

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of Consumers  
Energy Company for Authority to increase its  
rates for the generation and distribution of  
electricity and for other relief.

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MPSC Case No. U-21870

**Attorney General's Reply to Exceptions**

Dana Nessel  
Attorney General

Celeste R. Gill (P52484)  
Assistant Attorney General  
Michigan Department of Attorney  
General, Special Litigation Division  
Sixth Floor Williams Bldg.  
525 W. Ottawa Street  
P. O. Box 30755  
Lansing, MI 48909  
(517) 335-7627  
[Gillc1@michigan.gov](mailto:Gillc1@michigan.gov)

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## INTRODUCTION

On January 27, 2025, Administrative Law Judge (ALJ) Jonathan Thoits issued her proposal for decision (PFD) in this case. In the Notice of Proposal for Decision, the ALJ stated that replies to exceptions must be filed by February 26, 2026. Accordingly, the Attorney General files the instant replies to exceptions to respond to or otherwise address arguments made by the other parties in their exceptions to the proposal for decision. The Attorney General's decision not to address certain issues in this Reply to Exceptions is not a waiver of those issues. All of the Attorney General's briefs, testimony, exhibits and her exceptions should be considered in evaluating her position on the issues appearing in this case.

This Reply to Exceptions will address the following issues:

1. The ALJ was correct in recommending the disallowance or adjustment to capital expenditures as described herein because they were not adequately supported on the record or justified.
2. The PFD did not err in recommending a 50% equity ratio.
3. Consumers Energy's request for an authorized ROE of 10.25% is not supported by the record.
4. The PFD was correct in recommending disallowance for the Company's proposed O&M expenses described herein.
5. The PFD was correct in not recommending approval of the Service Restoration Resiliency Fund and Extraordinary Storm Accounting.

## ARGUMENTS

### I. RATE BASE.

#### A. Net Utility Plant

1. **The ALJ did not err in adjusting the Company's proposed distribution capital expenditures.**

a. **Distribution Investment must be reasonable, prudent and justified.**

Consumers Energy Company (“Consumers Energy,” “Consumers,” “CECo” or “the Company”) complains that the recommendations in the PFD are adopted by the Commission, would significantly impair the Company's achievement of its goal to improve electric reliability.<sup>1</sup> It notes that the PFD is recommending more than \$340 million in reductions to distribution capital spending which it claims are not supported by the evidence and will hinder the Company's ability to continue to improve reliability for customers.<sup>2</sup>

The Company appears to be arguing that the PFD and Commission should ignore their obligations in this contested case to review the specific requests and instead grant the Company's rate increase under the general goal of improving reliability. The PFD reflects the analysis of the ALJ. Further, the Attorney General disagrees with the Company on the level of spending needed or justified for the projected test year for some of its expenditures. The investment amount that

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<sup>1</sup> Consumers Energy Exception, p 2.

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

should be approved depends on the Company's ability to meet its evidentiary burden. The Commission should also balance the financial impact to ratepayers, who already pay some of the highest electric rates in the country.

Finally, the Company's has the burden of substantiating and proving its proposals are reasonable and prudent. Consumers Energy bears the burden of proof to demonstrate that its rate increase request is reasonable. The obligation of proving any fact lies upon the party who substantially asserts the affirmative of the issue.<sup>3</sup> A plaintiff always has the burden of proving its cause of action.<sup>4</sup> In administrative cases, a party seeking relief must prove his, her, or its claim by a preponderance of the evidence.<sup>5</sup> Likewise, in MPSC Cases, a utility has the burden of proof by a preponderance of the evidence.<sup>6</sup> Moreover, the MPSC may disbelieve even uncontradicted evidence.<sup>7</sup> When the burden of proving a fact falls on one party, then the other party does not have the burden of proving the opposite fact.<sup>8</sup>

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<sup>3</sup> *White v Campbell*, 25 Mich 463, 475 (1872).

<sup>4</sup> *Caruso v Weber*, 257 Mich 333; 241 NW 198 (1931).

<sup>5</sup> *Dillon v Lapeer State Home & Training School*, 364 Mich 1, 8; 110 NW2d 588 (1961), and *BCBSM v Governor*, 422 Mich 1, 88-89; 367 NW2d 1 (1985).

<sup>6</sup> *In re Michigan Gas Utilities Co*, MPSC Case No. U-7484, Opinion & Order dated 8-30-83, p 10, and *In re Detroit Edison Co*, MPSC Case No. U-8030-R, Opinion & Order dated 7-9-87, pp 16-17.

<sup>7</sup> *Woodin v Durfee*, 46 Mich 424, 427; 9 NW 457 (1881). *Accord*, *Yonkus v McKay*, 186 Mich 203, 211; 152 NW 1031 (1915), and *Cuttle v Concordia Mut Fire Ins Co*, 295 Mich 514,519; 295 NW 246 (1940).

<sup>8</sup> *S C Gary, Inc v Ford Motor Co*, 92 Mich App 789, 803-804; 286 NW 2d 34 (1979).

Moreover, the Commission has clearly noted that “[t]he burden is on the utility to prove the accuracy of each and every test year projection.”<sup>9</sup> Indeed, the Commission has reiterated its position on the need for detail and certainty to support projected test year expenses in prior cases.<sup>10</sup>

For future guidance, the Commission’s expectation is that the parties will fully document the basis of their test year projections by offering into evidence detailed supporting explanations and underlying assumptions rooted in expected business, financial, and economic circumstances. Rate applications may not rely on undocumented estimates of future ratemaking expenses and revenue criteria. When necessary, parties should provide competing projections, with a similar basis of support. The record thus created should lend itself to a comparative review of the reasonableness and prudence of the projections. Historical data may play a role, but ordinarily will not be a controlling factor except in circumstances that clearly demonstrate that it is a more fair and reasonable reflection of the utility’s cost of service, relative to projected data.<sup>11</sup>

The Commission has also determined that a utility’s presentation of substantial evidence on a particular proposal “does not make the reasonableness and prudence of that proposal a foregone conclusion...”<sup>12</sup> It is not enough that a utility’s projected capital expenditures be associated with a prudent capital project; instead, the projected capital expenditures must also be adequately supported. It is

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<sup>9</sup> Order, MPSC Case No. U-20561, May 8, 2020, p. 12.

<sup>10</sup> *Id.* at 13; *citing* Order, MPSC Case No. U-15645, November 2, 2009, p. 9.

<sup>11</sup> Order, MPSC Case No. U-15645, November 2, 2009, p. 9.

<sup>12</sup> Order, MPSC Case No. U-18014, January 31, 2017, pp. 5-8.

important to keep these burdens and obligations in mind when examining Consumers Energy's arguments in this case.

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

**b. High Voltage Distribution (HVD)**

**i. HVD Lines Reliability**

The Company is forecasting capital expenditures of \$133,667,000 for the 16-month bridge period and \$107,667,000 for the projected test year for HVD lines reliability projects.<sup>13</sup> The Attorney General recommended disallowances related to three of the seven spending categories: line rebuilds, pole top rehabilitation, and pole replacements. The PFD disagreed with the Attorney General's recommendation for line rebuilds and pole top rehabilitation and she filed exceptions for those recommendations.<sup>14</sup> However, it recommended approval of the Attorney General's recommendation for pole replacements.

**Pole Replacements** – According to the Company it inspects HVD poles to identify poles that need replacement because of threats to the system or safety

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<sup>13</sup> Exhibit A-113 (MPK-3), line 8.

<sup>14</sup> PFD, pages 53 – 55 and the Attorney General Exceptions to the PFD, pp 4 – 8.

concerns. According to the Company, there is a backlog of “red tagged” poles that need to be replaced.<sup>15</sup> This is reflected in the Company’s proposal to accelerate poles replacements over a three-year period from 2025 to 2027. The Company is forecasting capital expenditures of \$54,856,000 in the bridge period to replace 2,010 poles and \$33,569,000 for the projected test year to replace 1,161 poles.<sup>16</sup> However, in the most recent three years, the Company averaged 442 pole replacements annually.

According to the Company, the backlog of poles needing replacing grew because it was waiting to combine replacements with pole top rehabilitations and rebuilds, presumably for efficiency, and other time-consuming efforts, among other things. Before 2016 there were 1,353 poles needing replacement and the backlog has steadily increased to 2,250 poles needing replacement by the end of 2024.<sup>17</sup> The Company allowed the backlog to grow over the years and while it may need to be address, it has not justified the need to accelerate pole replacement activity to the levels it proposes now.<sup>18</sup> The accelerated pace of the proposed pole replacement places a large cost burden on customers over a short three-year period, especially in comparison to the amount of time that it took for the backlog to grow. To lessen that burden, while allowing the Company to work on the backlog, Mr. Coppola

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<sup>15</sup> Hayward, 3 TR 1202 – 1204.

<sup>16</sup> *Id.*, at 3 TR 1208, figure 21.

<sup>17</sup> *See*, Exhibit AG-12 (AG-CE-40465).

<sup>18</sup> Coppola, 3 TR 2463 – 2464.

proposes increasing pole replacements over current levels, but at a reduced pace by spreading the work needed to address the backlog over five years.<sup>19</sup>

The Company plans to replace 3,790 poles over the three years 2025-2027. This includes replacing 2,490 newly tagged poles for replacement over that same time period. The difference of 1,300 is the number of additional poles that the Company plans to replace over the three-year period to reduce the backlog, which is 433 additional pole replacements annually.<sup>20</sup> By spreading the 1,300 pole replacements over five years, the annual additional poles to be replaced would be 260 or 173 fewer than the Company has proposed.<sup>21</sup> The 173 fewer pole replacements translate to 231 fewer poles for the bridge period, which at a unit cost of \$27,292 result in capital expenditure reductions of \$6,304,000. For the projected test year, the 173 fewer pole replacements at the unit cost of \$28,914 result in lower capital expenditures of \$5,002,000. The Attorney General recommends that the Commission remove the \$6,304,000 for the bridge period and the \$5,002,000 for the projected test year from the Company's forecasted capital expenditures.<sup>22</sup>

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<sup>19</sup> *Id.* at 2464.

<sup>20</sup>  $1,300 / 3 = 433$ .

<sup>21</sup>  $1,300 / 5 = 260 - 433 = 173$ .

<sup>22</sup> *See*, Attorney General's Initial Brief, pp 18 – 21.

The PFD agrees with the Attorney General's recommendation to spread the accelerated HVD pole replacements over five years. Specifically, it agreed with the Attorney General that:

While the Company has offered some explanation for why it allowed this backlog to grow over the last eight to nine plus years, the management and planning of this program was in its control and there is no justification for the persistent delay in addressing pole replacements. Whatever the supposed cause, the Company has not adequately explained why pole replacement activity needs to be accelerated to the levels it proposes.<sup>23</sup>

Thus, it recommended the Commission approve the Attorney General's proposed disallowances of \$6.3 million for the bridge period and \$5 for the projected test year.<sup>24</sup>

The Company filed an exception to this recommendation arguing that its position is in line with the Liberty Consulting Group (Liberty) audit report. It also claims that the Commission previously approved increased spending for this subprogram in Case No. U-21585.<sup>25</sup>

The Commission should reject the Company's exception. The Company has not indicated that the Liberty Audit recommended specific numbers of the poles that should be replaced and, in any event, the Company still has to meet its evidentiary burdens in this case. While the Company mentions previous spending

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<sup>23</sup> PFD, p. 49.

<sup>24</sup> *Id.*

<sup>25</sup> Consumers Exceptions, p 4.

approval for this subprogram by the Commission, it has not indicated that the Commission previously approved spending for the Company's proposal in this case.

