

February 17, 2026

Ms. Lisa Felice
Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48909

Via E-File

RE: MPSC Case No. U-21870

Dear Ms. Felice:

Attached please find the enclosed documents for filing:

- Exceptions to the Proposal for Decision by Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan; and
- Proof of Service.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me.

Sincerely,

Christopher M. Bzdok
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CC: Parties to Case No. U-21870

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

EXCEPTIONS TO THE PROPOSAL FOR DECISION

BY

**MICHIGAN ENVIRONMENTAL COUNCIL,
NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB,
AND CITIZENS UTILITY BOARD OF MICHIGAN**

February 17, 2026

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I. INTRODUCTION

The Michigan Environmental Council (MEC), Natural Resources Defense Council (NRDC), Sierra Club (SC), and Citizens Utility Board of Michigan (CUB) file these exceptions to the Proposal for Decision (PFD) issued on January 29, 2026.

II. EXCEPTIONS

A. Rate Base – Jackson Plant – The Commission should not adopt the PFD’s recommendation to approve the \$5.28 million requested by the Company for the Jackson Gas Plant GSU and VIGV projects.

In this case, the Company proposed to spend over \$28 million in the test year for various projects on the Jackson plant – the Company’s least efficient and most expensive gas plant.¹ In his testimony, Mr. Comings identified defects in the economic analyses supporting two of the projects – the JGS-Generator Step Up Transformer (GSU) Site Spare project and the LMI1-6 variable inlet guide vane (VIGV) project. Accordingly, Mr. Comings recommended disallowances for those projects. Because both projects received some funding in the last electric rate case – Case No. U-21585 (2025) – Mr. Comings only recommended disallowances for new, incremental spending above the Company’s prior allowances.²

Despite claims by Consumers, the ALJ found that Mr. Comings’ recommended disallowances did not impermissibly seek relitigation of prior-approved costs.³ The ALJ also agreed with the merits of Mr. Comings’ testimony and that the Company’s economic analyses were

¹ See PFD, pp 265-66 (citing witness Comings’ testimony that the Jackson plant is “the ‘most economically vulnerable of the [Company’s] three NGCC plants ... [and] further investment in the plant should be carefully considered’”).

² MNSC Initial Brief, pp 16-19; see also MNSC Reply Brief, pp 3-4 (noting that the projects were approved without objection and were not actively litigated).

³ See PFD, p 274 (agreeing with MNSC that *Pennwalt Corp v Pub Serv Comm’n*, 166 Mich App 1, 9; 420 NW2d 156 (1988) is inapplicable to Mr. Comings’ proposal).

in fact “flawed.”⁴ Nonetheless, the ALJ recommended “full allowance of the amounts requested in this case,” expressing reluctance to “pull the plug” on projects that are “well under way.”⁵ Such reasoning – which has been used in other recent orders⁶ – is troubling and should be rejected.

At its core, the PFD’s recommendation is based on a sunk-cost fallacy – i.e., that project spending must continue to be authorized simply because a project has started and some spending was previously approved. The logic appears to be that it would be wasteful to withhold additional funding for an incomplete project, even if a party presents evidence that the project is based on defective analyses. Such logic is backwards and mistakes the Company’s burden of proof.

In rate cases, the Commission has the responsibility to ensure that all spending is reasonable and prudent and supported by the appropriate analysis.⁷ It is the Company’s burden to provide such analysis and to “place in evidence facts...to support the utility’s petition” – and the evidence must be sufficiently “thorough, detailed, and meaningful” to “support a finding that the costs are just and reasonable.”⁸ Where the Company fails to do so, “the Commission’s hands are tied” – the costs must be rejected.⁹

In this case, the Company failed to provide thorough, detailed, and meaningful economic analysis of the GSU and VIGV project costs – a fact that is documented in the record¹⁰ and in the

⁴ *Id.* at 274-75.

⁵ *Id.*

⁶ See Case No. U-21860, PFD, p 188 (“[O]ngoing projects...would be difficult to terminate....For these projects there has been spending, in some cases significant sums, since 2023, and terminating these projects now could be disruptive, and could potentially increase costs.”).

⁷ See MCL 460.6a.

⁸ Case No. U-16794, Order, June 7, 2012, p 13 (citing MCL 460.6a(1)).

⁹ *Id.*

¹⁰ Direct Testimony of Tyler Comings, 6 Tr 3892-3901.

PFD.¹¹ The Commission previously rejected DTE Electric’s costs associated with the River Rouge plant for a substantially similar reason: inadequate economic analysis.¹² And while the PFD repeats some of the project benefits alleged by Consumers, that is not a proper basis for allowing project costs in this case, especially considering that the Company can always reapply in the future. As the Commission previously acknowledged in Case No. U-16794, a disallowance in one case does “not preclude the company from seeking [the same] expenditures in its next rate case.”¹³ Because the Company failed to support its GSU and VIGV projects with thorough, detailed, and meaningful evidence (including competent economic analysis, “the Commission’s hands are tied” in this case – the Company’s requests for the GSU and VIGV projects must be rejected.

Additionally, and critically, neither the record in this case nor the record in Case No. U-21585 support the PFD’s finding that the GSU and VIGV projects were approved as reasonable and prudent in U-21585 – or, if they were approved, that they were approved at the amounts claimed. The PFD appears to have accepted Consumers’ bare contentions to this effect, but those contentions are not supported by any evidence.

The PFD notes, “Consumers emphasizes that both contested projects were found to have value and were approved in Case No. U-21585.”¹⁴ However, there is no evidence in the record to support this conclusion. Consumers’ initial brief cites Mr. Blumenstock’s rebuttal testimony at 6 Tr 3617.¹⁵ However, the cited page of Mr. Blumenstock’s rebuttal contains nothing more than the

¹¹ PFD, pp 274-75.

¹² Case No. U-18014, Order, January 31, 2017, pp 14, 17 (“Consumers chose to present the Commission with scant evidence...”).

¹³ Case No. U-16794, Order, June 7, 2012, p 13.

¹⁴ PFD, p 272.

¹⁵ Consumers Initial Brief, p 117.

bare assertion on this point. Mr. Blumenstock provides no citations from U-21585 to support his rebuttal on this point because there are none.¹⁶

The Order in U-21585 never mentions the GSU project or the VIGV project.¹⁷ Neither project appears anywhere in Consumers' generation capital exhibit in Case No. U-21585.¹⁸ Consumers witness Blumenstock did not testify *at all* regarding the GSU project in Case No. U-21585.¹⁹ In this case, the filing attachments do not identify any expenditures for the GSU in 2024 and only \$500,000 of expenditures for it in 2025.²⁰

Mr. Blumenstock mentioned the VIGV project only in passing in Case No. U-21585.²¹ He stated it was one of 12 small projects each representing less than \$262,500 in expenditures.²² Consumers identifies only \$7,885 in expenditures for the historical period of January to December 2024.²³ That amount is far lower than the \$1,036,667 that Consumers says the Commission approved in U-21585.

Furthermore, the Company never presented any evidence in U-21585 establishing the reasonableness and prudence of the GSU project or the VIGV project. The record in this case

¹⁶ In his testimony, MNSC witness Tyler Comings noted that *according to the Company's filing*, the Commission approved \$916,667 for the Jackson Plant GSU project and \$1,036,667 for the Jackson Plant VIGV project in U-21585, but he did not take a position on whether those amounts are verified. To be conservative, he recommended disallowance only of amounts incremental to those that Consumers proposed in this case. Comings Direct, 6 Tr 3895-96.

¹⁷ Case No. U-21585, Order, March 21, 2025, pp 125-129 (generation capital expenditures).

¹⁸ See Ex A-12, Schedule B5.2 in Case No. U-21585. A GSU for the Covert plant does appear in that exhibit.

¹⁹ See Case No. U-21585, Direct Testimony of Richard T. Blumenstock, 5 Tr 1387-1521.

²⁰ Company's Part III Filing Requirements, Attachment 131, line 22.

²¹ Case No. U-21585, Blumenstock Direct, 5 Tr 1475.

