset Categorization ("EAC") report in place of its old Transmission and Distribution ("T&D") report to update the cost categories used in the COSS. MNSC's Initial Brief, page 74. MNSC makes this claim despite the fact that Company witness Emily A. Davis testified that the EAC report "did not change the categorization of LVD energized lines, line equipment or batteries from the Company's last rate case nor did it fundamentally change how distribution costs are allocated." 4 TR 2670.

MNSC's response is to argue that "Consumers [Energy] takes pains to avoid calling the choice to allocate the cost of distribution assets only to downstream customers a change in method – instead characterizing it as an 'update.'" Consumers Energy "takes pains" to avoid calling updates required by the EAC report as a "change in method" because it is **not** a "change in method." In Case No. U-21585, the Company used a Class Peak allocator to allocate FERC accounts 361-362 (Distribution Substations and Equipment), 364-367 (Distribution HVD Overhead Lines and Distribution Underground Lines), and 360 (Distribution Land) costs, further broken out by voltage, to customers taking service at that or lower voltage levels. 4 TR 2652-2656. The assumption was that those customers would be downstream of and therefore utilizing that equipment. In this case, the Company is still breaking out costs by FERC account and voltage level and using a Class Peak allocator to allocate costs to customers attached to and downstream of that equipment. 4 TR 2652-2656. The methodology has not changed. The only difference is that the Company now has more granular detail about the costs in those FERC accounts, which allows the Company to apply the Class Peak allocators more precisely. For example, for Distribution Substations and Equipment (FERC accounts 361-362), the Company formerly only had enough detail to divide those costs into three voltage categories where it was assumed lower voltage customers used *all* of the upstream facilities. 4 TR 2652, Table 1. Now the Company has sufficient detail to divide those costs into six categories that differentiate between the voltage level(s) downstream relying on that equipment. 4 TR 2652, Table 2. That additional detail allowed the Company to identify some costs that were formerly allocated to Voltage 1, 2, 3, and 4 customers that are only actually caused by and attributable to Voltage 1 customers. 4 TR 2652, Tables 1 and 2. Likewise, the additional detail allowed the Company to identify some costs that were formerly allocated to Voltage 2, 3, and 4 customers that are only actually caused by and attributable to Voltage 2 customers. 4 TR 2652, Tables 1 and 2.

MNSC incorrectly claimed in its Initial Brief that the EAC "reliev[es] customers taking service at higher voltage of cost responsibility and shift[s] those costs to customers at lower voltage," which supposedly "will benefit large customers at the expense of small ones." MNSC's Initial Brief, page 74. But that is not true. The EAC report provided new detail that allowed Consumers Energy to assign certain costs to only Voltage 1 and Voltage 2 customers, which would have previously been lumped together with other costs in a category that was assigned to all customers downstream of those voltages. MNSC repeats this false claim later when it argues, "Whereas the Company used to allocate the cost of distribution assets based on class peak at the highest voltage connected to the asset, the new method allocates costs based on the highest voltage level downstream of the asset. The upstream or high side voltage connected to the asset would no longer bear any cost responsibility for the asset." MNSC's Initial Brief, page 75. MNSC then cites Ms. Davis's rebuttal as if it supports this claim, but Ms. Davis was clear during cross examination that she did not agree with MNSC's characterization of how the allocators worked before and after the development of the EAC. 4 TR 2689. During cross exam, MNSC asked Ms. Davis to confirm that the new category of "HVD (Voltage 1) Bulk Power (Shared V2, 3, 4)," which is allocated solely to Voltage 2, 3, and 4 customers would have been part of the "HVD (Voltage 1)" category in Case No. U-21585, which was allocated to Voltage 1, 2, 3, and 4 customers in that case. 4 TR 2690. Ms. Davis affirmed that was correct (4 TR 2690), and MNSC erroneously believes that proves that the EAC shifted costs from Voltage 1 customers to Voltage 2, 3, and 4 customers. But, the reason that Ms. Davis disagreed with MNSC's characterization is that the new category "HVD (Voltage 1) (V1 Only)" in this case *also* was included in the "HVD (Voltage 1)" category in Case No. U-21585. Which means that in Case No. U-21585, Voltage 2, 3, and 4 customers were paying for costs that are now solely allocated to Voltage 1 customers. When there is a cost category that groups both types of assets (i.e. (i) assets that serve only Voltage 1 customers and (ii) assets that serve only Voltage 2, 3, and 4 customers) into a single category with no way to differentiate them (as was the case in Case No. U-21585 and other previous cases), then the only way to allocate those costs is to allocate whole collective batch of costs to all four voltage groups, knowing that each voltage group is theoretically paying for some portion of the other group's assets and vice versa. The EAC simply disentangled the assets for both groups so that neither group is paying for the other group's assets and each group is now only paying for its own assets. Contrary to MNSC's claims, the EAC does not shift costs *from* lower voltage levels *to* higher voltage levels – it shifts costs ***<u>in both directions</u>*** so that no group is paying for costs it did not cause.