The Attorney General presented a proposal that increases pole replacement yet blunts the sharp increase in cost by spreading the increase over a five-year period.<sup>26</sup> Spreading the increased cost over five years is reasonable because it allows the Company to continue pole removals, address its backlog, and fairly balances the cost to ratepayers. The PFD's recommendation that the Commission remove \$6,304,000 and \$5,002,000 from the Company's forecasted capital expenditures for the bridge period and the projected test year, respectively, should be adopted.

#### ii. **HVD Substation Reliability**

The Company originally forecasted capital expenditures of \$47,322,000 for the 16-month bridge period and \$39,680,000 for the projected test year for HVD substation reliability.<sup>27</sup> It identified four spending categories with the related number of units however, the Attorney General recommends adjustments be made

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<sup>26</sup> Attorney General's Initial Brief, page 28.

<sup>27</sup> Exhibit A-113 (MPK-3), line 10. In Exhibit A-219 (line 4) the Company adjusted the amount for the bridge period down by \$10,992,000 for the portion of the bridge period ending December 31, 2025. *See also*, Hayward Rebuttal, 3 TR 1345. Unfortunately, neither Exhibit A-219 nor Ms. Hayward's rebuttal provide a breakdown of the adjustment between four spending categories, so the Attorney General's recommendations will not be able to provide accurate adjustments.

to expenditures for just two of the categories – Circuit Breakers and Other/Miscellaneous projects.<sup>28</sup>

***Circuit Breakers*** – The Company originally forecasted capital expenditures of \$20,038,000 in the bridge period to replace 63 circuit breakers/switchers and \$33,469,000 for the projected test year to replace 1,161 poles.<sup>29</sup> For the projected test year it forecasted capital expenditures of \$23,737,000 to replace 74 circuit breakers and switcher.<sup>30</sup> During the most recent three years, the Company averaged 17 circuit breakers/switchers replacements annually at an average unit cost of \$133,500.<sup>31</sup> Ms. Hayward’s direct testimony provides no specific explanation or justification for why the number of replacement units should increase from an average annual replacement rate of 17 to 67 in the bridge period and 74 for the projected test year.<sup>32</sup> No specific anomalies or problems have been identified with the targeted replacements to justify this four-fold increase in replacement activity. Also, no explanation or justification was provided why the replacement unit cost for the bridge period and projected test year more than doubles from \$133,500 in the most recent three years to more than \$300,000 in the next two years.

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<sup>28</sup> See, Hayward, 3 TR 1223, Figure 29.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See, Exhibit AG-1, (AG-CE-0354 attachment line 28).

<sup>32</sup> Coppola, 3 TR 2466. A correction may also be needed either here or on the previous page to address different numbers for the bride period.

While the Company did not justify its proposed increase; Mr. Coppola proposed an increase in the number circuit breaker/switcher replacements, albeit not at the level proposed by the Company. He proposes doubling the historical level of replacements to 40 and applying an inflation-adjusted historical average unit cost of \$137,372, which results in a forecasted capital expenditure amount of \$5,495,000 for the bridge period.<sup>33</sup> This amount is \$14,583,000 lower than the Company's originally forecasted amount of \$20,038,000 for the bridge period for circuit breaker/switcher replacements.

Similarly, for the projected test year, using the same 40 replacement units and an inflation adjusted average unit cost of \$140,669, Mr. Coppola calculated a forecasted capital expenditure amount of \$5,627,000, which is \$18,130,000 lower than the Company's forecast of \$23,737,00. The Attorney General recommends that the Commission remove this difference from the Company's forecasted capital expenditures for the projected test year.<sup>34</sup>

The PFD recommended that the Attorney General's recommended disallowances be adopted, agreeing that Consumers' failed to provide sufficient support for the significant spending increases.<sup>35</sup>

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<sup>33</sup> Coppola, 3 TR 2466, including footnote 50.

<sup>34</sup> *Id.* at 2467.

<sup>35</sup> PFD, pp 55 – 56.

The Company filed exceptions to the PFD's recommendation. The Company claims that there are benefits with the HVD Substation reliability program and that it must invest in the HVD System to ensure it remains resilient.<sup>36</sup> The Attorney General's recommendations result in an increase in spending over historical level, just not the amount requested by the Company.

The Company also disagreed with the PFD that it did not provide sufficient support for its proposed spending increases. It argues that the ALJ ignored the Company's Reliability Roadmap, which it claims included a thorough review of the HVD substation asset health and concluded that the Company needed to increase investment in replacing various substation components.<sup>37</sup> The Commission should reject this argument. The Reliability Roadmap is a plan that provides general recommendations but not specific support for spending levels. Ms. Hayward claims to have provided an explanation, which listed general problems with the circuit breakers in a summary fashion.<sup>38</sup> It is the Company's burden to fully support its proposed expenditures and seven lines of testimony and a list of projects in an exhibit, is not adequate support for capital spending of \$20 million in the bridge period and \$23 million in the projected test year.

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<sup>36</sup> Consumers' Exceptions, p 6.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 1221 – 1222. *See also*, Exhibit AG-72 (DR-AG-CE-0851).

As discussed above, the Commission should approve a spending level of \$5,495,000 for the bridge period.<sup>39</sup> For the projected test year the Commission should approve a spending level of \$5,627,000, which is \$18,130,000 lower than the Company's forecast of \$23,737,000. The Attorney General recommends that the Commission remove this difference from the Company's forecasted capital expenditures for the projected test year

***Other/Miscellaneous Projects*** – The Company forecasted capital expenditures of \$22,277,000 in the bridge period for 169 units or projects and \$12,758,000 for the projected test year for 83 units or projects for undefined Other Projects.<sup>40</sup> During the most recent three years, the average annual spending in this area ranged from \$332,000 to \$1.1 million.<sup>41</sup>

Ms. Hayward's direct testimony does not explain the reason for this dramatic increase in spending. The Company points to Exhibits A-109 and A-110 for what is included in Other Projects.<sup>42</sup> While these exhibits list several animal mitigation

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<sup>39</sup> The Attorney General recommends that whatever the difference is between the revised expenditure for the bridge period and the recommended spending level for circuit breakers and other/miscellaneous projects be disallowed since the Company did not provide a breakdown of its adjustment in Exhibit A-219.

<sup>40</sup> Hayward, 3 TR 1223, figure 29.

<sup>41</sup> Coppola, 3 TR 2467 and Exhibit AG-1 (AG-CE-0364 attachment line 31).

<sup>42</sup> Exhibit AG-13 includes DR AG-CE-0469.

projects and DSCDA projects, they do not provide any explanation or justification for why these projects are escalating significantly over historical periods.<sup>43</sup>

To set a reasonable amount of capital spending in this area and taking into consideration some amount of increased activity, Mr. Coppola doubled the highest amount spent by the Company in the prior three years from \$1.1 million to \$2.2 million for both the bridge period and projected test year.<sup>44</sup> The \$2.2 million forecasted amount is a reduction of \$20,277,000 from the Company's forecasted capital expenditures for the bridge period and a reduction of \$10,558,000 from the Company's forecasted amount of \$12,758,000 for the projected test year.

The PFD recommended that the Attorney General's recommended disallowances be adopted, agreeing that Consumers' failed to provide sufficient support for the significant spending increases.<sup>45</sup>

The Company filed an exception to the PFD's recommendation claiming that the Company supported specifics for this spending category. It points to Exhibit AG-13 as showing the increased work being undertaken for this spending category. It also points to the Reliability Roadmap. While the exhibit provides dollar

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<sup>43</sup> Coppola, 3 TR 2467.

<sup>44</sup> *Id.* at 2467 – 2468.

<sup>45</sup> PFD, pp 55 – 56.

amounts and units for 2025, 2026 and 2027, <sup>46</sup> it does not provide a detailed explanation of how the increased spending amounts were determined.

Therefore, the Attorney General recommends that the Commission approve a spending level of \$2.2 million for the bridge period and a spending level of \$2.2 million for the projected test year, which is \$10,558,000 less than the Company's projection. The Commission should remove that amount from the projected test year capital expenditures for this spending category.

### iii. **LVD Substation Rehabilitation**

The Company is forecasting capital expenditures for LVD Substations Rehabilitation of \$40,895,000 for the bridge period and \$31,147,000 for the projected test year.<sup>47</sup> There are two components for this subprogram – Allis Chalmers Transformers and Equipment Replacement and Regulatory.<sup>48</sup> The Attorney General proposed adjustments to the capital expenditures for each component. The PFD disagreed with the Attorney General's recommended disallowance for the Equipment Replacement and Regulatory component and the Attorney General filed an exception for that recommendation. However, the PFD

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<sup>46</sup> Exhibit AG-23, p 2.

<sup>47</sup> Exhibit A-113 (MPK-3), line 16.

<sup>48</sup> Hayward, 3 TR 1255, Figure 42.

agreed with the Attorney General’s proposed disallowance related to the Allis Chalmers Transformers.

***Allis Chalmers Transformers.*** According to the Company, it has 37 Allis Chalmers transformers in operation as of early 2025 and it has a history of problems with the this type of transformer.<sup>49</sup> The Company plans to replace all 37 Allis Chalmers transformers and other transformers by the end of the projected test year, including 26 in the bridge period and 18 units in the projected test year for a total of 44 units.<sup>50</sup> This represents a significant increase in activity over recent years. In fact, the number of replacements had declined in recent years.<sup>51</sup> The Company averaged four replacements annually between 2022 and 2024.<sup>52</sup> The planned acceleration in the pace of replacements is excessive and burdensome to ratepayers. The Attorney General recommended that the Company stretch the replacements over a longer number of years to ease the cost burden to ratepayers.<sup>53</sup>

The Attorney General recommends that nine units be replaced in the bridge period, which is more than twice the average number of units replaced in the past three years. Eight units should be replaced in the projected test year, which is twice the historical average number. The remaining fourteen units should be

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<sup>49</sup> Hayward, 3 TR 1250 – 1251.

<sup>50</sup> Id. at 1255 Figure 42.

<sup>51</sup> See, Hayward, 3 TR 1251 table.

<sup>52</sup> See, Exhibit AG-1, (attachment line 60).

<sup>53</sup> Id.

replaced over the subsequent two years.<sup>54</sup> Based on the recommendation for the bridge period and using the Company's forecasted unit cost of \$864,038, the forecasted capital expenditures should be \$7,776,000 for the bridge period. This amount is \$14,689,000 lower than the Company's forecasted capital expenditures of \$22,465,000. Likewise for the projected test year, using the eight units proposed above by the Company's forecasted cost of \$808,222 results in capital expenditure of \$6,466,000. This amount is \$8,082,000 less than the Company's forecasted capital expenditures of \$14,548,000.<sup>55</sup> The Attorney General recommended that the Commission remove the \$14,699,000 and \$8,082,000 from the Company's forecasted capital expenditures for the bridge period and projected test year, respectively.

The PFD agreed with the Attorney General's recommended disallowances for the Allis Chalmers transformers –

This PFD finds that for the Allis Chalmers transformer replacements, the Attorney General's adjustments should be adopted. As the Attorney General points out, Consumers has managed the issue with these transformers adequately, as demonstrated by the fact that none of the transformers has failed since 2018 due to increased monitoring. While this PFD recognizes that these faulty units will all need to be replaced eventually, in light of the very large rate increase that Consumers is requesting in the instant case, a more measured approach to transformer replacement is reasonable. Therefore, this PFD adopts the Attorney General's recommended disallowances of

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<sup>54</sup> Id. at 2455.

<sup>55</sup> Coppola, 3 TR 2455.