²² *Id.*

²³ Comings Direct, 6 Tr 3895, citing Attachment 131 of Consumers Part III filing requirements (see line 26).

shows that Consumers' original concept approval for the GSU is dated November 14, 2024.²⁴ The Company's original concept approval for the VIGV project is dated October 17, 2024.²⁵ Consumers filed its application in U-21585 on May 31, 2024, more than five months before these concept approvals.²⁶

Finally, even if Consumers' unsupported contentions are taken at face value, most of the spending on both projects is at issue in this case – not U-21585. The Company claims to have received approval of \$916,667 for the GSU project in U-21585 but seeks \$3.66 million in this case.²⁷ Similarly, Consumers claims to have received approval of \$1,036,667 for the VIGV project in U-21585 but seeks \$1,614,898 in this case.²⁸

The Commission should not adopt the PFD's recommendation on these two projects because it is not based on substantial evidence. Even if it was based on substantial evidence, the PFD's recommendation implies that Consumers can start spending on a project before concept approval; never mention (or barely mention) the project in the prior rate case; fail to support the project as reasonable and prudent due to deficiencies in the concept approval; and yet still have future spending on the project locked in for subsequent rate cases so long as no party challenges the initial spending in the first case where it possibly can be challenged. And of course, no party would challenge the project in the prior rate case because Consumers never mentioned it in testimony or supported it in exhibits – or, like the VIGV project, mentioned it only as an under-

²⁴ Ex A-45.

²⁵ Ex MEC-12, Company Response U21870-MNSC-CE-0072_ATT_0004.

²⁶ Case No. U-21585, Application, May 31, 2024.

²⁷ Comings Direct 6 Tr 3895; Ex MEC-50, Consumers Part III filing attachment 133.

²⁸ *Id.*

\$262,500 expenditure. That is not a workable outcome for the parties or for Consumers' customers, who are stuck with the bill for projects snuck in under the radar in this fashion.

B. Cost of Service – AMI Cost Allocation – The Commission should allocate AMI costs in proportion to its relative benefits, which are 36% energy-related, 17% demand-related, and 47% customer-related.

Over the past 15-plus years, Consumers has replaced most traditional meters with advanced – or “smart” – meters, unlocking a wide range of system-wide benefits. In recognition of those benefits, MNSC witness Palmer recommended updating how costs are allocated to better ensure that all who benefit from AMI also share in its costs. The ALJ disagrees, recommending that the Company maintain the status quo.²⁹

According to the ALJ, the Company has only ever allocated meter costs using the traditional “weighted customer allocator.”³⁰ Even so, that does not imply that AMI’s cost allocation cannot and should not be revisited. As discussed in MNSC’s initial brief, AMI cost allocation has not been contested,³¹ and in such circumstances, past cases offer little persuasive value.³²

According to the ALJ, Michigan law does not *require* AMI costs to be allocated according to program benefits.³³ At a minimum, however, Michigan law *does* require the Commission to ensure that rates are just and reasonable and that each customer class “is assessed for its fair and

²⁹ PFD, pp 792-93.

³⁰ *Id.* at 792.

³¹ MNSC Initial Brief, pp 94-95. As previously noted, the use of the “weighted customer allocator” for AMI cost allocation is carryover from cost allocation of traditional meters. See Davis Rebuttal, 4 Tr 2673 (“[T]he Commission has consistently relied on the weighted customer allocator to fairly apportion meter costs amongst customer classes.”).

³² See Case No. U-20527, MEC Initial Brief, October 8, 2022, pp 32-33 (citing *In re Wisconsin Electric Power Company*, Case No. U-12615, Order dated November 20, 2001, 2001 WL 1658750, p 9 (placing little weight on past Commission decisions where it “did not adjudicate disputes or make findings regarding subsidiary issues”)).

³³ PFD, p 793.

equitable use of the electric grid.”³⁴ Accordingly, it is unreasonable for residential customers to subsidize the rates of industrial and commercial customers by paying for infrastructure that provides them energy-related and demand-related benefits. While the benefits unlocked from AMI may be novel in some respects, the Commission has previously recognized that it will need to adapt rate design “as customers’ use of the grid evolves” and as new technologies emerge.³⁵ The Commission has recognized, for example, that “traditional COS ratemaking models do not fully account for this new use” and that new rate design options – including new “fixed-system access and demand charges” – are needed to account for changing use of the grid.³⁶ MNSC’s recommendation accounts for the changed use; the Company’s weighted customer allocator does not. While the ALJ expresses concern that MNSC’s method is “inexact” and “could lead to inequitable results,”³⁷ the current method is already causing inequitable results.³⁸ And if, as the ALJ concludes, Michigan law “establishes no preferred method for allocating” the costs of meters,³⁹ then there is nothing stopping the Commission from exercising its discretion to change the method of cost allocation for the better.

The PFD also summarized arguments by various parties that allocating costs according to benefits would violate cost-causation principles – principles by which the Commission is bound.⁴⁰

³⁴ MCL 460.6(a); MCL 460.11(1).

³⁵ Case No. U-20147, Order, August 20, 2020, p 60; Case No. U-20960, Order, February 4, 2021, pp 5-6 (Adoption of new technologies has “changed the way energy customers utilize the grid, which may result in cost shifts relative to a customer’s energy use.”).

³⁶ See Case No. U-20960, Order, February 4, 2021, pp 4, 8.

³⁷ PFD, p 794.

³⁸ See MNSC Initial Brief, pp 88-95.

³⁹ PFD, p 793.

⁴⁰ See e.g., MCL 460.11 (“[T]he Commission shall ensure the establishment of electric rates equal to the cost of providing service to each customer class.”).

As noted in MNSC’s initial brief, the Maryland Public Service Commission and Colorado Public Utilities Commission must also comply with cost-causation principles, and yet, the costs of AMI are allocated according to benefits in both of those states.⁴¹ Regardless of whether Michigan law *requires* the Commission to allocate meter costs according to program benefits, the Commission *may* do so without violating MCL 460.11.⁴²

For the reasons outlined in MNSC’s initial brief, the Commission should approve the recommendation to more equitably allocate the costs of AMI among all who benefit.⁴³

C. Cost of Service – Distribution Cost Allocation -- The Commission should not adopt the PFD’s recommendation to approve Consumers’ proposal to modify its method of allocating costs of distribution assets based on the Company’s new Electric Asset Categorization report.

In this case, Consumers proposes to modify the method by which the Cost-of-Service Study (COSS) allocates the costs of distribution assets. Where previously Consumers allocated the cost of an asset based on class peak at the voltage level of the asset, the Company now proposes to allocate these assets based on class peak at the highest voltage level of facilities downstream of the asset. That is a modification of the current method, so Consumers has the burden of proving it better ensures that costs are equal to the cost of service than the current method. Consumers did not meet that burden because the Company has not determined what the cost consequences of this modification will be and because the change rests on a false assumption that power never flows upstream from a distribution asset. The PFD accepted Consumers’ baffling argument that this

⁴¹ See MNSC Initial Brief, pp 92-93 (citing cases by the Maryland Public Service Commission and the Colorado Public Utilities Commission).

⁴² See MCL 460.11(1) (requiring the Commission to establish “electric rates equal to the cost of providing service,” meaning that rates must comport with cost-causation principles).

⁴³ See MNSC Initial Brief, pp 88-95.

change in the method of allocating the costs of distribution assets is not a change – and therefore placed the burden of proof on MNSC to prove that the proposal should not be approved, rather than placing the burden on Consumers to prove that it should be. That was an error, and the Commission should not adopt it. Instead, the Commission should reject Consumers’ proposed change.

Consumers witness Emily Davis described a new Electric Asset Categorization (EAC) report that the Company used to break out distribution plant “into more detail to facilitate allocating costs to customers.”⁴⁴ The report is not in evidence. Using the extra-record report, Consumers proposed to modify its method of allocating distribution costs. 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.⁴⁵ Customers on the upstream or high side voltage connected to the asset would no longer bear any cost responsibility for the asset.⁴⁶

Ms. Davis stated that the allocator used is still class peak.⁴⁷ However, Consumers proposes to change how it determines the customers to whom it applies the allocator. For example, in the COSS from Case No. U-21585, the cost of a substation at voltage level 1 was allocated to all customers at voltage levels 1, 2, 3, and 4.⁴⁸ By contrast, under the proposal in this case, if customers downstream of the same substation take service at voltage levels 2, 3, and 4, then only those

⁴⁴ Direct Testimony of Emily A. Davis, 4 Tr 2650.

⁴⁵ Davis Direct, 4 Tr 2652-53; Direct Testimony of Caroline Palmer, 6 Tr 3918.

⁴⁶ Davis Cross, 4 Tr 2690.

⁴⁷ Davis Direct, 4 Tr 2653, 2654, and 2655. The class peak method allocates distribution costs relative to each customer class’s independent (non-coincident) peak demand. Case No. U-20963, Order, December 22, 2021, pp 345-46.