There is good evidence in the case to cast doubt on MNSC's narrative about the EAC shifting distribution costs from high voltage customers to lower voltage customers. Under the Company's proposal in this case, Rate GPD Voltage 1 customers would actually experience a significant *increase* in the distribution component of their rates as shown on Exhibit A-16 (LMC-3), Schedule F-3.0, page 11. That exhibit shows that Rate GPD Voltage 1's distribution costs would increase from $2.571 million to $6.312 million, an increase of 145%. There is no reason to believe that the EAC shifts costs away from Rate GPD Voltage 1 to other customers.

For additional context, it is worthwhile to discuss in more detail the reason Consumers Energy developed the EAC report. The old T&D report "was built decades ago and relied on a set of Microsoft Access databases and mapping tables to categorize certain distribution assets." 4 TR 2651. Ms. Davis testified that "[a] combination of process complexity, outdated technology, and the loss of institutional knowledge made it difficult to continue to maintain and run the report." 4 TR 2651. Speaking plainly, the "loss of institutional knowledge" is a diplomatic way to say that the person who maintained the old T&D report retired from Consumers Energy. When he did, the people who became responsible to recreate the old T&D report encountered the "process complexity" and "outdated technology" that Ms. Davis testified about. Again, to speak plainly, the Company was having difficulty figuring out how the retired employee prepared the old T&S report and replicating a result that accurately categorized assets for use in the COSS. It became clear that the old report was no longer replicable in a form that the Company could confidently confirm to be reliable, so the Company was going to have to come up with a new report or it would have no way to translate costs in FERC distribution accounts into reasonable categories for use in the COSS. Since it was necessary to create a new report, the Company was determined to develop a report that improved upon the old report and "increase[d] transparency around how assets are assigned in the COSS." 4 TR 2651. The result was the EAC report. The sole goal of the report was to more accurately categorize costs so that the report could continue to support the COSS. It was not intended to – nor did it – change anything about the Company's cost allocation methodology. The goal was always to apply the existing Commission-approved methodology to the newly refined cost categories. Every party but MNSC seems to understand that.

Because the Company's use of the EAC report does not propose any change in the cost allocation methodology approved by the Commission in Case No. U-21585, there is also no merit to MNSC's claim that the Company somehow failed to satisfy some special burden of proof related to that proposal. But, even if the Company were subject to such a special burden, the Company has presented ample evidence to meet it. Exhibit A-111 (MLH-5) documents in detail how the Company categorized substation and HVD line distribution assets for the EAC report. See also 3 TR 1336-1339. Exhibit A-111 (MLH-5) includes visual mapping for each component of the Company's distribution system to show the customers that are (and are not) served by that component. This mapping fully demonstrates that the distribution rates resulting from the Company's COSS using the EAC report will be equal to the cost of service for each distribution customer group because it illustrates very clearly that the components are being assigned to the customers who use them and that none of the components are being assigned to customers who do not use them.[9]

Finally, the Company addressed MNSC's arguments about bidirectional power flow on the distribution system in its Initial Brief, see Consumers Energy's Initial Brief, pages 404-405, and need not repeat those arguments in this Reply Brief. However, it is appropriate to respond further