\$14,689,000 in the bridge period and \$8,082,000 in the test year for transformer replacements.<sup>56</sup>

The Company filed exceptions to the PFD's recommendation. It claims that the Allis Chalmers transformers need to be replaced due to a design deficiency that makes them "vulnerable to certain faults leading to potential failures."<sup>57</sup> And that the Company considers the remaining units "at risk of developing the condition."<sup>58</sup> The Company argues that the size of its rate case is unrelated to the reasonableness of costs associated with replacing known faulty transformers and that the PFD never explained why it would be reasonable to delay replacing the transformers. The Attorney General disagrees.

First, the amount the Company is seeking in a rate case can impact the reasonableness of specific requests for cost recovery. Affordability is a major concern for ratepayers. And whenever possible the Commission should balance that interest against the Company's never-ending requests for rate increases. Just because the Company seeks recovery for certain costs does not mean that the underlying work needs to occur at the pace that the Company proposes. In those situations where projects are not as urgent or can otherwise be managed and therefore delayed or done at a slower pace, it is reasonable to do so given all the projects for which the Company seeks recovery. Apparently, from 2022 to 2024, the

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<sup>56</sup> PFD, p 82.

<sup>57</sup> Consumers Exceptions, p 14.

<sup>58</sup> *Id.*

Company managed with a lower number of replacements. While the transformers may have some vulnerabilities, there have been no failures in over seven years, so it is manageable. The Attorney General is not recommending that no replacements occur and even recommended an increase in the rate of replacements, but at a slightly slower pace. Second, contrary to the Company's arguments, the PFD provided two reasonable bases for slowing the pace of replacements as stated above.

The Company also claims that the Company's bridge period projections were made by taking into account the Commission's approved spending levels in Case No. U-21585 and that the Company has been making investments in line with that approval and that any adjustments would be improper for that bridge period.<sup>59</sup> However, it not clear from the Commission's order in U-21585 that a specific spending level was approved for the Allis Chalmers transformers.

The timing issue is a result of the Company's choice to file rate cases within a few months after an order is issued in the previous case. Unfortunately, that creates a situation where capital spending is forecasted for the same project over two rate cases before they have been completed with capital spending overlapping from case to case. That should not be used as the basis for denying the Attorney General's proposal. The Commission should approve a spending level that will allow replacements to occur over a longer period as proposed by the Attorney General.

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<sup>59</sup> PFD, p 15 and Hayward Rebuttal, 3 TR 1351.

#### iv. LVD Substation Capacity

The Company is forecasting capital expenditures for LVD Substations Capacity of \$29,656,000 for the bridge period and \$22,251,000 for the projected test year.<sup>60</sup> There are two components for this subprogram – new substations and existing substations.<sup>61</sup> The Attorney General recommended adjustments for both components. The PFD recommends adoption of the Attorney General’s proposed disallowances and the Company filed exceptions.

***New Substations.*** The company forecasted four new stations for the bridge period at a total cost of \$5,136,000. For the projected test year, the Company forecasted eleven new units at a total cost of \$20,301,000 and an average unit cost of \$1,845,727. In comparison, the Company has completed between 3 and 8 new stations for the last four years with no stations built in 2023.<sup>62</sup> The Company has not provided sufficient evidence why the historical average number should be doubled for the projected test year and why eleven new stations need to be built. In fact, for the most recent three years (including 2021 instead of 2023), the Company completed an average of 5 new stations annually.<sup>63</sup>

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<sup>60</sup> See, Exhibit A-113 (MPK-3), line 24.

<sup>61</sup> See, Hayward, p. 133, Figure 56.

<sup>62</sup> Exhibit AG-1 (DR AG-CE-0364 with attachment).

<sup>63</sup> Coppola, 3 TR 2458. See also, Attorney General’s Initial Brief, pp 32 – 33.

Because the Company has not supported its projected level of activity compared to the historical level of activity, the Attorney General used the three-year average of five units for the projected test year to forecast expenditures for New Substations. This results in capital expenditures of \$9,229,000, which is \$11,074,000 lower than the company's forecast of \$20,303,000 and the Attorney General recommended that the Commission remove the difference.<sup>64</sup>

The PFD agreed with the Attorney General's recommendation stating:

This PFD finds the Company's justification for these projects in the bridge and test periods to be solely lacking. Ms. Hayward's direct testimony is general, at best and Exhibits A-109 and A-110 only provide: 1) a list of the projects; 2) the investment category (new substation or increased capacity); and 3) the location of the project; and the number of new customers served by each project. Nowhere in these exhibits is there any information about whether the substations at issue are currently overloaded, and if not, when they are projected to be overloaded. Nor did the Company provide any reasons why load growth in parts of Consumers' service territory is so extensive that the number or new substations and capacity expansion project more than double in the bridge or test year.<sup>65</sup>

The PFD recommended that the \$11,074,000 for the projected test year be disallowed. The Company excepted from this recommendation arguing that it explained that the investments are necessary for the overall operation and reliability of electric distribution system by preventing overloads and addressing existing overloads. It claims that the projects are identified based on capacity needs

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<sup>64</sup> *Id.*

<sup>65</sup> PFD, p 86.

and work to mitigate criteria violations and that the number of projects is dependent on pockets of load growth and can vary year by year.<sup>66</sup> While the Company provided some information which the PFD noted, it did not provide the details that would explain why it is necessary to undertake the identified projects such that the proposed expenditures would be reasonable and prudent. The information identified in the PFD would go a long way in providing the necessary support for the listed projects.

The Company argues that the information was never requested and it cites Exhibit AG-72.<sup>67</sup> Presumably this is a reference to discovery response AG-CE-0848 which is page 4 of the exhibit. In the response the Company acknowledges that Mr. Coppola asked what problems are being addressed, which is an open ended question to which the Company should have elaborated on its experience and underlying basis for proposing the listed projects. More importantly, it is the Company's burden to support its proposed expenditures. It is not the burden of the other parties to pry the information from the Company. The summary provided by the Company provides no background or context for the specific projects. Therefore, the Company has not demonstrated that the level of expenditures it proposes are

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<sup>66</sup> Consumers Exceptions pp 15 – 16.

<sup>67</sup> *Id.*, at p 16.

reasonable or prudent and the Attorney General recommended disallowance should be adopted by the Commission.

***Existing Substations.*** The Company forecasts nineteen substations for capacity expansion for the bridge period at a cost of \$24,520,000. In comparison, the Company completed from seven to twelve projects a year with an average number of nine units annually for the most recent three years 2022-2024 for this category of expenditures. The bridge period forecast more than doubles the average annual number of units. To support this increase, the Company references the direct testimony of Ms. Hayward and provides a list of stations indicating station overload conditions. Ms. Hayward's testimony provides only general statements about addressing customers' increasing load demands but nothing specific to support the substantial increase in the number of units. Similarly, a list provided by the Company does not identify the level of overload experienced and why these are priority projects that need to be completed in the bridge period.<sup>68</sup> Therefore, using the recent historical level of activity, Mr. Coppola forecasts 12 units for the 16-month bridge period at the average cost per unit of \$675,000 per unit. This results in forecasted capital expenditures of \$8,100,000 which is \$16,420,000 less

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<sup>68</sup> Coppola, 3 TR 2458 – 2459 and Exhibit AG-11 (DR AG-CE-0477).

than the Company's forecasted expenditure level for the bridge period.<sup>69</sup> The Attorney General recommended that the Commission disallow that amount.

As discussed above, the PFD agreed with the Attorney General's recommendation and the Company filed an exception to the recommended disallowance for the bridge period providing the arguments discussed above under New Substations. The Attorney General's response is the same as provided above and therefore she will not repeat it again here. In addition, the Company claims that it has been making bridge period investments for several months in line with the Commission's approval in Case No. U-21585.<sup>70</sup> As discussed above regarding the Allis Chalmers transformers, the timing issue is a result of the Company's choice to file rate cases within a few months after an order is issued in the previous case and creating a situation where capital spending is forecasted for the same project over two rate cases before they have been completed with capital spending overlapping from case to case. That should not be used as the basis for denying the Attorney General's proposal.

The Attorney General recommends that the Commission remove \$16,420,000 for the bridge period and \$11,074,000 for the projected test year from the

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<sup>69</sup> See, Coppola, 3 TR 2459 and footnote 43.

<sup>70</sup> Consumers' Exceptions, p 16.

Company's forecasted capital expenditures for the LVD Substations Capacity subprogram.

v. **HVD Strategic Customers New Business**

According to the Company it is projecting \$90.045 million in the bridge period and \$48.860 million in the test year for HVD Strategic Customers New Business spending category.<sup>71</sup> This category consists of capital costs to meet the new business needs of large C&I customers that are too energy intensive to be served by the LVD system.<sup>72</sup> The Attorney General recommended disallowances for cancelled projects and unspecified high probability projects. The PFD agreed with the Attorney General's recommendations and the Company has filed exceptions to the PFD.

Information provided by the Company shows that five projects have been cancelled in the bridge period, have not yet started the design phase, are still in the early stage of project design, or have a placeholder amount without a known specific project. The Company originally included \$34,654,000 in the bridge period for these projects.<sup>73</sup> The cancelled projects, total to \$27,305,000, and the Attorney General

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<sup>71</sup> Consumers' Exceptions, p17.

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

<sup>73</sup> *See*, Exhibit AG-14, pages 2 and 3.

recommended that they should be removed along with the placeholder amount of \$7,349,000 for unknown “High Probability” projects.

In rebuttal, the Company recommended a partial disallowance related to the cancelled HVD Strategic Customers New Business project of \$10,653,000.<sup>74</sup> However, it rejected the Attorney General’s recommended disallowances for the remainder of the cost associated with the cancelled projects, other premature projects, and unknown projects.<sup>75</sup> As discussed in the Attorney General’s initial brief, the recommended partial disallowance is not adequate for the cancelled projects and the Attorney General continues to recommend the full disallowance.<sup>76</sup>

The Company also disagreed with the recommendation to disallow \$7.3 million for unknown HVD high probability projects strategic customers claiming that the Commission previously approved the strategic procurement of critical inventory designed to make it easier to execute high probability projects.<sup>77</sup> However, the Company did not provide any supporting detail or components for those forecasted capital expenditures in testimony or related exhibits. Therefore, the Company’s claim that it pertains to some inventory of equipment is unsupported and should be rejected.

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<sup>74</sup> Hayward rebuttal, 3 TR 1362.

<sup>75</sup> *Id.*

<sup>76</sup> *See*, Attorney General’s Initial Brief, pp 27 – 28.

<sup>77</sup> Hayward rebuttal, 3 TR 1361.

The PFD agreed with the Attorney General and ABATE –

That the most reasonable approach is to remove the costs of canceled projects from rate base, under the assumption that the Company will recoup some of the investment from the customer and repurpose the remaining investment from in equipment for other projects, the cost of which can later be included in rate base.<sup>78</sup>

The PFD found that \$4.340 million and \$22.965 million for two canceled projects as well as \$7.349 million for the unspecified projects should be removed from the bridge period.<sup>79</sup> It also found that for the test year that \$20,619,000 for a canceled project and an additional \$6.470 million in high probability projects should also be disallowed.<sup>80</sup>

According to the Company it agrees to the removal of \$20,619,000 for the test year related to a canceled project.<sup>81</sup> However, the Company argues that while it would normally be reasonable to remove money allocated for cancelled project, the HVD Strategic Customers New Business sub-program is different because the Company enters into contract with customers which it claims make the associated investments reasonable and prudent. It claims that there are a number of Commission proceedings where it was indicated that a contract was necessary for the inclusion of projected costs in a case. The Company points to the Commission's

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<sup>78</sup> PFD, p 93.

<sup>79</sup> Id., at p 94.

<sup>80</sup> Id.