⁴⁸ Davis Direct, 4 Tr 2652.

customers would have cost responsibility for the substation – customers taking service at voltage level 1 would no longer have any cost responsibility for it.⁴⁹

MNSC opposed this change on two grounds. First, the proposal has cost consequences, but Consumers does not know what those consequences are.⁵⁰ The Company has not assessed them. Further, Consumers included the change in both versions 1 and 2 of the COSS, so it is impossible to determine the cost consequences on this record. The Commission should not adopt a change in cost allocation without any information about the cost consequences of the change.

Second, the proposed change assumes that customers on the upstream or high side of a distribution asset never cause any of the costs of, or benefit from, the asset. But Consumers Energy has not proven out that assumption. MNSC witness Caroline Palmer testified that “the power system is changing such that DERs [distributed energy resources] are making bidirectional power flow more common on the distribution system, in turn providing generation and other services to higher voltage customers who previously only benefitted from centralized generation delivered at the transmission or primary level.”⁵¹ Consumers agrees that power on its system can flow from lower to higher voltage distribution equipment.⁵²

While such bidirectional flows may be relatively small now, they exist and – importantly – Consumers has aggressive plans to increase them. The Company’s Reliability Roadmap highlights “[b]i-directional power flows, especially in circuits that show a propensity to higher-than average adoption of solar DG [distributed generation].”⁵³ Consumers anticipates between 2.4

⁴⁹ Davis Direct, 4 Tr 2652; Davis Cross, 4 Tr 2690.

⁵⁰ Davis Cross, 4 Tr 2691-92 and 2695-96.

⁵¹ Palmer Direct, 6 Tr 3919.

⁵² Ex MEC-17, Response to MNSC-CE-0222(c).

⁵³ Exhibit A-129, Reliability Roadmap, p 34.

and 3.5 GW of solar DG by 2030, causing “two-way flows.”⁵⁴ Consumers also justifies the importance of a DER Management System (DERMS) in part based on the described bidirectional power flow, calling DERMS “critical for managing bi-directional power flows.”⁵⁵ “Clearly, Consumers is increasingly planning and designing its power system to be bidirectional.”⁵⁶

Because power sometimes flows from lower to higher voltages on Consumers’ system now, and the Company plans to increase the amount of power flowing in that direction as it connects more distributed solar in the future, the assumption that power only flows from the high to low side of distribution assets – is not accurate. Therefore, it is not consistent with cost causation to assign upstream voltage zero cost responsibility for equipment if some power is flowing upstream. Further, the assumption that no power flows upstream will grow less accurate as time goes on and Consumers connects more distributed solar to its system.

The PFD recommends that “MNSC’s objection to the EAC report should be rejected.”⁵⁷ The PFD finds that “Consumers adequately rebutted MNSC’s claim that the EAC report represents a new method of allocating distribution costs.”⁵⁸ To support that finding, the PFD recites arguments from Consumers’ reply brief that the Company “continues to break out costs by FERC account and voltage level and use a Class Peak allocator to allocate costs to customers attached to and downstream of that equipment;”⁵⁹ and that “[t]he EAC report now allows the Company to apply the Class Peak allocators more precisely, and Consumers illustrated how certain assets that

⁵⁴ *Id.* at 35.

⁵⁵ *Id.* at 142.

⁵⁶ Palmer Direct, 6 Tr 3920.

⁵⁷ PFD, p 781. In the same section, the PFD recommends rejection of MNSC’s proposal to allocate battery costs to all distribution customers, but MNSC is not taking exception to that recommendation.

⁵⁸ *Id.*

⁵⁹ *Id.* (citing Consumers’ Reply Brief, pp 21-22).

were previously grouped into a single category with no way to differentiate them are now ‘disentangled’ so that customer groups are not paying for other groups’ assets.”⁶⁰ There are several problems with these findings.

First, the findings misstate (or adopt Consumers’ misstatement) of what is happening. Consumers *is* continuing to break out costs by FERC account and voltage level and use a Class Peak allocator – but it is *not continuing* to allocate costs only to voltage levels attached to and downstream of that equipment. Allocating costs only to customers on voltage levels downstream of distribution assets is new. It is undisputed that until now, Consumers allocated costs to all customers on the voltage level of the asset or below.

Second, there is no basis in evidence or common sense for the PFD’s acceptance of Consumers’ argument that allocating the cost of distribution assets only to voltage levels downstream of an asset instead of all customers at or below the asset’s voltage level is *not* a modification to the existing cost allocation method. The proposal obviously modifies the current method. Consumers did not allocate distribution plant costs in this way previously.⁶¹ The Company proposes new and revised COSS categories that did not exist before.⁶² The Commission has not previously approved allocating these costs only to downstream customers.⁶³ And the change has cost consequences.⁶⁴

The Commission has held that “proponents of modifications to the existing cost allocation method bear the burden to demonstrate that the methods that they respectively advocate ‘better

⁶⁰ *Id.*

⁶¹ Davis Cross, 4 Tr 2690 and 2695.

⁶² Davis Direct, 4 Tr 2653.

⁶³ Davis Cross, 4 Tr 2688-90. Ms. Davis argued that the change is directionally consistent with the Commission’s intent with respect to allocating distribution costs. *Id.* at 2688-89.

⁶⁴ *Id.* at 2691-92 and 2695.

ensure rates are equal to the cost of service' than the current method.”⁶⁵ On its face, that holding is not limited to wholly new cost allocation methods. It applies to modifications of existing methods. Plainly Consumers is modifying its existing method for allocating distribution costs, and therefore, the Company has the burden to demonstrate that the change is reasonable and prudent.

Because of this error, the PFD wrongly put the burden on MNSC. The PFD started down the wrong track when it recommended that “MNSC’s objection to the EAC report should be rejected” – rather than that Consumers’ proposed modification should be approved.⁶⁶ The PFD continued down the wrong track when it found that MNSC did not prove that “there is no basis to reject Consumers’ COSS *or to otherwise alter its allocation methods* due to bidirectional power flows.”⁶⁷ MNSC did not propose to alter Consumers’ cost allocation method due to bidirectional power flows. Consumers wrongly proposed to modify its cost allocation method despite the existence and projected future growth of bidirectional power flows.

The PFD doubles down on the error when it cites Company witness McPhail’s testimony that bidirectional power flows are currently de minimis and Consumers is currently unable to track them; and finds that “[i]t would be premature and imprudent “to modify cost allocations without adequate, quantitative data demonstrating that lower-voltage assets are being used to serve higher-voltage customers.”⁶⁸ But again, MNSC did not propose to modify Consumers’ cost allocation method. The PFD has it backward and shifts the burden from the Company onto MNSC. If Consumers currently lacks sufficient data on bidirectional power flows – putting aside its plans to increase such flows – then the lack of data undermines the Company’s assumption that the costs

⁶⁵ Case No. U-17689, Order, June 15, 2015, pp 18-19.

⁶⁶ PFD, p 781.

⁶⁷ *Id.*

⁶⁸ *Id.* at 782.

of distribution assets are caused only by downstream customers and are in no way caused by those customers upstream.

Finally, the PFD finds “there is not adequate evidence showing that the EAC report results in costs being unfairly shifted from low- to high-voltage customers.”⁶⁹ Again, that finding misstates the burden of proof. MNSC does not have the burden to show that Consumers’ proposed modification will cause unfair and inequitable costs shifts. Consumers has the burden to show that its cost-of-service rates will ensure that class and sub-class is assessed for its fair and equitable use of the electric grid.⁷⁰ Consumers cannot meet that burden because it never assessed what the cost impacts of its proposal are.⁷¹

In sum, going from allocating the costs of a distribution asset to all customers on the voltage level of that asset or below to allocating the costs of that asset only to customers on voltage levels downstream of that asset is a modification of Consumers’ existing method of allocating distribution costs. Therefore, Consumers has the burden of proving that this change ensures the establishment of electric rates equal to the cost of providing service to each customer class, and that each class will be assessed for its fair and equitable use of the electric grid.⁷² The PFD wrongly placed the burden of proving the opposite of these things on MNSC, and wrongly held Consumers’ lack of data on bidirectional power flows and its failure to assess the cost consequences of this change

⁶⁹ PFD, p 781.

⁷⁰ MCL 460.11(1).