[9] MNSC also implied that the Company's case was deficient because "[t]he [EAC] report is not in evidence." MNSC's Initial Brief, page 75. Consumers Energy has never put the former T&D report into evidence in a rate case. The accounting reports that help categorize the assets in the various FERC accounts are merely workpapers that support the COSS. Like all other workpapers, they are included as part of the Company's initial filing in the case, under the Commission's filing requirements, but are not admitted as exhibits. The EAC report was included as a workpaper in this case, and as such, it was served on MNSC. The Company also produced the EAC report itself in discovery and provided a detailed list of the substation and line equipment plant balances broken out by EAC category. .MNSC could have made it an exhibit if they chose to do so. They did not. The Commission has never, to the Company's knowledge, ruled that a COSS failed to satisfy the evidentiary burden in a rate case on the grounds that one or more of the workpapers supporting the COSS were not admitted as exhibits.

here to MNSC's claim that "Consumers has no plans to revisit the new allocations as it implements the distribution plan and bidirectional flows increase." MNSC's Initial Brief, page 80. That claim disregards Company witness Davis's testimony during cross examination in which she testified that, although there is no formal plan to change anything currently, "there's always a conversation with our engineering experts to understand how the system may be changing in material ways, [that] changes how they make investments." 4 TR 2701-2702. It was misleading to suggest that the Company is stubbornly inflexible on this issue. If there comes a time that there is proper engineering support to reconsider how bidirectional power flow changes cost causation, the Company will consider it. There is no such support right now.

MNSC's arguments related to the EAC report and its impact on the COSS are all without merit. The Commission should reject MNSC's arguments regarding distribution cost allocation as it relates to the EAC report.

2. Advanced Metering Infrastructure Meter Cost Allocation

On pages 89-93 of its Initial Brief, MNSC claims that federal and state law "requires AMI costs to be allocated according to program benefits" and concludes that "the Company is currently departing from cost-causation principles." No such legal requirement exists.

MNSC's claim is principally based on a shallow reading of federal case law pertaining to FERC's application of the cost-causation principle under federal law. The first problem with MNSC's claim is, of course, that the MPSC is not required to conform Michigan ratemaking to FERC or federal court decisions about how to apply the cost-causation principle in federal cases. Federal perspectives on the cost-causation principle are, at most, persuasive materials that the Commission is free to adopt or not as the Commission sees fit for state ratemaking purposes.

Even if the Commission were to agree that it is appropriate to adopt a similar application of the cost-causation principle followed by FERC, however, MNSC's characterization of that principle is not accurate. Federal courts have held that the cost-causation principle "traditionally required that all approved rates reflect to some degree the costs actually caused by the customer who must pay them." *K N Energy, Inc v FERC*, 968 F2d 1295, 1300; 297 US App DC 13 (1992). In *Midwest ISO Transmission Owners v FERC*, 373 F3d 1361, 1368; 362 US App DC 314 (2004), the U.S. Court of Appeals for the D.C. Circuit, in reviewing whether FERC's allocation of Independent System Operator costs to certain transmission customers was lawful, held that "we evaluate compliance with this unremarkable [cost-causation] principle by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party." It is self-evident that a customer who causes a utility to incur a cost necessarily benefits from the fact that the utility incurs it. So, it is unsurprising that federal courts might evaluate the relationship between a cost and the benefits the cost-causer receives when evaluating the reasonableness of the cost allocation. But, the mere use of the word "benefits" does not, as MNSC suggests, prove that the federal courts broadly meant to abandon the "cost-causation"-centered focus of the cost-causation principle and transform it into a "benefits"-centered principle that allocates costs to anyone who may be claimed to receive some benefit, no matter how remote or abstract.

Furthermore, it is important to recognize that the U.S. Court of Appeals only reviews FERC cost allocation decisions like this to ensure that the cost allocation mechanism is not "arbitrary and capricious." *Id*. at 1369. Therefore, when the U.S. Court of Appeals adopted its methodology of comparing costs assessed against the burdens imposed or benefits drawn by a party in *Midwest ISO Transmission Owners*, the Court was not purporting to establish a prescriptive standard for how FERC *must* allocate costs; it was only adopting a deferential standard for guiding its own post hoc review of FERC's cost allocation decisions. Federal courts do not require FERC to engage in the type of "benefits"-centered analysis that MNSC claims in making cost allocation decisions.