<sup>81</sup> Consumers' Exceptions p 17.

order in Case No. U-21806 pages 15 – 16 for support.<sup>82</sup> However, the referenced pages of the order do not appear to address the issue for which they were cited. And the requirement to have a contract to support an investment is not the same as saying that a contract in and of itself demonstrates that the costs are reasonable and should be recovered. The Company also argues that the PFD set a new approval standard when it noted that the Commission did not review the contracts. Without Commission review, the Company should bear the risk and therefore the cost of any costs incurred, if the contracts it enters are not sufficiently protective. Other ratepayers should not bear the cost for the contractual failures of other Company customers.

There are also thirteen projects for the projected test year, that have been cancelled, do not have specific projects associated with forecasted dollars, are currently in the scoping phase, or no design and engineering work has yet been completed. The total capital expenditures for these thirteen projects are \$78,051,000.<sup>83</sup> As discussed above, one of projects with forecasted capital expenditures of \$20,619,000 was cancelled and the Company has already agreed to its removal.<sup>84</sup>

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<sup>82</sup> Consumers' Exceptions pp 17 – 18.

<sup>83</sup> See the highlighted projects in Exhibit A-14, pages 4 to 9.

<sup>84</sup> PFD, pp 91 and 94.

The Company also included capital expenditures of \$6,470,000 under New Business Strategic Customers for high probability projects that have not yet been identified. The Company describes high probability projects as those “that are in active contract negotiation that are highly likely to move forward in the future, such that the Company must invest in the bridge period and test year to ensure customer needs can be met.”<sup>85</sup> It claims that “the customer either has accepted a commitment offer letter from the [Michigan Economic Development Corporation] and/or has identified a specific site in the Company’s service territory for a location.”<sup>86</sup> It claims that the projects have long lead time and the customers need to know they can connect to the Company’s system on their schedule.<sup>87</sup> The Company describes high probability projects as those “that are in active contract negotiation that are highly likely to move forward in the future, such that the Company must invest in the bridge period and test year to ensure customer needs can be met.”<sup>88</sup> It claims that “the customer either has accepted a commitment offer letter from the [Michigan Economic Development Corporation] and/or has identified a specific site in the Company’s service territory for a location.”<sup>89</sup> It claims that the projects have long lead time and the customers need to know they can connect to

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<sup>85</sup> *Id.*, at p 19.

<sup>86</sup> *Id.*, quoting Hayward, 3 TR 1300.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*, at p 19.

<sup>89</sup> *Id.*, quoting Hayward, 3 TR 1300.

the Company's system on their schedule.<sup>90</sup> This is a placeholder amount and should be removed.

In rebuttal, Ms. Hayward indicated that contracts with two high probability strategic accounts had been signed since the Company filed the rate case.<sup>91</sup> However, the Company's rebuttal nor discovery responses provide any capital expenditure amounts for those customers. Without evidence of forecasted capital expenditures for those customers, the Attorney General's proposed disallowance should be sustained as proposed.

The PFD agreed:

Lastly, for "high probability" projects, this PFD agrees with the Attorney General that despite the Company's claims that it has now signed two contracts, Consumers did not provide sufficient information on what specific expenditures the Company expects to make in the bridge or test period for these contracts. Moreover, if these projects are completed, the Company can recover reasonable and prudent costs in its next rate case.

The Company argued in its exceptions that the removal of cost for unknown High Probability projects for the bridge period and projected test year are contrary to the Commission's direction in Case No. U-21585, pages 41 – 42. It claims that the Commission ruled that it was reasonable and prudent for the Company to strategically procure critical inventory designed to make it easier to execute on high

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<sup>90</sup> Id.

<sup>91</sup> Hayward, 3 TR 1363.

probability-projects in this sub-program.<sup>92</sup> The issue in Case No. U-21585 involved long lead-time transformers that the Company also claimed could be reallocated to other substation projects in the Reliability and Capacity programs as needed which will improve reliability by supporting quicker proactive replacements of units in poor health.<sup>93</sup> The Commission limited its decision, indicating “that this decision is not to be construed as a green light for the blanket stockpiling of equipment and associated expenditures in future rate cases...”<sup>94</sup> The Commission should adopt the Attorney General’s recommendation to disallow recovery of these speculative costs.<sup>95</sup>

For the reasons discussed above, in the Attorney General’s Initial Brief, Reply Brief and this reply, the Commission should adopt the PFD’s recommendation.

**c. Low Voltage Distribution (LVD)**

**i. LVD Lines Reliability – ROW**

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<sup>92</sup> Consumers’ Exceptions p 19.

<sup>93</sup> Order dated March 21, 2025, Case No. U-21585, pp. 41 – 43.

<sup>94</sup> Id. at p. 43.

<sup>95</sup> Attorney General’s Initial Brief, pp. 26, 27 – 28.

The Company is forecasting ROW costs of \$6,188,000 for the bridge period and \$17,667,000 for the projected test year.<sup>96</sup> ROW costs ranged from \$4.2 million to \$6.2 million during the four years from 2021 to 2024.<sup>97</sup> The projected test year increase in ROW costs to more than \$17 million represents a significant increase that has not been adequately supported by the Company.<sup>98</sup> According to the Company, there are no individual projects supporting the ROW forecast, instead it used a 14% ratio of historical ROW costs to target capital investments for its projections. No data or calculation were provided to support the 14% or the range of 11% to 19% noted in the discovery response.<sup>99</sup> In addition, the 14% ratio used by the Company may not be pertinent to the need for ROW easements and that not all capital projects require new or expanded ROWs.

Because the Company had not adequately associated the ROW costs to specific projects and justified the increased ROW costs to relevant projects planned for the projected test year, the Attorney General recommended disallowances.<sup>100</sup> Therefore, Mr. Coppola determined a reasonable spending level for the projected test year by using the highest level of ROW costs in the past four years of \$6,202,000 (from 2024) as the forecasted amount. This amount is slightly higher

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<sup>96</sup> Partlan, 3 TR 1956, Figure 35.

<sup>97</sup> Exhibit AG-4 (DR AG-CE-0346 with attachment).

<sup>98</sup> Coppola, 3 TR 2435 – 2436.

<sup>99</sup> *Id.* at 2436. *See also*, AG-4 (DR ST-CE-0155).

<sup>100</sup> Coppola, 3 TR 2436.

than the \$6,188,000 forecasted by the Company for the 16-month bridge period ending April 2026, and it is even higher than the 12-month annualized amount of \$4,641,000. The \$6,202,000 forecast for the projected test year is \$11,465,000 less than the Company's forecast of \$17,667,000. The Attorney General recommended that the Commission remove this difference from the Company's forecasted capital expenditures.<sup>101</sup> Staff also recommended disallowances for the spending category.

The PFD found the Attorney General and Staff's arguments to be persuasive. It noted the Commission's criticism that the Company failed to provide adequate support for these investments in the Company's last electric rate case and that the information provided by the Company in this case was equally lacking.<sup>102</sup> The PFD found the Attorney General's historical approach to calculating the test year investment to be the most reasonable.<sup>103</sup>

The Company excepted from the PFD's determination. It argues that the Commission should adopt its ROW expenditures based on a percentage of Targeted Circuit Improvements is reasonable.<sup>104</sup> The Company claims that ROW costs have averaged 14% of Targeted Circuit improvement spending with a range of 11% to 19% since 2020, and for the projected test year the Company is projecting ROW

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<sup>101</sup> *Id.* at 2436 – 2437.

<sup>102</sup> PFD, p 138.

<sup>103</sup> *Id.*

<sup>104</sup> Consumers' Exceptions, p 23.

spending at 12% of Targeted Circuit Improvement costs.<sup>105</sup> The Company admits that the “extent to which these costs apply to particular projects is typically not known until closer to project completion because they involve items such as creation of easement documents and any new easements and payments for these easements.”<sup>106</sup> Thus it claims that the Company’s method of projecting ROW costs “based on a historical spending percentage is reasonable and should be approved.”<sup>107</sup>

The Commission should reject the Company’s arguments and adopt the PFD’s recommendation. The Company has failed to provide the most for basic information that should be part of any consideration for obtaining and paying for a ROW – costs and the specific projects, lines or miles of lines for which the easements will be needed. Its test year projection based on a “historical spending percentage” is based on nothing more than coincidence. It lacks the specific information needed to support the expenditure. The Company’s claim that certain information is not known until closer to project completion indicates that the Company may need to adjust its process to ensure better identification of cost sooner or adjust the timing of their requests for funding until it has better information.

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

## ii. Metering and Transformers

The Company forecasts capital expenditures for LVD Transformers of \$227,963,000 for the period bridge period and \$207,782,000 for the projected test year.<sup>108</sup> The proposed amount represents a significant increase in spending in the forecasted periods over the prior five years.<sup>109</sup> According to Ms. Partlan, the increase in spending is driven by both volume and price increases.<sup>110</sup> The increase in volume results from new purchases of pad mount transformers tied to increase undergrounding work for new services, primary and secondary circuits likely related to undergrounding overhead lines, and EVs.<sup>111</sup>

The Company provided the number of units of 1-phase and 3-phase transformers it planned to purchase and it shows large increases from 2024 to 2027.<sup>112</sup> The forecast for the 1-phase pad mount transformers shows an increase from 2,876 units in 2024 to 7,469 units in 2027. These increases are in addition to a 48% increase in the number of units in 2023 over 2022 and another 24% increase in 2024 over 2023.<sup>113</sup>

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<sup>108</sup> Exhibit A-113 (MPK-3), line 5.

<sup>109</sup> Partlan, 3 TR 2024, Figure 64.

<sup>110</sup> *Id.* at 2026 – 2027.

<sup>111</sup> Coppola, 3 TR 2446.

<sup>112</sup> See, Exhibit AG-8 (AG-CE-0361 with attachments) and Coppola 3 TR 2446 – 2447.

<sup>113</sup> Coppola, 3 TR 2447.

The forecast for the 3-phase pad mount transformers shows similar high increase of 64% in 2025 over 2024 followed by a decrease of 20% in 2026 and an increase of 60% in 2027. The increase in units from 2023 to 2024 was 32%. According to Mr. Coppola, the increases for 2025 through 2027 are excessive and are not supported by any calculations or basis other than general statements about projects that may need new pad mount transformers.<sup>114</sup> The lack of support is made clear by other evidence presented by the Company in the case. For example, New Service Connections are forecasted to increase at an annual rate of approximately 1% from 2024 to the projected test year.<sup>115</sup> And, the number of miles of undergrounding projects is 1.4 miles in the bridge period and 50 miles in the projected test year.<sup>116</sup> This level of activity does not justify the forecasted increases in pad mount transformers.

Mr. Coppola calculated an appropriate number of 1-phase and 3-phase transformers. First, he determined the number of units that will provide the Company with some additional inventory of 1-phase pad mount transformers for the bridge period and projected test year. He used the 24% rate of increase in 2024 actual purchases over the number in 2023 and applied it to the 2,876 units

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<sup>114</sup> Coppola 3 TR 2447.

<sup>115</sup> *See*, Partlan, 3 TR 1898, Figure 4.

<sup>116</sup> Coppola 3 TR 2447.

purchased in 2024 which results in 5,040 units for the bridge period and 4,776 units for the projected test year.<sup>117</sup>

To determine a reasonable capital expenditure amount for the bridge period for 1-phase transformers, he multiplied the 5,040 units by the year-to-date price of \$5,287 per unit provided by the Company that already reflected inflation based on actual prices billed by vendors, resulting in a forecasted capital expenditures of \$26,646,000.<sup>118</sup> This amount is \$9,791,000 less than the cost of \$36,437,000 included in the Company's forecasted capital expenditures for the bridge period. The Attorney General recommends that the Commission remove the \$9,791,000 from the Company's forecasted capital expenditures.