⁷¹ Davis Cross, 4 Tr 2691-92 and 2695-96. In its reply brief, discussed by the PFD at p 779, Consumers argued that “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 argument is a sideways reach to grasp evidence that was never evaluated by the cost-of-service witnesses or discussed before Consumers threw it into its reply brief. There could be lots of reasons for the increase in distribution costs for GPD-1 customers. The same exhibit shows flat to minimal increases for other GPD voltage levels. Further, Consumers witness Davis said in cross that she did not know the cost shift effect of these changes. Davis Cross, 4 Tr 2691-92.

⁷² MNSC Initial Brief, pp 74-82.

against MNSC. The Commission should not adopt the PFD's recommendation or Consumers' proposed change.

D. Rate Design - Exceptions Regarding Proposed Changes to the LED Rate.

Consumers Energy has a Large Economic Development (LED) rate that it currently offers to primary customers with a minimum new or expanded demand of 35 MW.⁷³ The LED rate is heavily discounted in a variety of ways discussed below. In this case, Consumers seeks approval to offer a facilities allowance to LED customers that would offset the incremental distribution investment cost of adding a new LED customer to the Company's system.⁷⁴ The facilities allowance would reduce an LED customer's incremental distribution charge, which collects the costs of dedicated substation, transformers, wires, and metering that Consumers incurs specifically to serve that customer.⁷⁵ The Company would set the facilities allowance amount based on the net present value (NPV) of five years' worth of expected distribution and system contribution charge revenues from the LED customer.⁷⁶ Consumers would then reduce the LED customer's incremental distribution charge by that amount.⁷⁷ Consumers also seeks to apply the allowance retroactively to existing LED customers who signed up for service without an allowance.⁷⁸

⁷³ The Commission approved the LED rate in an *ex parte* proceeding in 2021. Case No. U-21160, Order, December 22, 2021.

⁷⁴ Direct Testimony of Laura M. Connolly, 3 Tr 159.

⁷⁵ Palmer Direct, 6 Tr 3930; Ex MEC-19, Response to MNSC-CE-0253(c); Ex MEC-20, Response to MNSC-CE-0255(c).

⁷⁶ Connolly Direct, 3 Tr 159; Palmer Direct, 6 Tr 3930; Ex MEC-19, Response to MNSC-CE-0253 with Attachment 1.

⁷⁷ *Id.*

⁷⁸ Consumers also sought to update the production capacity charge to the latest forecast of MISO Cost of New Entry (CONE) and to include a power factor adjustment, but MNSC took no position on these changes.

The governing statute requires the Commission to “ensure the establishment of electric rates equal to the cost of providing service to each customer class . . .”⁷⁹ The statute also requires that “[t]he rates of an electric utility shall be just and reasonable and a consumer shall not be charged more or less than other consumers are charged for like contemporaneous service rendered under similar circumstances and conditions.”⁸⁰ As the proponent of adding a facilities allowance to the LED rate, Consumers has the burden to demonstrate that its proposal meets these requirements.⁸¹ It plainly does not.

MNSC recommended that the Commission: (1) reject adding the proposed facilities allowance to the LED rate; (2) if it does approve the facilities allowance, at least not apply it retroactively to existing customers; (3) increase the system contribution charge; (4) reduce the length of LED rate contracts; and (5) require a five-year true-up process to reconcile any overestimated revenue if the Commission does adopt facilities allowance.⁸²

The PFD recommends (1) approving Consumers’ proposed facilities allowance; (2) allowing existing LED customers to be eligible for the facilities allowance if an allowance is contemplated in their contract and the Company obtains *ex parte* approval; (3) updating the system contribution charge in each rate case but without correcting the excessive discount built into the calculation of the charge; (4) rejecting MNSC’s recommendation to shorten the LED contract period; and (5) approving a five-year true-up process and requiring Consumers to reconcile any

⁷⁹ MCL 460.11(1).

⁸⁰ MCL 460.557(4).

⁸¹ *Dillon v Lapeer State Home & Training School*, 364 Mich 1, 8; 110 NW2d 588 (1961); *BCBSM v Governor*, 422 Mich 1, 88-89; 367 NW2d 1 (1985); *In re Michigan Gas Utilities Co*, MPSC Case No. U-7484, Opinion & Order August 30, 1983, p 10, and *In re Detroit Edison Co*, MPSC Case No. U-8030-R, Opinion & Order, July 9, 1987, pp 16-17.

⁸² MNSC Initial Brief, pp 96-123.

overestimated revenue.⁸³ MNSC takes exceptions regarding recommendations (1) and (4) in whole – and to recommendations (2) and (3) in part.

1. The Commission should reject the PFD’s recommendation to add the proposed facilities allowance to the LED rate.

The Commission should reject adding the proposed facilities allowance to the LED rate for five reasons, discussed in more detail in MNSC’s initial brief: (1) the LED rate is already excessively discounted; (2) Consumers has not proven that reducing an LED customer’s incremental distribution charge through the facilities allowance would not increase costs for other customers; (3) there is significant risk that the LED customer will not cover all these costs through its distribution charges over the term of their contract; (4) despite the facilities allowance being rejected as insufficiently developed in Case No. U-21389, Consumers has not developed it materially further in this case; and (5) Consumers provided no evidence to support its claim of economic development benefits from a facilities allowance for the LED rate.

a. Overview of the discounted LED rate.

As set forth in more detail in MNSC’s initial brief, the LED rate is excessively discounted and imposes risks of cost shifts on other customers even without the facilities allowance:

- The LED rate production charge is based on the MISO Cost of New Entry (CONE) at the time the LED customer enters a rate contract – which is a discount compared to Consumers’ embedded cost of capacity and considerably lower than the production charges for rate GPD.⁸⁴ Further, the LED production charge is fixed for the life of the rate contract, even as the MISO CONE increases over time, growing the gap between

⁸³ PFD, p 800-817.

⁸⁴ Connolly Cross, 3 Tr 186; Ex A-16 Schedule F5, pp 48-49 and p 64.

the LED customer's production charge and the incremental cost of capacity.⁸⁵ If the LED customer elects interruptible service, they can reduce their production charges to as low as zero.⁸⁶

- The LED rate transmission charge is based on the incremental cost to provide the LED customer with transmission service and is much lower than the transmission charges for GPD customers, which are based on embedded transmission costs.⁸⁷
- The LED rate system contribution charge is characterized as a contribution to embedded production costs, but it is miniscule – less than three one-hundredths of one cent per kWh.⁸⁸ That amount is intended to represent 1% of the company's embedded cost of generation.⁸⁹ It has never been increased, even though Consumers' embedded cost of generation has gone up since then.⁹⁰

MNSC does not take issue with the energy charge for the LED rate, which is based on the MISO Real-Time or Day-Ahead Locational Marginal Price (LMP);⁹¹ or with the distribution charge, which represents rate GPD's share of embedded distribution system costs.⁹² However, these other discounts result in the LED rate being much lower than GPD rates.⁹³

⁸⁵ *Id.* at 181-83.

⁸⁶ Connolly, Cross, 3 Tr 187; Ex A-16, Schedule F5, p 66.

⁸⁷ Connolly Cross, 3 Tr 189; Ex A-16, Schedule F-5, p 63-64 (LED) compared with pp 48-49 (GPD).

⁸⁸ Connolly Cross, 3 Tr 188; Ex A-16, Schedule F-5, p 64.

⁸⁹ Connolly Cross, 3 Tr 188.

⁹⁰ *Id.*

⁹¹ Ex A-16, Schedule F5, p 64.

⁹² Connolly Cross, 3 Tr 178-79.

⁹³ See MNSC Initial Brief, Confidential Version, p 100.

b. PFD recommendation.

The PFD finds that “Consumers’ current facilities allowance proposal is consistent with the Commission’s order in Case No. U-21585 as it only includes distribution and system contribution revenues and is based on a limited 5-year term.”⁹⁴ The PFD relies on the fact that “Staff did not offer any testimony in opposition to the current proposal, which suggests that its concerns that the facilities allowance eliminates the benefits of the new LEDR customer to other customers have been ameliorated.”⁹⁵ Therefore, the PFD recommends that the Commission “approve a facilities allowance for LEDR that only includes distribution and system contribution revenues and is based on a limited 5-year term.”⁹⁶

The PFD’s focus on the use of distribution and system contribution revenues and the 5-year term omits any consideration of other deficiencies noted by the Commission in prior cases. The Commission has denied prior requests for approval of a facilities allowance for the LED rate for reasons that were in addition to the types and length of revenues included in the allowance calculation.