Instead, the federal courts have been clear that "FERC need not use a 'particular formula' or 'allocate costs with exacting precision.'" *Paragould Light & Water Comm v FERC*, 144 F4th 287, 292 (DC Cir, 2025).

MNSC cites *Paragould* for the proposition that "[t]he cost-causation principle requires that customers receive benefits 'roughly commensurate' to the costs they pay for a given transmission facility." *Id*. See MNSC's Initial Brief, page 90. The Paragould Court went on to state: "FERC may not force customers to pay for a facility if they do not receive any benefits from it." *Id*. In other words, if FERC allocates costs to a customer, federal courts will regard that allocation as "arbitrary and capricious" when the customer does not experience sufficient benefits from the cost. Put yet another way, FERC *cannot* assign costs to a customer when there is a *lack* of benefits. But, that observation does not support the converse proposition – which is what MNSC is trying to claim here – that FERC *must* assign costs to a customer if there is *any conceivable* benefit. The Courts' doctrine is stated primarily in language of proscription not prescription. It only establishes criteria for when FERC may *not* assign costs to particular customers, not when it is *required to* assign costs to particular customers. There is nothing in the federal case law that supports MNSC's claim that federal law requires Advanced Metering Infrastructure ("AMI") costs to be allocated according to program benefits merely because some of the case law uses the word "benefits." MNSC has failed to critically read what these cases actually hold.

In Order 1000 (136 FERC 61051 (2011)), FERC established its own principles for the showing that a transmission owner must make in compliance filings in order to support the appropriateness of its proposed cost allocation formula, which the U.S. Court of Appeals has endorsed. See *Old Dominion Elec Coop v FERC*, 898 F3d 1254, 1256; 438 US App DC 89 (2018). The first principle in FERC's requirements was that costs "must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits." 136 FERC 61051, ⁋ 622. While this language might initially appear to support the conclusion that FERC follows a "benefits"-centered view of cost allocation, FERC indicated this was consistent with its view of determining cost-causation principles, which asks "whether a proposal fairly assigns costs among those who cause the costs to be incurred and those who otherwise benefit from them." *Id*. at ⁋ 623. Again, in a "cost-causation"-centered philosophy, the cost-causer is expected to incur benefits as a result of the costs that it has caused the utility to incur, so use of the word "benefits" does not imply that FERC's cost-causation philosophy is "benefits"-centered rather than "cost-causation" centered. Based on FERC's clarification, it is clear that FERC's focal point is still cost causation, though FERC's language admittedly opens the door for allocation of some costs to customers who "otherwise" benefit from the cost. However, FERC recognized the pandoras box that language might inadvertently open and addressed it with caution. FERC acknowledged concerns from commenters in the proceeding that "the definition of benefits could be interpreted too broadly or too narrowly." *Id*. at ⁋ 625. FERC elected not to attempt to further define "benefits" for purposes of its Order 1000; however, FERC stated: "We expect that concerns regarding overly narrow or broad interpretation of benefits will be addressed in the first instance during the process of public utility transmission providers consulting with their stakeholders. If such interpretations should emerge, we can more effectively ensure that the term is not given too narrow or broad a meaning by considering a specific proposal and a record than by attempting to anticipate and rule on all possibilities before the fact." *Id*. FERC further specified that "any benefit used by public utility transmission providers in a regional cost allocation method or methods must be an identifiable benefit . . . ." *Id*. Therefore, it is evident that FERC was aware of the potential of an interested party to too broadly assert the concept of "benefits" in an effort to justify cost allocation where it is not really appropriate, and FERC clearly did not intend to embrace every conceivable form of "benefits" as adequate to support a cost allocation proposal.

The fifth principle in FERC's requirements from Order 1000 was that "the cost allocation method and data requirements for determining benefits and identifying beneficiaries . . . must be transparent with adequate documentation to allow a stakeholder to determine how they were applied . . . ." *Id*. at ⁋ 668. FERC recognized that "identifying which types of benefits are relevant for cost allocation purposes, which beneficiaries are receiving those benefits, and the relative benefits that accrue to various beneficiaries can be difficult and controversial." *Id*. at 670. FERC concluded that the method "must balance being pragmatic and implementable with being accurate and unbiased." *Id*. at 671. Accordingly, FERC stated that public utility transmission providers, in preparing their cost allocation proposal, were "free to consider suggestions . . . that only direct costs and benefits should be considered in economic studies." *Id*. Again, FERC was aware of the potential of an interested party to too broadly assert the concept of "benefits" in an effort to justify cost allocation where it is not really appropriate, and FERC once again clearly demonstrated that it did not intend to embrace every conceivable form of "benefits" as adequate to support a cost allocation proposal.