For the projected test year, he adjusted the bridge period price for the 1-phase pad mount transformer by inflation to arrive at a price of \$5,414.<sup>119</sup> This price multiplied by the forecasted number of units of 4,776 results in forecasted capital expenditures of \$25,857,000 for 1-phase transformers, which is \$11,777,000 lower than the Company's forecasted cost of \$37,634,000.<sup>120</sup> The Attorney General recommends that the Commission remove the \$11,777,000 from the Company's forecasted capital expenditures for the projected test year for 1-phase transformers.

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<sup>117</sup> See, Coppola 3 TR 2448 and FN 29.

<sup>118</sup> See, Exhibit AG-8 (DR AG-CE-0361 with attachments), Coppola 3 TR 2448, and Exhibit AG-9.

<sup>119</sup> See, Coppola 3 TR 2449, footnote 31.

<sup>120</sup> See, Exhibit AG-9.

Second, a reasonable number of units was determined for 3-phase pad mount transformers for the bridge period and projected test year. Mr. Coppola used the 32% rate of increase in 2024 actual purchases over the number in 2023 and applied it to the 564 units purchased in 2024 resulting in 991 units for the bridge period and 820 units for the projected test year.<sup>121</sup>

To determine capital expenditures for the bridge period, he multiplied the 991 units by the year-to-date price of \$27,217 per unit based on the information provided by the Company that already reflects inflation in actual prices billed by vendors.<sup>122</sup> The result is forecasted capital expenditures of \$26,972,000. This amount is \$5,514,000 less than the cost of \$32,486,000 included in the Company's forecasted capital expenditures for phase-3 transformers for the bridge period.<sup>123</sup> The Attorney General recommended that the Commission remove the \$5,514,000 from the Company's forecasted capital expenditures for the bridge period.

Likewise, for the projected test year, Mr. Coppola adjusted the bridge period price for the 3-phase pad mount transformer by inflation to arrive at a price of \$27,870.<sup>124</sup> Multiplying this price by the forecasted units of 820 results in forecasted capital expenditures of \$22,853,000, which is \$3,005,000 lower than the

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<sup>121</sup> Coppola 3 TR 2449 including footnote 33.

<sup>122</sup> Exhibit AG-8 (DR AG-CE-0361 with attachments).

<sup>123</sup> See, Exhibit AG-9.

<sup>124</sup> \$27,217 x 1.024 = \$27,870.

Company's forecasted cost of \$25,858,000.<sup>125</sup> The Attorney General recommended that the Commission remove the \$3,005,000 from the Company's forecasted capital expenditures for the projected test year.

The Attorney General recommends that the Commission remove a total of \$15,305,000 for the bridge period and \$14,782,000 for the projected test year from the Company's forecasted capital expenditures. The PFD recommended that the Commission approve the Attorney General's adjustments for the bridge period and projected test year noting that those amounts represent approximately seven percent of the Company's request.<sup>126</sup>

The Company excepted from the PFD's recommendation arguing that the increase in LVD transformer spending is being driven by the growth in purchases in 1-phase and 3-phase padmount transformers needed for undergrounding, new business activity and projected EV adoption.<sup>127</sup> It also argues that the Attorney General's proposed reduction was based on applying 2023 to 2024 growth rate for padmount transformers, but that undergrounding drives the need for transformers above the already increased need reflected in the increase from 2023 to 2024.<sup>128</sup>

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<sup>125</sup> Exhibit AG-9.

<sup>126</sup> PFD, p 199.

<sup>127</sup> Consumers' Exceptions, p 28.

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

The Commission should reject the Company's arguments. As discussed above, other evidence presented by the Company in this case belie the claim that the increase is being driven by the items identified above. For example, New Service Connections are forecasted to increase at an annual rate of approximately 1% from 2024 to the projected test year.<sup>129</sup> And, the number of miles of undergrounding projects is 1.4 miles in the bridge period and 50 miles in the projected test year.<sup>130</sup> This level of activity does not justify the forecasted increases in pad mount transformers. Further, as pointed out by the PFD, the Attorney General's recommendation results in a fairly modest decrease of seven percent in the Company's request. For comparison, the forecast for the 1-phase pad mount transformers shows an increase of 24% in 2024 over 2023.<sup>131</sup> For the 3-phase pad mount transformers the Company forecast shows similar high increase of 64% in 2025 over 2024 followed by a decrease of 20% in 2026 and an increase of 60% in 2027.

The Commission should adopt the PFD's recommendations.

### iii. **Metro Modernization**

The Company forecasted capital expenditures for the bridge period of \$895,000 for Peer-to-Peer Automation and \$305,000 for Metro Automation. For the

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<sup>129</sup> See, Partlan, 3 TR 1898, Figure 4.

<sup>130</sup> Coppola 3 TR 2447.

<sup>131</sup> Coppola, 3 TR 2447.

projected test year, the respective forecasted capital expenditures are \$270,000 and \$650,000. The Company withdrew the proposed capital spending for the Peer-to-Peer Automation project in line with the Attorney General's proposal to disallow the total amount.<sup>132</sup> Therefore, the Commission should remove \$1,165,000 (\$895,000 for the bridge period and \$270,000 for the projected test year) for this program from capital expenditures in this case.

The Company continues to seek capital expenditures for the Metro Modernization project.<sup>133</sup> According to the Company, it did not perform a cost/benefit analysis to demonstrate there is economic value for this new to the company technology.<sup>134</sup> It also did not present evidence of a track record for the technology to justify the capital spending.<sup>135</sup> Furthermore, the Company indicates that employees spend 2,000 hours in underground vaults, which means the 185-hour reduction stated in McPhail's rebuttal represents a relatively minor reduction in safety exposure. The Attorney General recommended that the Commission should reject this proposal and remove \$955,000 (\$305,000 for the bridge period and \$650,000 for the projected test year) from capital expenditures in this case.

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<sup>132</sup> McPhail rebuttal, 3 TR 1745. *See also*, Exhibit AG-75 (DR AG-CE-0860).

<sup>133</sup> McPhail Rebuttal, 3 TR 1746.

<sup>134</sup> Exhibit AG-16 (DR AG-CE-0541c).

<sup>135</sup> Exhibit AG-75 (DR AG-CE-0862).

The PFD agreed with the Attorney General that the Company “failed to adequately support its costs for this project. It also recommended that if the Company seeks recovery of related expenditures in a future rate case, it should provide a complete picture of the total costs involved for full system-wide deployment as well as a BCA. The Commission should therefore disallow \$305,000 in the bridge period and \$650,000 in the test year.”<sup>136</sup>

The Company filed an exception to the PFD’s recommendation arguing that the project will improve reliability through remote operations and will improve safety for the public and the Company’s electric line worker.<sup>137</sup>

The Commission should reject the Company’s arguments for the reasons provided above and in the Attorney General’s initial brief,<sup>138</sup> and adopt the PFD’s recommendations.

#### iv. **Distribution Asset Management**

The Company is proposing capital expenditures for Electric Distribution Asset Management systems, specifically for the Asset Repository System and the Asset Performance Management System. The forecasted capital expenditures for

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<sup>136</sup> PFD, p 213.

<sup>137</sup> Consumers’ Exceptions, pp 28 – 29.

<sup>138</sup> Attorney General’s Initial Brief, pp 75 – 77.

the projects totals \$1,740,000 for the bridge period and \$4,050,000 for the projected test year.<sup>139</sup> According to Mr. McPhail, the implementation costs of the Asset Repository system have increased. In addition, the Company claims that purchasing and installing a new Asset Performance Management system would be expensive and decided to build its own system in-house at a lower cost.<sup>140</sup>

As discussed in the Attorney General's initial brief, the background and support for these projects are problematic. The Company reported that the original estimated cost of the Asset Repository system was approximately \$2.5 million, including development O&M costs. It now forecasts the revised cost of the system will be \$8.8 million, including O&M costs.<sup>141</sup> This is a substantial increase in cost considering that the Company proposed this system in the two prior rate cases, dating back to 2023 at a much lower cost. The Company's explanation for the increase is that the initial capital estimate was based on early planning assumptions and as the project progressed it proved to be more complex and costly. It also stated that the software-as-a-service model tool was higher than originally forecasted.<sup>142</sup>

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<sup>139</sup> McPhail, 3 TR 1703, Figure 9.

<sup>140</sup> *Id.* at 1704.

<sup>141</sup> *See*, Exhibit AG-17 (DR AG-CE-0544 with attachments).

<sup>142</sup> Attorney General's Initial Brief, pp 77 – 81.

The Attorney General questioned the need to undertake this project and the related Asset Performance Management system and recommended that the Commission disallow the forecasted capital spending for multiple reasons, the Company had not demonstrated that the new systems was necessary and that current systems could no longer be used, and a cost/benefit analysis (CBA) had not been performed in the last case (but provided one in this case) incorporating all the systems the Company wants to implement, including the Asset Repository, Asset Performance Management system, Asset Investment Planning system, and the Device Management system.<sup>143</sup> In addition, the Device Management system is a new system that the Company added in this rate case at a cost of \$2.5 million without any explanation or justification.<sup>144</sup>

Mr. Coppola points out problems with the CBA. First, it is premised on the total cost for all systems being approximately \$16 million instead of the current forecast of nearly \$21 million and is now stale. Second, the new higher cost makes the result of the net present value analysis unfavorable. It is now at about breakeven, assuming all of the soft savings included in the CBA are achievable. Third, the purported savings were not documented, and it is not possible to determine whether they are realistic or achievable. Fourth, the Company also included cost savings for “Societal Improved Power Quality” and reduced

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<sup>143</sup> Coppola, 3 TR 2477 – 2478.

<sup>144</sup> *Id.* at 3 TR 2478.

“Reliability Degradation Risk,” which are vague concepts and the Company has not demonstrated that they provide tangible and realistic cost savings to the Company or its customers.<sup>145</sup> The proposed systems are not economically justified.<sup>146</sup>

Additionally, the Asset Performance Management system is still in the planning phase of development, and it is too premature to include its capital spending in rate base in this rate case.

In rebuttal, the Company disagreed that the Asset Performance Management System funding should be excluded from funding in this rate case.<sup>147</sup> According to Mr. McPhail, “the APM is scalable, meaning as each health score is developed for each asset, that information becomes useful and will be used to guide investment decisions.”<sup>148</sup> However, the Company subsequently confirmed that the Asset Performance Management System is still in the planning phase and despite Mr. McPhail’s claims otherwise, is still too premature to include in capital expenditures in this case.<sup>149</sup> Therefore, the Attorney General recommended that the forecasted capital expenditures of \$1,740,000 for the bridge period and \$4,050,000 for the projected test year should be removed from this rate case.

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<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> McPhail rebuttal, 3 TR 1743.

<sup>148</sup> McPhail Rebuttal, 3 TR 1743.

<sup>149</sup> See, Exhibit AG-75 (DR AG-CE-0861).

The PFD agreed with the Attorney General’s recommended disallowances for the bridge period and projected test year.<sup>150</sup> It shared the concerns expressed by Staff and the Attorney General regarding spending and the overall management of the project. The PFD noted that in Case No. U-21389, that while the Commission expressed support for continuation of the DistAM project, the original approved projection of \$12 million had been reached and that the Commission required “updated data, including total costs, for any future cost recovery requests associated with the DistAM project.” In Case No. U-21585, the Commission referenced its mandate from the previous case and found that Consumers had failed to provide adequate data supporting recovery of the increased costs associated with DistAM, disallowing \$5.558 million in expenditures.”<sup>151</sup> “Here, Consumers supports its DistAM spending with a flawed BCA that is based on updated costs and includes anticipated cost savings that are vague and unrealistic.”<sup>152</sup>

The Company excepted from the PFD’s recommendation. It summarizes the features of the project, purported benefits, the history of the project through multiple rate cases, more purported benefits of the program, and claims that the

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<sup>150</sup> PFD, p 222.