In Case No. U-21389, the PFD found that arguments regarding the proposed facilities allowance creating a subsidy for Rate LED customers were persuasive; that the allowance would place the burden of paying embedded costs on other ratepayers; that the details of the proposal had not been delineated sufficiently; that Consumers and ABATE did not show that the allowance would lead to more large manufacturers bringing facilities to Michigan; *and* that if Commission were to adopt a facilities allowance in spite of all these flaws, the Commission should adopt Staff’s

⁹⁴ PFD, p 815.

⁹⁵ *Id.* at 815-16.

⁹⁶ *Id.*

recommendation that LED customers be required to pay the same embedded distribution costs as others and a system contribution charge.⁹⁷ The Commission found the PFD’s recommendations were “well-reasoned and supported by the record;” and adopted them.⁹⁸ The Commission did not reject any of the PFD’s findings just listed.

In Case No. U-21585, the PFD again found Consumers’ proposal lacking – because it included power supply revenues and a 20-year term but also because “the Company has not provided sufficient evidence to demonstrate that a facilities allowance for Rate LED is needed or that it would lead to enhanced economic development.”⁹⁹ The Commission adopted the PFD’s recommendation and stated that if Consumers proposed another facilities allowance for LED in the future, it should “include[] only distribution and system contribution revenues, not power supply revenues, and [be] based on a limited term, similar to DTE Electric’s Rate D13.”¹⁰⁰

In neither order did the Commission state that if Consumers proposed a facilities allowance using distribution and system contribution revenues with a 5-year term, approval would be guaranteed despite all the other problems the PFDs identified. The same is true here. While Consumers did propose using distribution and system contribution revenues and a 5-year term, there are many other reasons why the proposal does not “ensure the establishment of electric rates equal to the cost of providing service to each customer class”¹⁰¹ or meet the requirements that “[t]he rates of an electric utility shall be just and reasonable and a consumer shall not be charged

⁹⁷ Case No. U-21389, PFD, December 21, 2023, pp 499-500.

⁹⁸ Case No. U-21389, Order, March 1, 2024, p 248.

⁹⁹ Case No. U-21585, PFD, January 27, 2025, pp 574-75.

¹⁰⁰ Case No. U-21585, Order, March 21, 2015, pp 424-25.

¹⁰¹ MCL 460.11(1).

more or less than other consumers are charged for like contemporaneous service rendered under similar circumstances and conditions.”¹⁰²

c. PFD’s treatment of MNSC’s arguments.

The PFD in this case identifies but does not fully engage with MNSC’s arguments why Consumers did not meet its burden to demonstrate that adding a facilities allowance to the discounted LED rate would meet these statutory requirements. In some cases the PFD ignores or mischaracterizes evidence MNSC provided.

First, the PFD agrees that Consumers has the burden to support the facilities allowance, but states “this does not mean that Consumers must prove the opposite of every argument or speculation presented against its proposal.”¹⁰³ The PFD claims: “MNSC suggests that the proposed facilities allowance may increase costs for other customers or that the LEDR customer would not cover its marginal distribution costs, but MNSC does not provide sufficient evidence to show that these are valid concerns.”¹⁰⁴

The PFD never explains what it found insufficient in MNSC’s evidence, however. As noted above, LED is a severely discounted rate that does not recover embedded costs through production or transmission charges – except for a miniscule system contribution charge that recovers less than 1% of the LED customer’s share of embedded costs – and does not even recover incremental production costs over the contract term because the production charge is fixed at the CONE value for the first year of a 20-year contract. With these discounts already in place, there is no incremental production or transmission revenue to offset any shortfall in distribution revenues.

¹⁰² MCL 460.557(4).

¹⁰³ PFD, p 816.

¹⁰⁴ *Id.*

MNSC witness Caroline Palmer explained an LED customer causes two kinds of distribution costs: (1) the costs of dedicated distribution infrastructure; and (2) the marginal cost of adding more demand to the rest of the distribution system.¹⁰⁵ A facilities allowance reduces the charge that is supposed cover the dedicated infrastructure.¹⁰⁶ To prevent cost shifting, Consumers must demonstrate that the expected future revenues included in the facilities allowance cover both the costs of the dedicated infrastructure and the marginal cost of adding the customer’s load to the shared system.¹⁰⁷ But Consumers cannot make this demonstration because the Company has not calculated its marginal distribution costs.¹⁰⁸

Consumers did not deny these facts on rebuttal but instead argued that it would be unfair to require that LED customers cover their marginal distribution costs before giving them a facilities allowance when the same is not required for “similarly situated” GPD customers to receive a CIAC allowance.¹⁰⁹ But LED customers are not “similarly situated” to GPD customers because GPD customers pay their share of embedded costs and their production charges are updated in each rate case rather than fixed for 20 years. Because GPD customers contribute to embedded capacity and transmission costs, a case can be made that other ratepayers get something in return for fronting the cost of new GPD customers’ dedicated infrastructure – but the same is not true of LED customers.

ABATE witness James Dauphinais argued that Ms. Palmer “provided no evidence to support her contention there would be a marginal distribution cost for Consumers to serve a Rate

¹⁰⁵ Palmer Direct, 6 Tr 3931.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 3931-32.

¹⁰⁸ Palmer Direct, 6 Tr 3932; Ex MEC-21, Response to MNSC-CE-0256, sub-part (g).

¹⁰⁹ Connolly Rebuttal, 3 Tr 169.

LED customer beyond the cost of dedicated facilities” – or that the remaining distribution charges would not cover such a cost if there was one.¹¹⁰ But that argument mischaracterizes the burden of proof. When the burden of proving a fact falls on one party, the other party does not have the burden of proving the opposite fact.¹¹¹ It is worth noting that to be eligible for the LED rate, a customer must have new or expanded incremental demand of at least 35 MW.¹¹² That is a very large customer – too large to just assume they can be added to the system without adding any marginal costs – which is what Mr. Dauphinais assumes.¹¹³ Reaching further, Mr. Dauphinais claimed that the system contribution charge “is another source of sales margins from the customer that would not exist but for the customer taking service from Consumers.”¹¹⁴ However, the system contribution charge is miniscule and would be captured for the facilities allowance for five years under this proposal.

Also reaching, Solar Technology witness Michael Gorman argued that “Consumers is able to adjust the distribution charge listed in LEDR if the Rate GPD distribution charge is not sufficient for Consumers to recover its incremental distribution or connection costs incurred to serve the LEDR customer.”¹¹⁵ But the proposed tariff language for the facilities allowance contains no terms that would require Consumers to adjust the facilities allowance or resulting distribution charges to cover marginal distribution costs, and Consumers does not know what those marginal distribution costs are because the Company has not evaluated them. Mr. Gorman also claimed that Consumers

¹¹⁰ Rebuttal Testimony of James R. Dauphinais, 6 Tr 3667.

¹¹¹ *S C Gary, Inc v Ford Motor Co*, 92 Mich App 789, 803-804; 286 NW 2d 34 (1979).

¹¹² Consumers Rate Book, First Revised Sheet No. D-78.10.

¹¹³ Solar Technology witness Michael Gorman made the same assumption without any facts to support it. Gorman Rebuttal, 4 Tr 3177-78.

¹¹⁴ Dauphinais Rebuttal, 6 Tr 3667.

¹¹⁵ Rebuttal Testimony of Michael P. Gorman, 4 Tr 3174.

has the right under Rule C1.4 of its tariff, “Extraordinary Facility Requirements and Charges,” to levy an extraordinary facilities charge to an LED customer to recover incremental costs of connecting the customer that exceed the facilities allowance.¹¹⁶ However, nothing in the LED tariff says that. The LED tariff only says that “Customers taking service under the Large Economic Development Rate are ineligible for the terms of the Contribution in Aid of Construction Allowance Schedule located in Rule C1.4, Extraordinary Facility Requirements and Charges.”¹¹⁷ And Rule C1.4 does not reference the LED tariff or LED customers.

The PFD never explained how any of this evidence is speculation or otherwise insufficient to require Consumers to meet its burden of proving that an LED customer with a facilities allowance will cover its marginal distribution costs. Further, even if the distribution charges did cover both the costs of dedicated distribution infrastructure and the marginal cost of adding more demand to the distribution system, there is significant risk that the LED customer will not cover all these costs through its distribution charges over the term of their contract. Consumers’ LED tariff and rate contracts expressly relieve LED customers of paying the full cost of the incremental distribution and transmission investments made to connect them if they leave before the end of their contract term, with their obligation stepping down from 100% to 17% of remaining costs over the back half of their contract term.¹¹⁸ Consumers witness Connolly said she believed the difference between what the customer owes and pays in that scenario will be made up by other customers in general rates.¹¹⁹

¹¹⁶ Gorman Rebuttal, 4 Tr 3174-76, citing Rule C1.4, Extraordinary Facility Requirements and Charges.