Contrary to MNSC's claims, even if the Commission were persuaded to adopt principles like FERC's (which it is not required to do), FERC's principles fall far short of "requiring" AMI costs to be allocated "according to program benefits" as MNSC perceives them. The "benefits" that MNSC claims customers receive as a result of the AMI investments are clearly "indirect" benefits and are susceptible to the challenge that MNSC is interpreting the term "benefits" too broadly. Although MNSC asks the Commission to significantly change the longstanding methodology for allocating AMI costs, MNSC offers nothing to show that it's proposed cost allocation balances "being pragmatic and implementable with being accurate and unbiased." Consumers Energy submits that the type of benefits that MNSC focuses on are not the types of benefits that are typically treated as "relevant for cost allocation purposes." As Company witness Davis testified, "the installation and investment in a meter is driven by the need to connect and serve a customer." 4 TR 2672. A customer's receipt of a meter enables the customer to begin receiving electric service and ensures that the electric service the customer receives will be accurately measured and timely used for billing purposes. Those are the types of direct benefits that are relevant for determining which customers "caused" the utility to incur the cost of an AMI meter. MNSC's effort to cherry-pick language in one or two federal cases to create the impression that cost-causation is mainly driven by far-reaching ideas about who "benefits" from particular costs, no matter how remotely or abstractly, is just not an accurate representation of how federal law regards the cost-causation principle.

MNSC then falsely claims that the Commission "adheres to these cost causation principles, requiring utility costs to be broadly allocated according to the benefits accrued to each customer class." MNSC's Initial Brief, page 91. MNSC cites only one Commission case as supposed support for that proposition, Case No. U-10554. However, Case No. U-10554 does not support MNSC's conclusion either. It is correct, as MNSC claims, that the Commission found in Case No. U-10554 that a Demand Side Management program would "benefit all customers." See MPSC Case No. U-10554, June 19, 1995 Order, page 13. But, that does not mean that the Commission intended to adopt a broad "benefits"-centered cost allocation philosophy. The Commission made it clear that its view on cost allocation for the Demand Side Management program was grounded on the Commission's recognition that the program "provides an alternative to construction of new power plants," which was "the basis for the design of rates associated with those programs." *Id*. In other words, the Commission viewed the cost-causation for Demand Side Management programs the same way it views cost causation for new power plants – all customers cause those costs, so all customers should be allocated a portion of the costs. In fact, the Commission explicitly stated in Case No. U-10554 that "the costs of [Demand Side Management] are not allocated based upon the benefits that customers receive." *Id*. at 14. The actual basis of the Commission's allocation of the Demand Side Management costs was clearly on the theory that the costs are caused in the same way that power plant costs are caused. In another case, where the Commission addressed cost allocation for power plants, the Commission has been clear that it "continues to view cost allocation in accordance with cost causation principles." MPSC Case No. U-16794, June 7, 2012 Order, page 107. MNSC's claim that the Commission's decision in Case No. U-10554 requires AMI costs to be allocated according to program benefits is clearly without merit too.

Finally, MNSC claims that, in order to account for the "benefits" of AMI meters to customers other than the customers who caused the costs, the Commission should allocate AMI costs according to the Company's last AMI business case from Case No. U-21389 and proposes that the Commission require Consumers Energy to once again produce a new AMI business case in each new electric rate case. MNSC's Initial Brief, pages 88-89, 94; 6 TR 3913. However, MNSC fails to recognize that during the numerous years that the Commission required the Company to produce a new AMI business case in each rate case, there were times that the business case was negative (i.e. it suggested that customers did not receive benefits from the original AMI investment because the costs exceeded the benefits). See e.g. MPSC Case No. U-20697, December 17, 2020 Order, page 241. MNSC assumes a positive business case that would support quantification of benefits to justify some allocation of AMI costs as energy-related and demand-related, but that is not necessarily the case. Even worse, because the past AMI business cases were sometimes positive and sometimes negative, relying on a new iteration of the AMI business case could result in unstable rates for customers. The reality is that the AMI business case was very sensitive to changes in underlying assumptions and market conditions and was not necessarily a good hind-sight tool for quantifying AMI benefits.