<sup>151</sup> PFD, p 221 (internal citations omitted).

<sup>152</sup> *Id.*

Liberty Audit supports completion of the project.<sup>153</sup> But it does address or even rebut the deficiencies described by the PFD and the Attorney General.

The Commission should adopt the PFD's recommendation for the reasons provided above, in the PFD and the Attorney General's initial brief.<sup>154</sup>

As Mr. Coppola noted, this is a classic case of not doing enough upfront research and analysis, before making a decision to proceed with a project and finding out later that the cost ballooned to five times more than originally estimated.<sup>155</sup> Customers should not pay for projects that are incurring significant cost overruns and are not economically justified.

## **2. Fleet Services Capital Expenditures**

### **a. Vehicle Capital Expansion Plan**

The Company is forecasting capital expenditures for the Transportation Fleet of \$25.9 million for the bridge period and \$67.9 million for the projected test year.<sup>156</sup> In comparison, the Company had capital expenditures of \$16.6 million in 2024. In Exhibit A-104, Mr. Guinn lists the number of vehicles and field equipment within

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<sup>153</sup> Consumers' Exceptions, pp 29 – 32.

<sup>154</sup> PFD, pp 213 – 222 and Attorney General's Initial Brief, pp 77 – 81.

<sup>155</sup> Coppola, 3 TR 2477.

<sup>156</sup> Exhibit A-12, Schedule B-5.6, page 4.

each vehicle class that the Company purchased in 2024 and plans to purchase in 2025, 2026, and the projected test year along with the related cost, including the additional number of vehicles and equipment it claims is needed to support the planned capital spending in the distribution area.<sup>157</sup>

The projected test year fleet expansion detail shows that of the 229 new planned vehicle purchases, 71 vehicles are for electric undergrounding work and 158 vehicles for other LVD programs.<sup>158</sup> Consistent with the Attorney General's recommended disallowance for the Company's overhead to undergrounding program, Mr. Coppola recommended that cost of the 71 vehicles pertaining to this program be removed resulting in \$27.931 million disallowance.<sup>159</sup>

The PFD recommended adoption of the Attorney General's proposed disallowance of \$27.931 million based on recommended disallowance of the Company undergrounding spending. It noted that it seems unlikely that the Commission will reject the entirety of the undergrounding and LVD work, however, there is a question whether the Company will be able to scale up the work as proposed will need total number of additional vehicles requested by the Company.<sup>160</sup>

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<sup>157</sup> See, Exhibit A-104, line 3.

<sup>158</sup> Coppola 3 TR 2493 and Exhibit AG-24 (DR AG-CE-0661 with attachment.)

<sup>159</sup> See, Exhibit AG-25 and Attorney General's Initial Brief, pp 97 – 98.

<sup>160</sup> PFD, p 305.

The Company excepted from the PFD's recommendation arguing that if the recommended disallowance is adopted, the Company *risks* stranding labor as some members of the Company workforce *could* be without equipment and vehicles necessary to perform the work.<sup>161</sup>

If the Commission adopts the Attorney General's recommendation related to OHUG program, the recommended disallowance for the expansion program would only make sense. However, even if the Commission adopts some but not all of the proposed disallowances, the Company has not demonstrated that the Attorney General's recommended disallowance for this spending category is unreasonable. As discussed in the Attorney General's brief and exceptions, the Company is underutilizing its vehicle fleet, and some perhaps some vehicles could be repurposed for this program.<sup>162</sup> Interestingly, the Company's exceptions provided less than a complete claim that the lack of funding would necessarily result in workers not having vehicles and equipment.

For the reasons provided above, the Commission should adopt the PFD's recommendations.

### **3. IT and Security Capital Expenditures**

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<sup>161</sup> Consumers' Exceptions, p 46.

<sup>162</sup> See, Attorney General's Initial Brief, pp 97 – 99 and Attorney General's Exceptions to the PFD, pp 61 – 64.

**a. Projects in the Investment Planning Phase**

The Attorney General recommended disallowances for the Electric GIS Utility Network Transformation project (\$1,050,000 capital expenditures and \$520,000 for O&M) and the Integrated Energy Management Platform Optimization project (\$1,070,000 for capital expenditures and \$508,000 for O&M). These proposed disallowances were part of a larger set of recommendations.<sup>163</sup> The Company disclosed that the four projects are still in the Investment Planning phase and that no detailed requirements have yet been completed.<sup>164</sup> Because these projects are still in the initial stage of development there is significant uncertainty whether or when they will advance further. The projects are too premature to include in rate base in this rate case. So, the Attorney General recommended their disallowance. In addition, the Benefit to Cost ratio is a negative 1.0, meaning that it has no financial benefits and is not economically justified.<sup>165</sup>

The PFD found that the projects were premature based on the Company's indication that it does not plan to expend funds for the projects until the last four months of projected test year.<sup>166</sup> The Company filed an exception to the recommendation, arguing that the lack of expenditures in 2026 is not a reason to

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<sup>163</sup> While the PFD agreed with the proposed disallowances identified above, it recommended rejection of the other proposed disallowances and that recommendation was addressed in the Attorney General's exceptions.

<sup>164</sup> Exhibit AG-27 (DR AG-0592 with attachments).

<sup>165</sup> See, Attorney General's Initial Brief, pp 105 – 107.

<sup>166</sup> PFD, p 366.

determine that the projects are premature, it is not requesting post test year expenditures, and essentially the timing of the expenditures during the test year should not matter.<sup>167</sup>

The Commission should reject this argument. The lack of requirements indicates that the full nature of the project may not be known and there is no guarantee that expenditures will occur before the end of the test year. The Commission should adopt the PFD's recommendations.

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

The Company proposed a permanent capital structure with a common equity component of 50.75%,<sup>168</sup> which is more than the current 50.0% approved in Case No. U-21585.<sup>169</sup> It also claimed that an appropriate ROE is 10.25%.<sup>170</sup> The PFD recommended a equity ratio of 50% and a ROE of 8.2%.<sup>171</sup> Consumers disagrees with the PFD's capital structure and rate of return recommendations. In fact it adamantly urges the Commission to reject the PFD's "dramatic reduction" in ROE to 8.2%. It also claims that in order to best support the Company's credit, the Commission should adopt its request for a 10.25% ROE and 50.75% equity ratio.

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<sup>167</sup> Consumers' Exceptions , pp 51 – 52.

<sup>168</sup> Exhibit A-14 (MRB-1), Schedule D1.

<sup>169</sup> March 21, 2025 order in Case No. U-21585 (March 21 order), page 129. In the previous Case No. U-21389 (March 1 order), page 129, the Commission authorized a 50.02% equity ratio.

<sup>170</sup> Bleckman, 3 TR 811 and 841; Bulkley, 4 TR 2720; Bulkley Rebuttal, 4 TR 2797.

<sup>171</sup> PFD, pp 448 and 542, respectively.

For the reasons discussed below, the PFD properly determined that the Company's requested equity ratio and ROE are excessive.

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

The PFD determined that an equity ratio of 50.0% is reasonable and consistent with the Commission's orders. Specifically, it stated that "[r]ecognizing the relative cost differences between debt and equity financing, the Commission has long determined that a balanced capital structure reflects equal amounts of debt and equity as a percentage of Consumers' permanent capital structure,"<sup>172</sup> before revisiting several Commission orders that document its decision that a ratio equally balanced between debt and equity best balances the interest of the utility's investors and customers consistent with *Bluefield* and *Hope*.<sup>173</sup>

Consumers Energy takes exception to the PFD's recommendation claiming that the ALJ does not really explain his reasoning except that the Company did not establish its request and its decision is reasonable and consistent with Commission orders.<sup>174</sup> The Company argues that "[s]ince the ALJ offered no specific reason why the Company's presentation was insufficient, the Commission should give no weight to his recommendation."<sup>175</sup> There is no merit to the Company's argument unless you chose to ignore about twenty-six pages of the PFD.

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<sup>172</sup> PFD, p 423.

<sup>173</sup> *Id.*, at pp 423 -424.

<sup>174</sup> Consumers' Exceptions, p. 54.

<sup>175</sup> *Id.*

The ALJ noted recent Commission orders regarding balancing the Company debt-equity ratio, and then he did a comprehensive review of the parties testimony and exhibits on the issue before turning to his analysis.<sup>176</sup> After reviewing all of the evidence provided by the parties, the ALJ appeared to weigh the evidence while addressing the risk to the Company and cost to ratepayers.<sup>177</sup> And in over seven pages of analysis, the PFD correctly determined that the Company's had failed to demonstrate that its proposed equity 50.75% was reasonable.<sup>178</sup> Noting that "the Commission has determined that a balanced capital structure – reflecting equal amounts of debt and equity as a percentage of Consumers' permanent capital structure – most appropriately balances the interests of the utility and its customers."<sup>179</sup>

In rendering its decision, the PFD discussed recent credit reports for Consumers and the unlikelihood of a negative credit action if the Company's capital structure remained equally balanced.<sup>180</sup> In response to the Company's claim that Staff downplays the importance of Moody's 2021 downgrade of Consumers' credit, the PFD disagreed that the downgrade negatively impacted the Company's ability to maintain its credit or attract capital.<sup>181</sup> In light of the Company' capital

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<sup>176</sup> See, PFD pp 424 – 442.

<sup>177</sup> PFD, pp 442 – 449.

<sup>178</sup> *Id.*, at p 442.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*, at pp 443 – 444.

<sup>181</sup> *Id.* at p. 444.

investment plans, the PFD discussed the credit reporting agencies' stable outlook and the Commission's view that did not indicate any concern with the goal of a balanced capital structure.<sup>182</sup> The PFD discussed the role of the FFO/debt ratio and what impact, if any it should have on determining an appropriate equity ratio and ROE, including dismissing any claims that their determination is linked.<sup>183</sup> The PFD addressed the various views of the regulatory environment in Michigan.<sup>184</sup> Finally, it touched on the Company's arguments regarding volatility and economic uncertainty (which the PFD discussed in more detail with regard to the ROE).<sup>185</sup>

The PFD concluded its analysis –

After reviewing the record and the arguments of the parties, this PFD finds that Consumers has not established that its request for a changed capital structure with an increased equity ratio of 50.75% is reasonable and consistent with prior Commission orders. Conversely, having reviewed the evidence and arguments presented by Staff, the Attorney General, ABATE, and CUB, this PFD finds that the evidence presented supports maintaining a balanced capital structure. Thus, this PFD recommends adopting the Attorney General's methodology for maintaining a balanced 50/50 equity ratio, i.e. increasing debt and decreasing equity.<sup>186</sup>

The PFD was not persuaded to the Company's position, which is consistent with the Company's failure to meet its burden of proof. The PFD's analysis addresses all the relevant issues in rendering its decision. Because the Attorney General's treatment

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<sup>182</sup> *Id.*, at pp 444 – 445.

<sup>183</sup> *Id.* at pp 445 – 446.

<sup>184</sup> *Id.*, at pp 446 – 447.

<sup>185</sup> *Id.*, at pp 447

<sup>186</sup> *Id.*, at p. 448.

of the equity ratio is consistent with PFD, she incorporates her Initial Brief and Reply herein by reference,<sup>187</sup> and will just touch briefly on a few of issues raised by the Company in its Exceptions.