¹¹⁷ Consumers Rate Book, First Revised Sheet No. D-78.10.

¹¹⁸ Consumers Rate Book, First Revised Sheet No. D-78.10. See also, Ex MEC-29C, U-21870-AG-CE-0478_Hayward_Atts. 3a & 5 pp 4-5, section 11; p 15, exhibit D; pp 19-20, section 11; and p 28, exhibit D; Connolly Cross, 3 Tr 531-33.

¹¹⁹ *Id.* at 532-33.

Since the facilities allowance is a discount to the distribution charge that is levied to recover these investments over the 20-year term of the LED rate contract, approving the facilities allowance without addressing this exposure will only increase the potential size of the stranded costs that could be imposed on other customers. There is nothing speculative about these facts – they are undisputed in the record. The PFD never addresses these undisputed facts before concluding that MNSC’s arguments are speculative and unsupported.

Next, the PFD states: “MNSC’s argument that LEDR customers already receive an excessively discounted rate is also insufficient as it does not provide evidence that the facilities allowance is unnecessary.”¹²⁰ It is unclear what the PFD means by this. MNSC explained that the excessive discounts already included in the LED rate have three implications for the facilities allowance proposal: (1) there is no other marginal revenue coming from the LED customer to offset any shortfall in distribution revenues resulting from the facilities allowance; (2) the LED rate is already so discounted that it does not ensure the establishment of electric rates equal to the cost of providing service or rates that are just and reasonable and do not charge a customer less than other consumers are charged for like contemporaneous service rendered under similar circumstances and conditions;¹²¹ and (3) there is no evidence that the deep discounts already offered in the LED rate are insufficient to attract the target customers without needing to add a facilities allowance.

Next, the PFD states that MNSC’s argument that the facilities allowance proposal “is not well-developed is belied by the analysis and testimony by the parties, the ALJ, and the Commission

¹²⁰ PFD, p 816.

¹²¹ MCL 460.11(1) and MCL 460.557(4), respectively.

in this and previous rate cases.”¹²² Here the PFD misses the point. The fact that there has been lots of testimony about the facilities allowance does not mean that Consumers’ proposal is well-developed. As noted above, one of the findings in Case No. U-21389 was that the details of the facilities allowance had not been delineated sufficiently to justify approval of the proposal. Yet Consumers has not delineated those details any further in this case. The proposed tariff change provides no specifics to govern the proposed facilities allowance. The entire change is the addition of three words to a sentence in the LED tariff about distribution charges: “The monthly charge per kW of Maximum Demand per calendar month may be adjusted to contribute to the recovery of the annual revenue requirement associated with investments made by the Company for incremental distribution facilities required to serve the customer and *a facilities allowance* specified in the contract for electric service.”¹²³ And the facilities allowance contract for the LED rate is not in evidence.

Finally, the PFD finds that “MNSC’s final argument, that the Company has not provided evidence to support its claim of economic development benefits, is well-taken and was noted in the PFD in Case No. U-21585. However, the Commission did not find this issue dispositive when it rejected the facilities allowance in that case.”¹²⁴ This finding is curious because – as noted above – the Commission never stated in U-21585 that it would automatically approve a facilities allowance using distribution and system contribution revenue and a 5-year term, all other concerns aside. Nor did the Commission find that the lack of evidence of economic development benefit was unimportant or should be disregarded.

¹²² PFD, p 816.

¹²³ Ex A-16, Schedule F-5, p 65.

¹²⁴ PFD, p 816.

In this case, Consumers submitted almost no evidence at all as to how the rest of its customers would benefit from the Company offering a facilities allowance to LED customers – via economic development or otherwise. As the PFD noted, two customers have signed LED rate contracts in recent years without an allowance even though they wanted one. If there is no incremental economic development benefit from the facilities allowance above and beyond the purported benefit of the discount LED rate, there is no substantial evidence supporting the reasonableness and prudence of providing yet another discount and taking on more risk of cost shifting.

In sum, Consumers has not proven that adding a facilities allowance to the discount LED rate complies with statutory cost of service and just and reasonable requirements simply because the Company has come around to using distribution and system contribution revenues and a 5-year term. The other concerns outlined above remain. The Commission should not adopt the PFD recommendation and should not approve the facilities allowance.

2. If the Commission approves the LED rate facilities allowance, it should not authorize Consumers to apply it retroactively to existing customers.

Consumers revealed in discovery that if the Commission approves the facilities allowance, the Company plans to apply it retroactively to two customers who already signed LED rate contracts in 2023 and early 2024.¹²⁵ MNSC opposed applying the allowance retroactively because the Commission “approved Rate LED to attract new load – and the associated investment and jobs – to the state” and the discounted LED rate already succeeded in attracting those two customers

¹²⁵ Connolly Cross, 3 Tr 519; Ex MEC-22, Response to MNSC-CE-0257(d). The two customers’ confidential LED rate contracts were admitted as Ex MEC-29C.

without a facilities allowance.¹²⁶ Providing them with a facilities allowance after-the-fact would just make them “free-riders” enjoying a benefit that was unnecessary to secure their business.¹²⁷ And Consumers would have to collect more than ten million dollars in rates from other customers that otherwise would be – and currently are being – charged to the two free riders as distribution charges.¹²⁸

In rebuttal, Consumers witness Connolly testified that “part of the negotiation with these customers was around potential for a future facilities allowance” and their rate contracts “contained language expressing the Company’s intention to file a request to amend this rate to allow LEDR customers to qualify for a CIAC credit.”¹²⁹ However, the actual contract language for these two customers does not create any expectation or entitlement to such an allowance at this point in time. The first contract is from 2023 and states that “Consumers shall file with the MPSC an application to amend Rate LED to allow for Rate LED customers to qualify for the Contribution in Aid of Construction credit.”¹³⁰ Consumers fully performed on this obligation when it filed Case No. U-21389 in May of 2023.¹³¹ Nothing in the contract says that Consumers must provide a facilities allowance to the customer if the Commission did approve it.¹³² Nor does the contract say Consumers must continue seeking approval of a facilities allowance if the Commission does not

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Palmer Direct, 6 Tr 3934 (public) and 4678 (confidential). The exact number is confidential and no party disputed it.

¹²⁹ Connolly Rebuttal, 3 Tr 170.

¹³⁰ Connolly Cross, 3 Tr 524, referencing Ex MEC-29C, p 4, section 9.j. Permission to discuss on the public record is at 3 Tr 523.

¹³¹ Connolly Cross, 3 Tr 525.

¹³² *Id.*

approve it – as happened in U-21389 and U-21585.¹³³ The same things are true of the contract for the other LED customer.¹³⁴

The PFD recommended that “the facilities allowance should be offered to an existing LEDR customer if the customer’s contract contemplates a future facilities allowance.”¹³⁵ However, the PFD recognized the lack of evidentiary support for such a retroactive offering in the two customers’ contracts: “However, in recognition of MNSC’s contention that Consumers only has two existing LEDR customers and their contracts do not support retroactive application of the facilities allowance, this PFD recommends that if the Company intends to offer the facilities allowance to an existing LEDR customer that it first obtain approval from the Commission that the contract sufficiently contemplates the facilities allowance, and the Company may seek this approval *ex parte*.”¹³⁶

While MNSC appreciates the PFD’s acknowledgment that the contract terms do not support the claims of entitlement, pushing this issue to future *ex parte* proceedings is not a solution, for two reasons. First, such a move does not address the fundamental flaws with granting these customers a facilities allowance – that such a discount was not necessary to incent them to sign up for service and providing it to them now would just make them free riders, at a substantial cost to other customers. Second, there is no need to push this issue to an *ex parte* proceeding because all the evidence needed to decide it is already in this record: the contracts, Consumers Energy’s testimony about the contracts, and even testimony from Michael Gorman on behalf of one of the customers. Pushing the issue to an *ex parte* proceeding would only have the effect of excluding

¹³³ *Id.*

¹³⁴ Connolly Cross, 3 Tr 526-27, referencing Ex MEC-29C, p 19, section 9.j.

¹³⁵ PFD, p 817.

¹³⁶ *Id.*

MNSC – the party who brought this evidence forward – from the decision-making process. For these reasons, if the Commission approves the facilities allowance, it should prohibit Consumers from applying it retroactively.