For all the reasons discussed above and in the Company's Initial Brief, there is no valid justification for MNSC's proposed changes to the allocation of AMI costs. The Commission should reject MNSC's proposal.

3. MAOAM Cost Allocation

On page 87 of its Initial Brief, MNSC claims that the Company "concedes that [Commercial and Industrial customers] are currently the only customers who can or do use [the Multi-Account Online Account Management ("MAOAM") project]." That claim is not correct. There are no customers who can or do use the MAOAM project today. The Company is incurring costs for the project, but the project is not ready for customer use yet. MNSC appears to have misunderstood Ms. Davis's rebuttal testimony when she said that "[t]oday the Company uses a third-party tool (Bill Trust) that is only available to C&I customers . . . ." 4 TR 2674. The costs for the third-party tool are not the same as the MAOAM costs and are allocated separately. The MAOAM project, when complete, will serve customers across all rate classes; therefore, it should be allocated in the same manner as other IT projects. 4 TR 2658.

VI. OTHER ISSUES

A. Distribution Investment Recovery Mechanism

For the first time in this case, UCC requests quarterly reporting on project completion rates, spending versus budget, and equity outcomes in the Investment Recovery Mechanism ("IRM") going forward. UCC's Initial Brief, page 104. The Commission should reject this additional reporting requirement because the separate IRM reconciliation already addresses these matters. See 3 TR 1619-1620.

B. Distribution System Planning and Analysis

UCC argues that the Company has not complied with the Case No. U-21389 requirement to make Geographic Information System ("GIS") reliability data publicly available. UCC's Initial Brief, pages 95-96. UCC is incorrect. In Case No. U-21389, the Commission required the Company to "develop, with the Staff's input, 'a clear and repeatable process that allows interested parties to request, safely obtain, and use GIS data.'" Case No. U-21389, March 1, 2024 Order, page 236. As directed, the Company met with Staff multiple times and developed the existing publicly accessible map with Staff's input. 3 TR 1621. While UCC seems to want something different, that does not mean that the Company failed to comply with the Case No. U-21389 order.

C. Customer Assistance Programs

At pages 20 through 41 of its Initial Brief, UCC alleges that the Company's current payment assistance programs are not adequate and argues for the adoption of a Percentage of Income Payment Plan program. For the reasons previously stated in its Initial Brief, Consumers Energy disagrees with this recommendation. Additionally, the Company supports Staff's position that "the Commission should continue its plan to modify energy assistance programs through the MPSC Case No. U-20757 case docket and Staff's energy affordability report and align its decisions on energy assistance across all relevant open dockets." See Staff's Initial Brief, page 192.

UCC argues that the Company did not "conduct an adequate affordability analysis," that affordability must be considered to determine whether rates are "just and reasonable," and that the Company should be required to present an affordability analysis "incorporating the Commission's definition of energy affordability" in rate cases. UCC's Initial Brief, pages 46, 56, and 62. First, the Company does consider customer affordability and addressed it in this filing, including describing and improving on a range of customer assistance options. See 3 TR 967.25-967.41, 1821. Pursuant to MCL 460.11(1) and (2), the Commission "shall ensure the establishment of electric rates equal to the cost of providing service to each customer class," but "may establish eligible low-income customer or eligible senior citizen rates." Consistent with MCL 460.11(2), the Company included funding for customer assistance options in rates. See 3 TR 944; Exhibit A-16 (LMC-3), Schedule F-3.0. Second, the Commission is not bound to any particular formula in setting rates, but rather considers "all relevant factors in exercising its broad discretion to determine a just and reasonable ratee." *ABATE v Public Service Commission*, 208 Mich App 248, 259 (1994); see also *In re Application of Mich Consolidated Gas Co*, 281 Mich App 545, 548 (2008). And third, the MPSC should not require the Company to conduct the affordability analysis that UCC requests because the details of the analysis are unclear and the Company does not have all of the information needed to perform the requested analysis. See 3 TR 967.71-967.72, 1848.