The Company starts its exceptions by arguing that the Company's equity ratio (along with its ROE) has an important impact on the Company's credit quality in two ways. "First, both the equity ratio and the Company's ROE are included in a key financial metric used by the credit ratings agencies to evaluate a business's credit quality – the ratio of the business's Funds from Operations ("FFO") to the business's debt ("FFO-to-Debt ratio"). 3 TR 818. Second, credit agencies also evaluate the regulatory environment in which a utility operates as part of their determination of a utility's credit quality. 3 TR 824."<sup>188</sup> It claims that the Company's equity ratio and ROE cannot be evaluated in isolation and that the Commission should calculate the weighted rate of return by multiplying the equity ratio and ROE together.<sup>189</sup> And that the Company's weighted rate of return has been declining as a result of declining equity ratios which also corresponds to the Company's declining FFO-to-Debt ratio with Moody's and S&P.<sup>190</sup>

The PFD disputed the Company's assertion that the linkage between the equity ratio and ROE requires a balancing of those two inputs for the FFO/Debt

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<sup>187</sup> See, Attorney General's Initial Brief, pages 119 – 136. See also, Attorney General's Reply Brief, pages 16 – 23.

<sup>188</sup> Consumers' Exceptions p. 54.

<sup>189</sup> Consumers' Exceptions, p 55.

<sup>190</sup> Consumers' Exceptions, p. 55.

ratio.<sup>191</sup> The linkage proposed by the Company elevates the importance of those two inputs over other inputs such as debt in determining an appropriate ratio. As discussed in the Attorney General’s Initial Brief, the Company does not provide any evidence from the ratings agencies that certain minimum equity ratios or ROEs are needed to maintain credit ratings.<sup>192</sup> More importantly, different considerations are used to determine the reasonableness of the equity ratio and ROE, therefore they should be judged on their merits.<sup>193</sup> There is no basis for the Company’s use of the weighted rate of return in its equity analysis. In *Bluefield* and *Hope*, the Supreme Court refers to a rate of return or fair return, but the Court does not appear to discuss an “overall rate of return” or the companies’ equity ratio. *Hope* discusses investor interest and the return to the equity owner, which is what ROE provides.<sup>194</sup>

The Company also argues that the Commission’s regulatory environment score has recently decreased because of recent ratemaking decisions regarding equity ratios and ROES. Referencing S&P credit outlooks for the North American utility industry, the Company highlighted comments regarding companies operating with only minimal financial cushions from downgrade thresholds and the need for significantly more common equity issuances to avoid weakening financial

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<sup>191</sup> PFD, pp 445 – 446.

<sup>192</sup> Attorney General’s Initial Brief, p 130.

<sup>193</sup> *Id.*, at p. 131.

<sup>194</sup> *Hope*, 320 US 603. *See also, Bluefield*, 262 US 692 – 693.

measures across the industry. The Company warns that “those conditions will undoubtedly become markedly worse if the Commission were to approve rates in this case based on the ALJ’s recommendation of a 50% equity ratio and a dramatically reduced 8.2% ROE.”<sup>195</sup> This argument should be rejected.

First, the report provides general industry information, the Commission is not responsible for financial condition of the regulated utility industry, it can only consider the cases and record before it for Michigan’s regulated utilities. In addition, the median rating among North American Investor-owned regulated utilities is BBB+ whereas Consumers Energy’s S&P rating is A-/Stable/A-2.<sup>196</sup>

Second, the Company has not proven that it needs a common equity ratio of 50.75% to maintain certain cash flow ratios in support of its credit metrics. The ratings agencies report that the Company’s performance in recent years has been above their respective thresholds for downgrades.<sup>197</sup> The Company presented no evidence that there have been any negative consequences from its current 50% equity ratio.

Third, any claims that both S&P and Moody’s expected FFO-to-debt ratios are now below the low end of S&P’s and Moody’s expected ranges and approaching their downgrade thresholds should not be taken at face value. In testimony, the Company focused on declines in coverage ratios that temporarily occurred in 2022

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<sup>195</sup> Consumers’ Exceptions, p 55. The Attorney General will address the ROE below.

<sup>196</sup> See, Attorney General’s Reply Brief, p 21, and Exhibit A-35, p 5 – S&P Outlook for North American Investor Owned Regulated Utilities, dated April 18, 2024.

<sup>197</sup> See, Attorney General’s Initial Brief, pp 121 – 124.

and 2023. However, the causes of the decreases have receded and, in neither case, did the ratios reach the Company's downgrade levels,<sup>198</sup> nor did the Company indicate that they reached a level that triggered a credit alert or other action by the ratings agencies that usually precede a downgrade.

As discussed in the Attorney General's initial brief, Mr. Coppola calculated the Company's key cash flow-to-debt ratio for the 12-months ended March 2025 adjusted for the ROE (9.80%) and Common Equity ratio (50%) levels he advocates in this case for Moody's, starting with the actual 2025 ratio results from Moody's on line 1. The result of his analysis for Moody's is shown on line 4 with a cash flow-to-debt ratio of 20.0%. This ratio is well above the 18% downgrade threshold noted by Moody's in its most recent report. Mr. Coppola did not perform the same calculation for S&P given the similarity in the calculations and the lower 15% ratio for downgrade.<sup>199</sup> More importantly, the credit ratings agencies' reports for the Company do not reveal any significant concerns regarding a possible downgrade with an equity ratio of 50%. Instead, they highlight the Company's stable outlook and point to credit positive factors such as a credit positive regulatory environment in Michigan.<sup>200</sup> The Company has not demonstrated that it does not have sufficient financial cushion without increasing its equity ratio.

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<sup>198</sup> *Id.* at pp 123 – 126.

<sup>199</sup> *Id.* at p 125. *See also*, Coppola, 3 TR 2520 – 2521 and Exhibit AG-44 for the complete analysis.

<sup>200</sup> *See*, Coppola 3, TR 2521 – 2522, Exhibit AG-48 CONF report page 1. Exhibit AG-47, report page 2, and Exhibit AG-49 CONF, report page 1.

The Company also argues that there is a high degree of volatility and economic uncertainty with respect to financial markets, interest rates, and geopolitical tensions and that it needs an ROE and equity ratio that is supportive of good credit quality to maintain uninterrupted access to needed liquidity and better withstand potential impacts from spikes in fuel prices, inflationary pressures, and tightening capital markets.<sup>201</sup>

First, the Company already has access to short-term credit facilities. For example, in 2022 during the spike in natural gas prices, the Company increased its credit lines from \$1.1 billion to \$1.8 billion.<sup>202</sup> Regarding liquidity, the Company stated that it was not aware of any instance in which it was directly refused short-term credit.<sup>203</sup> Second, the Company's financials and credit rating remain strong. It has not demonstrated that its earnings have been negatively impacted by its current 50% equity ratio. While the ratings agencies noted some downward pressure from recent rate cases, the ratings agencies take a broader view of the Company's financial health and how Michigan's regulatory environment is constructive in helping the Company maintain its credit ratings. As noted by the ratings agencies, the Company also benefits from several regulatory mechanisms

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<sup>201</sup> Consumers' Exceptions, p 56.

<sup>202</sup> See, Attorney General Initial Brief, p 112 and Coppola, 3 TR 2511, referring to the Company's SEC filings on Form 10-K for the periods ending December 31, 2021 and December 31, 2022 on page 123 of each report.

<sup>203</sup> *Id.*, at 3 TR 2511.

that reduce business risk, such as regular rate increases, streamlined rate cases, forward looking test years, the PSCR, GCR, FCM, and IRPs, and other cost recovery programs and mechanisms.<sup>204</sup> Third, the projected test year ratemaking construct used in Michigan permits utility companies to recover projected costs and CPI inflationary increases for O&M expenses and capital expenditures in setting new rates.<sup>205</sup> Fourth, the Company's stock is not sold on the open market, however its parent, CMS is already planning approximately \$2 billion in equity infusions into the Company.<sup>206</sup>

Likewise, any claims that a modest increase in the equity ratio is needed because of a drop in the stock market, recent federal shutdowns, conflicts in the middle east, the Ukraine or any other geopolitical uncertainty elevate risk and volatility to the U.S. markets, representing a material changes in the Company's risk environment since the previous Commission orders should be rejected.<sup>207</sup> First, a .75% increase in the equity ratio is not modest. Second, the Commission issued orders in the Company's last electric rate case U-21585 on March 21, 2025, and its last gas rate case U-21806 on September 30, 2025, and the identified issues, except

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<sup>204</sup> See, Attorney General's Initial Brief, p 131 and Exhibit AG-47 CONF Moody's Credit Opinion dated May 29, 2025, page 3. See also, Exhibit AG-48 CONF, S&P Global, Ratings Score Snapshot for Consumers Energy Company, dated August 20, 2024, page 2 (first paragraph).

<sup>205</sup> See, Attorney General's Initial Brief, pp 128 – 129.

<sup>206</sup> Attorney General's Reply Brief, p 19 referring to the Initial Brief of Consumers' Energy Company, p 194.

<sup>207</sup> See, Consumers' Exceptions, p 60.

for the federal shutdown existed with no indication that they have negatively impacted the Company. And, the Company has not presented evidence of direct negative impacts from the federal shutdown.

The Company claims that a constructive equity ratio, supporting a higher credit rating for the Company benefits customers because the Company provides a critical service that impacts customers quality of life and that it will making significant capital investments to maintain and improve infrastructure for the benefit of customers.<sup>208</sup> Based on the Company's current credit ratings and recent financial activity, it has access to capital markets, so this argument for increasing the Company's equity ratio is without merit.<sup>209</sup> Further, the excessive equity ratio proposed by the Company will cost customers an additional \$9.0 million annually compared to a 50% equity ratio.

Any remaining issues raised by the Company for the equity ratio are meritless and are also addressed in the Attorney Generals briefs, which are incorporated into this reply as discussed above. The Commission should not be swayed from requiring the Company to have a completely balanced capital structure.

## **B. Return on Equity**

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<sup>208</sup> Consumers' Exceptions, pp 59 – 60.

<sup>209</sup> See, Attorney General's Reply Brief, pp 19.

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

The PFD rightly rejected the Company’s request for an excessive ROE of 10.25%. “In conclusion this PFD finds that the ROEs recommended by Staff, the Attorney General, ABATE and CUB are each reasonable and commensurate with returns for recently authorized regulated utilities, on investments having corresponding risks, while the ROE recommended by Consumers is not.”<sup>210</sup> Instead, it recommends a ROE of 8.2%, although it also found “that the results of the estimating models suggest that a reasonable ROE commensurate with the returns earned by other regulated utilities is about 9.7%.<sup>211</sup>

The Attorney General recommended a ROE of 9.80%, which is also supported by the evidence.<sup>212</sup> It provides the Company’s investors with an ample return on their investment given the Company’s risk profile and is consistent (if not generous) when compared to the returns on investments authorized for similar utilities.<sup>213</sup> Further, it should not hinder the Company’s ability to obtain debt at competitive rates.<sup>214</sup>

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<sup>210</sup> PFD, p 542.

<sup>211</sup> PFD, p 542.

<sup>212</sup> See, Attorney General’s Initial Brief, pp 140 – 164, Attorney General’s Reply Brief, pp 24 – 31, Coppola, 3 TR 2537 – 2564, and Exhibits AG-36 – AG-44.

<sup>213</sup> See, Exhibit AG-40.