3. Irrespective of whether it approves the facilities allowance, the Commission should increase the LED system contribution charge because it is not based on the cost of service – and the Commission should not just update the charge to 1% of current embedded costs as the PFD recommends.

The evidence in this case showed that system contribution charge is neither “just and reasonable” nor “equal to the cost of providing service to each customer class.”¹³⁷ While the purpose of the charge is ostensibly to contribute to embedded system production costs, it falls so far short of making a material contribution that it wholly fails that objective. The charge is less than $\frac{3}{100}$ of one cent per kWh; represented only 1% of embedded production costs in 2021 when it was first approved; has never been increased; and is locked in for the 20-year life of an LED contract.¹³⁸ It is not based on any analytical justification;¹³⁹ and Consumers acknowledged in a prior rate case that the charge was based simply on what Consumers thought would be competitive with economic development rates in other states.¹⁴⁰ That is not a cost-of-service basis on which to set a charge. MNSC witness Palmer testified that “Consumers has not presented a cost basis for setting its system contribution charge at 1% of the Rate GPD embedded capacity costs;” and

¹³⁷ MCL 460.557(4) and 460.11(1).

¹³⁸ Connolly Cross, 3 Tr 188.

¹³⁹ Palmer Direct, 6 Tr 3935.

¹⁴⁰ *Id.*, citing Cross examination of Consumers Energy witness Hubert Miller in Case No. U-21224, 3 Tr 635-637.

recommended that the Company “raise the charge in order to contribute more meaningfully to embedded system costs.”¹⁴¹

Procedurally, revising the charge would be no different than the many other changes to the LED rate that have been made over the years – including updates to the production, transmission, and distribution charges; additional options for the energy charge;¹⁴² adding a maximum contract length;¹⁴³ and seeking other changes that ultimately the Commission did not approve – such as lowering the minimum demand threshold and adding a proxy plant option for production and energy charges.¹⁴⁴

“The System Contribution charge was established in Case No. U-21160 and was set based on 1% of the Rate GPD embedded capacity costs.”¹⁴⁵ In that case, Consumers took total on-peak capacity revenues based on the capacity charges for Rate GPD Voltage Level 1 from Case No. U-20697, multiplied by 1%, and then divided that revenue by expected energy consumption for a hypothetical customer with 100 MW of demand and a 90% load factor, to establish a system contribution charge of \$0.0002838 per kWh – or less than 3 cents per MWh.¹⁴⁶ MNSC recommended updating the system contribution charge by updating the capacity revenues for a Rate GPD Voltage Level 1 customer to the capacity charges proposed in this case and performing the same calculation – but at 25% of embedded costs instead of 1%.¹⁴⁷ That calculation produces

¹⁴¹ Palmer Direct, 6 Tr 3935.

¹⁴² Case No. U-21389, Order, March 1, 2024, pp 249-50.

¹⁴³ *Id.* at 252-53.

¹⁴⁴ *Id.* at 241-52.

¹⁴⁵ Ex MEC-31, discovery response MNSC-CE-0767(d).

¹⁴⁶ Attachment LEDR System Contribution Charge.xlsx to discovery response MNSC-CE-0767(d) (attachment not submitted for admission into evidence).

¹⁴⁷ MNSC Initial Brief, p 119.

a system contribution charge of \$0.0058208 per kWh, or about 0.6 cents per kWh, which modestly narrows but does not close the gap between the average LED rate and GPD rates discussed above.¹⁴⁸ MNSC recommended that the system contribution charge be increased to 25% of embedded costs and that it be updated in each case based on actual costs rather than locked in for the duration of an LED customer's rate contract.

The PFD states:

[T]his PFD finds it reasonable to update the systems contribution charge, finding that MNSC's argument was persuasive, Consumers did not provide opposing evidence, and the Company argued that any update should be consistent with Case No. U-21160. Therefore, this PFD recommends that the system contribution charge for LEDR customers should be updated in each rate case based on actual costs and using the methodology approved in Case No. U-21160.¹⁴⁹

While this recommendation mostly tracks MNSC's evidence and recommendation, it misses the most critical component: revising the charge from 1% to at least 25% of embedded production costs. Without that change, the system contribution charge will continue to be wholly disconnected from cost of service, as well as unjust and unreasonable. The Commission should adopt the PFD's recommendation to update the charge in each case, but it should be calculated based on a higher percentage of embedded production costs.

4. Irrespective of whether it approves the facilities allowance, the Commission should require Consumers to shorten the LED rate discount period.

Finally, MNSC recommended that the Commission shorten the LED rate contract terms to 7 years, because Consumers has not justified why it is necessary to provide the LED discounts for

¹⁴⁸ *Id.*

¹⁴⁹ PFD, p 817.

15 to 20 years in order to incent economic development.¹⁵⁰ MNSC witness Palmer explained that many other jurisdictions offer economic development discount rates for five years, including LGE and KU in Kentucky, Dominion in Virginia, Evergy in Missouri and Kansas, Florida Power and Light, Interstate Power and Light in Iowa, and Dominion in South Carolina.¹⁵¹

Consumers argued that shortening the contract length “could result in potential stranded assets should a customer decide to cease taking service from the Company at the end of their contract term.”¹⁵² ABATE witness Dauphinais also raised a slew of objections that MNSC addressed in initial brief and the PFD did not rely on.¹⁵³

The PFD rejected MNSC’s recommendation to shorten the LED contract length, “finding persuasive the Company’s argument that shorter terms increase the risk of stranded assets.”¹⁵⁴ But Consumers’ argument is not persuasive, for three reasons.

First, it is unclear why the distribution charges could not be scaled to the contract length to prevent that from happening.

Second, as noted above, the LED rate contracts already allow the LED customer to strand assets by reducing their payment obligation below the remaining balance of transmission and distribution investments made to connect them starting at the halfway mark of their contract term and stepping down from there.¹⁵⁵ Revising that provision would reduce the risk of stranded assets

¹⁵⁰ Palmer Direct, 6 Tr 4680-81.

¹⁵¹ *Id.*, with detailed references cited therein. I&M provides discounts in Indiana for 7 years. *Id.*

¹⁵² Connolly Rebuttal, 3 Tr 171.

¹⁵³ MNSC Initial Brief, pp 121-22.

¹⁵⁴ PFD, p 817.

¹⁵⁵ Consumers Rate Book, First Revised Sheet No. D-78.10. See also, Ex MEC-29C, pp 4-5, section 11; p 15, exhibit D; pp 19-20, section 11; and p 28, exhibit D.

far more than shortening the contract term and scaling the distribution charges to that term would increase it.

Third, the prevalence of shorter contract terms in the other jurisdictions listed above is substantial evidence that the stranded cost risk is not an impediment to implementing a reasonable contract term sufficient to incent economic development without providing deep discounts for a generation.

For these reasons, the Commission should not adopt the PFD's recommendation and should reduce the maximum LED rate contract term to seven years.

E. Other Issues – Securitization of Test Year Tree Trimming – The Commission should defer and securitize all above-baseline spending on the LVD line clearing surge, which includes approximately \$72.7 million for the test year. (Sean)

In this case, MNSC and Consumers agreed that the Company should defer above-baseline O&M expenses associated with the LVD Line Clearing Program surge and that the Commission should approve a regulatory asset for those costs.¹⁵⁶ MNSC and Consumers disagreed, however, about how much should be deferred – i.e., what constitutes “above baseline” – and what interest rate should be applied – the Company's full weighted cost of capital or its short-term debt rate.¹⁵⁷

In the PFD, the ALJ agreed with MNSC, Staff, and the Attorney General that the short-term debt rate should applied – just as it was applied to DTE Electric's tree-trimming surge.¹⁵⁸ The ALJ, however, disagreed with MNSC regarding what constitutes “baseline,” opting instead to use the Company's calculation of “baseline” spending.¹⁵⁹ MNSC's initial brief fully addressed the

¹⁵⁶ Revised Direct Testimony of Richard J. Bunch, 6 Tr 4052, Direct Testimony of Douglas B. Jester, 6 Tr 3991.

¹⁵⁷ Bunch Direct, 6 Tr 4052.

¹⁵⁸ PFD, p 1006.

¹⁵⁹ *Id.*

advantages of projecting test year expenses using historical data adjusted for known and measurable changes; however, those advantages are not reiterated here.¹⁶⁰ Rather, this exception specifically addresses the two reasons offered by the ALJ in support of the recommendation to adopt the Company’s proposed baseline spending projection.