D. <u>State Reliability Mechanism</u>

The Commission has been consistent and made it exceedingly clear that the Company's rate case is not the appropriate docket to amend the State Reliability Mechanism ("SRM") calculation methodology. The Company discussed the SRM in its Initial Brief at pages 449-450. Staff and Energy Michigan, Inc. ("Energy Michigan") discuss amending the SRM based on Energy Michigan's proposed calculation. See Staff's Initial Brief, pages 148-153; Energy Michigan's Initial Brief, pages 1-18. The Company stands by its position that any change to the calculation methodology should occur in the original SRM case, Case No. U-18239. 3 TR 1785-1786. This would allow the Company to propose a methodology that does not unfairly harm full-service or any customers. It is also likely a new methodology will be needed due to MISO's Seasonal Construct which would make it untimely to adopt Energy Michigan's methodology in this case.

An alternative to the Company reopening the original docket would be initiating a stakeholder collaborative process. The Company is not the only utility impacted by changes to the calculation methodology and a collaborative process would allow all interested stakeholders to have input as well as allow for further consideration of the impact of MISO's new seasonal construct. It would be inappropriate to make this change now in this docket as "[w]hether to change the calculation method is a topic for a separate docket, as the Commission has stated several times." MPSC Case No. U-21585, March 3, 2025 Order, page 378.

E. Virtual Power Plants

Great Lakes Renewable Energy Association ("GLREA") cites to a wide range of Michigan statutes, rules, and cases and argues that this "full panoply of statutory authority provides the Commission sufficient jurisdiction and authority to require utilities to undertake [Virtual Power Plants]." GLREA's Initial Brief, page 6. But in all of GLREA's citations, GLREA does not identify a single Michigan statute that provides the MPSC the authority to require the Company to implement a Virtual Power Plant ("VPP") program as proposed by GLREA. All of the MPSC's authority must be found in statutory enactments, and doubtful powers do not exist. *Consumers Power Co v Public Service Commission*, 189 Mich App 151, 176 (1991) (stating that "[t]o the extent that the PSC actually ordered Consumers to enter, or not enter, into any particular contract, it exceeded its authority"). And the MPSC's authority to regulate rates does not include the power to make management decisions. *Union Carbide*, 431 Mich App 148. As discussed at pages 451-454 of the Company's Initial Brief, pursuant to the MPSC's requirement, the Company is committed to conducting a Distributed Energy Resource Management System ("DERMS") stakeholder working group and obtaining robust stakeholder input, including analysis of VPPs, before seeking funding for a DERMS. But the MPSC has no legal authority to require the Company to implement a near-term VPP program in this case.

F. <u>Customer Outage Credit</u>

For the first time in this case, UCC proposes changes to the customer outage credit. UCC's Initial Brief, page 67. The Commission should reject this new proposal because the provision of customer outage credits is governed by MPSC rules (see R 460.744, 460.745, and 460.746), and there is no evidence indicating that the Company has failed to comply with these rules. See also Case No. U-20629, September 11, 2025 Order.

VII. <u>CONCLUSION</u>

Consumers Energy Company requests that the Michigan Public Service Commission grant the relief requested at pages 460-461 of the Company's Initial Brief.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: December 23, 2025

By: ____________________________

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **CONSUMERS ENERGY COMPANY** for authority to increase its rates for the generation and distribution of electricity and for other relief.	))))))	Case No. U-21870

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

Crystal L. Chacon, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on December 23, 2025, she served an electronic copy of **Consumers Energy Company's Motion to Exceed Page Limit and Reply Brief** upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein.

Crystal L. Chacon

Crystal L. Chacon

Subscribed and sworn to before me this 23rd day of December 2025.

Melissa K. Harris

Melissa K. Harris, Notary Public
State of Michigan, County of Jackson
My Commission Expires: 06/11/2027
Acting in the County of Hillsdale

ATTACHMENT 1 TO CASE NO. U-21870

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