First, while the ALJ found the Company’s proposal “desirable to reduce ratepayers’ exposure to interest expense,”¹⁶¹ the ALJ did not consider the intergenerational equity of that recommendation. Intergenerational equity is a well-established principle in ratemaking, typically describing the situation when “later generations of customers [] pay expenses that earlier generations should have borne.”¹⁶² The Commission can, should, and *has* exercised its control over utility ratemaking to allocate costs equitably and to limit rate shock from programmatic spending surge.¹⁶³ Securitization of surge expenses is one way the Commission has spread out those costs – reducing rate shock to current customers and better aligning the utility’s cost recovery with the accrual of programmatic benefits.¹⁶⁴

The Company’s line clearing surge raises serious concerns about intergenerational equity. As discussed in the Liberty Audit, the Company has significant backlogs in tree trimming and vegetation maintenance, which is why the Company proposes a massive surge in spending.¹⁶⁵ While it is inevitable that current ratepayers will bear at least some of the costs of surge

¹⁶⁰ MNSC Initial Brief, pp 136-42.

¹⁶¹ PFD, p 1006.

¹⁶² Case No. U-13899, Order, April 28, 2005, p 46.

¹⁶³ Case No, U-14400, Order, November 30, 2005, p 8 (“The Commission agrees with all the parties that minimizing rate shock, to the extent possible, is a legitimate regulatory concern.”).

¹⁶⁴ Jester Direct, 6 Tr 3991.

¹⁶⁵ MNSC in the previous Consumers’ rate case opposed the Company’s extended trim cycles as a drag on reliability improvements and out of line with other utilities, but the Commission upheld the Company’s aspirational 7-year “effective” cycle goal. See Case No. U-21585, MNSC Initial Brief, pp 83-104; Order, March 21, 2025, pp 287-93.

programming, the ALJ’s recommendation does not adequately mitigate likely rate shock.¹⁶⁶ The ALJ’s recommendation to use the Company’s forward-looking baseline would account more of the tree trimming surge costs as O&M; and costs accounted as O&M are expensed to ratepayers every year, meaning that the rate impacts are direct and immediate. Resulting improvements in grid reliability are not immediate, however.¹⁶⁷ Therefore, under the Company’s proposal – which the ALJ recommended for Commission approval – current ratepayers will be required to pay expenses that should have been borne by past ratepayers and that will primarily benefit future ratepayers. Lowering the “baseline” ensures current surge spending is distributed to a great portion of benefited ratepayers.

Second, although the ALJ determined that there has been a “consistent upward trend in Consumers’ forestry spending,”¹⁶⁸ that does not imply that the baseline proposed by MNSC is “outdated” or “unreasonable.”¹⁶⁹ While the ALJ noted that MNSC’s proposed baseline is below 2025 approved levels, current spending levels are already inflated above baseline and include surge spending to catch up on off-cycle (backlogged) circuits.¹⁷⁰ To the extent that operational costs may increase, those increases are already factored into Mr. Bunch’s proposed baseline, which adjusts historical spending based on productivity-adjusted inflation (endorsed elsewhere in the PFD).¹⁷¹

¹⁶⁶ Bunch Direct, 6 Tr 4023 (“A significant portion of Consumers’ distribution surge spending is remedial . . . It is not fair to charge today’s customers the full cost of investments that should have been made in the past, on top of current investments.”).

¹⁶⁷ See Jester Direct, 6 Tr 3991 (“The proposal to defer and securitize surge costs serves to reduce the rate impact of the line clearing surge and align the timing of cost recovery of the surge expenses with the timing of the resulting improvements in reliability.”).

¹⁶⁸ PFD, pp 1006.

¹⁶⁹ See *id.* at 1001, 1005-06.

¹⁷⁰ E.g., PFD, pp 999-1000 (citing Coppola Direct, 3 Tr 2581-2582).

¹⁷¹ See MNSC Initial Brief, p 141.

To ensure current rates are not inordinately increased because of the Company's past failures, the Commission should adopt the MNSC's recommendation and defer approximately \$72.7 million of surge costs for future securitization.

F. Other Issues – Securitization of Test Year LVD Pole Spending – The Commission should defer and securitize all above-baseline spending on the Company's LVD pole replacement surge, which includes all costs above \$25 million.

The Company also proposes a temporary surge in pole replacement work and expenses. As with the temporary surge in tree trimming work, MNSC recommended that above-baseline costs be deferred for future securitization, which would limit rate shock and intergenerational inequity.¹⁷² The ALJ rejected MNSC's recommendation because: "the Company has numerous existing cost deferral mechanisms and adding more debt and interest expense without sufficient justification and a detailed record would be imprudent."¹⁷³ However, as addressed in MNSC's initial brief, concerns about the Company's credit metrics are unsubstantiated.¹⁷⁴ And contrary to what the ALJ asserts, the proposal to defer surge spending on LVD pole replacements *is* supported by a detailed record. Like the Company's line clearing program, the record shows that the pole replacement program is backlogged and eliminating that backlog will create a surge in replacement work and expense.¹⁷⁵ Like the line clearing program, the record shows that the surge will be temporary.¹⁷⁶ The record also shows that the backlog is at least partially due to "historic low

¹⁷² Jester Direct, 6 Tr 3995-3996.

¹⁷³ PFD, p 1009.

¹⁷⁴ MNSC Initial Brief, pp 144-46.

¹⁷⁵ See *id.* at 133-36 (internal citations omitted).

¹⁷⁶ See *id.* at 135-36 (citing Jester Direct, 6 Tr 3992-93).

inspection frequency and consequent low application of preventive maintenance practices.”¹⁷⁷ While the Company noted that the pole replacement surge involves capital expenditures that are already depreciated over time, the need for that capital work is partially a result of neglected maintenance.¹⁷⁸ Under such circumstances, it would be neither just nor reasonable to allow the Company to collect its full rate of return on costs incurred reducing the backlog, which would only enrich current shareholders at the expense of ratepayers.¹⁷⁹

The PFD also cites Consumers’ argument that Michigan law “does not *require* securitization.”¹⁸⁰ While securitization is not a required tool, the Commission has a duty to set just and reasonable rates, and MCL 460.6a(1) gives the Commission “broad plenary power...to regulate all rates, fares, fees, charges, services, rules conditions of service, and all other matters pertaining to the formation, operation or direction of public utilities.”¹⁸¹ It is well-within the Commission’s broad plenary power to order deferral and securitization of costs in order to protect ratepayers from excessive rates. The Commission should exercise that authority and its discretion in this case to defer some of the costs of Consumers’ pole replacement surge and to ensure reasonable rates for ratepayers.

¹⁷⁷ *Id.* at 136.

¹⁷⁸ See *Id.* (citing Jester Direct, 6 Tr 3994) (“[S]ome portion of Consumers Energy’s pole defects is due to historic low inspection frequency and consequent low application of preventive maintenance practices.”).

¹⁷⁹ See *Id.* at 144 (citing Jester Direct, 6 Tr 3996) (“The ‘cost of financing the surge expenditures through securitization bonds will be considerably less than Consumers Energy’s authorized cost of capital, helping to mitigate, though not eliminating, the rate impacts of the surge.’”).

¹⁸⁰ PFD, p 1009.

¹⁸¹ E.g., Case No. U-21384, Order, November 7, 2024, p 10.

III. CONCLUSION

For the reasons discussed above and in its prior briefing in this case, MNSC respectfully requests that the Commission:

- A. Disallow inclusion in rate base of \$5.28 million in capital expenditures for the Jackson Gas Plant GSU and VIGV projects;
- B. Allocate AMI costs in proportion to its relative benefits, which are 36% energy-related, 17% demand-related, and 47% customer-related;
- C. Reject the Company's proposal to modify its method of allocating costs of distribution assets based on the Company's new Electric Asset Categorization report;
- D. Deny approval to add a facilities allowance to Rate LED, do not apply it retroactively if it is approved, increase the system contribution charge from 1% to 25% of embedded system production costs, and shorten the maximum contract length to 7 years;
- E. Defer and securitize all above-baseline spending on the LVD Line Clearing surge, which includes approximately \$72.7 million for the test year;
- F. Defer and securitize all above-baseline spending on the Company's LVD pole replacement surge, which includes all costs above \$25 million.

Respectfully submitted,

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Date: February 17, 2026

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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

On the date below, an electronic copy of **Exceptions to the Proposal for Decision by Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan** was served on the following:

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The statements above are true to the best of my knowledge, information and belief.

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