<sup>214</sup> *Id.*

The Company's exceptions include a strong criticism of the PFD's recommendation of an 8.2% ROE.<sup>215</sup> Chief among the criticism is that a ROE at that level would have a catastrophic impact on the Company's credit rating and its ability to attract capital on favorable terms for its planned investments.<sup>216</sup> It also claims that it would result in an immediate reevaluation of the regulatory environment in Michigan and could be detrimental to all utilities in Michigan.<sup>217</sup> In a footnote, the Company states that the investment community reacted negatively and swiftly to the ALJ's recommendation which it claims negatively impacted its stock prices (along with DTE's) among other things. The Company attached two analyst's reports to its exceptions, which it claims is not being offered as "evidence," but "merely to provide the Commission with contextual background for its policy considerations."<sup>218</sup> The Attorney General objects to the submittal of Attachments A and B. While the Company claims it is not being offered as "evidence" it is clearly intended to influence the Commission analysis and decision regarding the PFD's recommended ROE. It even touches on the Company's argument regarding the regulatory environment in Michigan stating "the volatility and uncertainty [caused by the 8.2% ROE recommendation] is fraying investor confidence in Michigan as a

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<sup>215</sup> Consumers' Exceptions, p. 61.

<sup>216</sup> *Id.*

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

<sup>218</sup> *Id.*, at page 61, footnote 7.

premium jurisdiction.”<sup>219</sup> This “evidence” presented after the record is closed and at the Exceptions phase of the case does not give other parties any time to respond and should not be given any weight or consideration – even from a policy perspective. Finally, it argues that the PFD’s recommendation of an 8.2% ROE is based on faulty legal reasoning and incorrect analysis of the evidence.<sup>220</sup>

The PFD’s recommendation speaks for itself. Whether the Commission agrees with the PFD’s recommended ROE of 8.2% or not, its analysis overall demonstrates that the Company’s proposed ROE of 10.25% is excessive and that the current 9.9% ROE is higher than necessary to meet the constitutional requirements of a reasonable ROE. As discussed herein, the Attorney General recommended a ROE of no more than 9.80% which is based on her calculation of weighted average return on equity of 9.73%, which reflects the Company’s true cost of equity. By allowing a slightly higher ROE than the required for investment purposes, it represents a gradual return to the true cost of equity.<sup>221</sup>

The Attorney General will address a few of the arguments raised by the Company.

**a. The Company’s exceptions exaggerate the PFD’s application of the legal standards for analyzing the ROE**

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<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *See*, Attorney General’s Initial Brief, p 156.

The Company argued extensively against the PFD's reference to *Willcox v Consul Gas Co of New York*, 212 US 19; 29 S Ct 192; 53 L Ed 382 (1909).<sup>222</sup> It claims that the ALJ misread U.S. Supreme Court precedent and applied a standard for ROE that does not exist. The Company argues that the ROE recommendation was based heavily on an incorrect interpretation of the *Willcox* case.<sup>223</sup> It further argues that the ALJ confused the Supreme Court's standard articulated in *Willcox* with the Supreme Court's subsequent application of those standards to the fact of that particular case, and that based on faulty legal reasoning it asserts a legal standard that does not exist. It claims it was this standard that led the ALJ to conclude the results of traditional quantitative ROE models are constitutionally prohibited as too high contrary to the constitutional standards for an appropriate return.<sup>224</sup> According to the Company, the PFD does cite to and discuss the standards of *Bluefield* and *Hope* to some extent, but it essentially uses *Willcox* to superimpose a constitutional standard not found in *hope*.<sup>225</sup>

References to and reliance by the ALJ on *Willcox* is overstated by the Company. While the PFD did expand on the discussion of risk citing to *Willcox*,<sup>226</sup> that was not the sole basis for its analysis of ROE. First, the PFD acknowledges

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<sup>222</sup> Consumers' Exceptions pp 61 – 74.

<sup>223</sup> *Id.*, at p 61.

<sup>224</sup> *Id.*, at p 62.

<sup>225</sup> *Id.*, at p 63.

<sup>226</sup> See, PFD, pp

that Bluefield and Hope are controlling and that balancing the interest ratepayers and shareholders is required by *Bluefield* and *Hope* and has been recognized by the Michigan Supreme Court.<sup>227</sup> The PFD also highlights the Michigan Supreme Courts determination, that balancing those interest may require the Commission to reduce rates.<sup>228</sup>

Second, the PFD did a comprehensive review of the parties' positions and analysis.<sup>229</sup> This review revealed many divergent views on the relevant considerations for determining ROE and included other evidence in support of the opinion of the various experts. One thing that was highlighted through the PFD's review of the parties' evidence is the extent to which issues of risk are interwoven throughout the parties' presentations, the ROE estimating methodologies, and other considerations used to determine a reasonable ROE. The Company is no different than the other parties in discussing risk either to support it proposed ROE or differentiate it from comparison to other factors in its ROE analysis. The Company acknowledges that utilities can have similar risks.<sup>230</sup>

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<sup>227</sup> PFD, p 454.

<sup>228</sup> Id.

<sup>229</sup> Id., at pp 455 – 506.

<sup>230</sup> PFD, p 457, *citing* 4 TR 2722.

Third, the PFD in determining that the Company's recommended ROE of 10.25% was excessive, analyzed the parties' application of the various models.<sup>231</sup> In some instances it agreed with the Company and others it did not.

Fourth, the PFD made a valid point about returns for utilities, that they generally have lower risks than other investment opportunities in the greater market.<sup>232</sup> This is not inconsistent with *Bluefield*. In its opinion in *Bluefield*,<sup>233</sup> the United States Supreme Court stated:

“A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public *equal to that* being made at the same time and in the *same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it **has no constitutional right** to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures.* The return should be reasonably sufficient to *assure confidence* in the financial soundness of the utility and should be adequate, *under efficient and economical management, to maintain and support* its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.”

The PFD also addressed other constitutional considerations – “The Supreme Court standard for establishing a reasonable return on equity should be “sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its

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<sup>231</sup> PFD, pp 506 – 532.

<sup>232</sup> *Id.*, at pp 530 – 531.

<sup>233</sup> 262 U.S. 679, 692 – 693 (1923). (emphasis added).

credit and to attract capital.”<sup>234</sup> The principals of the *Bluefield* Case were reaffirmed by the U.S. Supreme Court in *FPC v Hope Natural Gas Company*:<sup>235</sup>

“By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.”

Applying this standard, the PFD found that the record evidence supports a finding that ROEs proposed by Staff, the Attorney General, ABATE, and CUB are more than sufficient for the Company to maintain its credit and attract capital.<sup>236</sup>

The Attorney General does not find the PFD’s analysis, to the extent that it found that the positions and recommendations of the parties were or were not consistent with *Bluefield* and *Hope*, to be remarkable or problematic. The PFD’s finding is consistent with the Attorney General’s recommendation of a ROE no higher than 9.80%.

As discussed above, the Company finds the PFD’s use of *Willcox* to be problematic because it believes that the ALJ is using it to create a new standard and it is distinguished factually. Part of the Company’s criticism is based on its literal interpretation of *Willcox*’s application of the standard to the facts of that case. It notes that seven gas utilities operating in the city under separate charters

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<sup>234</sup> PFD, p 532, citing to *Hope*, 320 US at 603.

<sup>235</sup> 320 U.S. 591, 603 (1944).

<sup>236</sup> PFD, p 532.

with defined territories and were considered able to supply demand for the next twenty years. There was a law, that virtually prohibited new pipes being placed under the street, and the issue was related to whether the rates set by state law were confiscatory.<sup>237</sup> The Company argues that the PFDs use of *Willcox* in its risk analysis to support its claim that “[t]he Supreme Court described the nature of the business model risk (or lack thereof) relevant to establishing a reasonable return as being based upon public utilities selling a necessary product – energy, power, light, heat – without competition pursuant to a state regulatory monopoly,” is a misreading of the opinion.<sup>238</sup> It claims that the opinion is not applicable to all utilities and that it is applicable to just the unique facts of case.<sup>239</sup> The Company goes so far in its analysis to focus on the restriction to laying new pipes to support its narrow view of the applicability of the decision.<sup>240</sup> This overly restricted reading and should be rejected. All cases are situated somewhere and the reference to New York should not preclude a broader application of the *Willcox* opinion.

*Willcox* does provide some parallels to utility cases in Michigan where the Commission regulated utilities enjoy nearly exclusive or monopolistic service territories, which reduces the risk of competition. It appears that the PFD is using *Willcox* to show why utilities, that operate in a regulated field that usually insulate

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<sup>237</sup> Consumers’ Exceptions, p. 65.

<sup>238</sup> *Id.*, at p 66, citing PFD, pp 523 – 524.

<sup>239</sup> *Id.*

<sup>240</sup> Consumers’ Exceptions, p 64.

them from competition compared to other purely market driven enterprises, are usually less risky. In other words, the regulatory construct lends itself to certain protections that affect the relative riskiness of utilities. It does not exclude the possibility that other enterprises may be similarly risky, however the reality is that in utility cases, comparisons are usually made to other utilities. This is evident in the fact that traditional ROE analysis begins with the establishment of a peer group of similarly situated utilities for purposes of determining the ROE.

In the end, the PFD's analysis demonstrates that the Company's claims that it needs a 10.25% ROE or that a 9.9% ROE is required is unjustified. And as discussed above, the degree to which the analysis supports the PFD's recommendation of an 8.2% ROE is for the Commission to decide.

**b. Application of the quantitative models demonstrate that the Company's recommended ROE is overstated.**

The Company claims that the PFD made errors in its analysis of the parties' various arguments regarding the quantitative analyses for estimating a reasonable ratemaking ROE or did not consider the Company's analysis of certain models. The PFD addressed the parties' various positions and evidence and applied the appropriate standards in reaching an appropriate ROE recommendation of 9.7%. Likewise, the claims by the Company that its testimony, exhibits, and briefing on the quantitative analyses support a ratemaking ROE of 10.25% are meritless.

As discussed in the Attorney General’s briefs, which she incorporates herein by reference, and therefore will not repeat in their entirety here,<sup>241</sup> the Company is seeking a ROE of 10.25% using novel and unorthodox methodology to reach that result. It relies on a “forecasted risk premium” which was developed based on flawed premises in determining his CAPM ROE and Utility Risk Premium ROE. It also uses the ECAPM method to determine ROE, which is also flawed and inappropriate.<sup>242</sup> The Attorney General did not provide an estimate of ROE using the ECAPM method for reasons discussed below. Applying the principles of *Bluefield* and *Hope* and using the DCF, CAPM and Risk Premium models, the Attorney General determined a reasonable ROE of 9.80%.<sup>243</sup>

The Company complained that the PFD did not consider the results for some of its ROE models in determining the 9.7% ROE, that the ALJ’s reasons for rejecting those ROE models was invalid and that the Commission should consider all of the Company’s qualitative ROE estimates which support an ROE higher than the 9.7% recommended by the ALJ.<sup>244</sup> The Commission should reject this recommendation.

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<sup>241</sup> Attorney General’s Initial Brief, pp 137 – 164 and Attorney General’s Reply Brief, pp 23 – 31.

<sup>242</sup> Coppola, 3 TR 2555.

<sup>243</sup> See, Attorney General Initial Brief, pp 138 – 156.

<sup>244</sup> Consumers’ Exceptions, p 78.

The PFD rejected the Company's CAPM analysis as unreliable because the Company's calculation of its market risk premium included some companies that are not paying dividends and that the Company's market risk premium results are excessive. As discussed in the Attorney General's initial brief, the Company calculated an MRP of 8.28% which resulted in a higher CAPM ROE than the one calculated by the Attorney General. The Company's MRP analysis is problematic for a few reasons.

First, instead of using a proven historical MRP, the Company developed its MRP based largely on future expected stock price growth rates and dividends for a select group of companies from the S&P 500 stock index over the next three to five years. Based on her sample of companies, Ms. Bulkley calculates a forecasted stock market return of 12.58%. She then deducts her forecasted 30-year U.S. Treasury risk-free rate of 4.30% from that percentage to arrive at a forecasted MRP of 8.28%.<sup>245</sup> Mr. Coppola points out that when witness Bulkley conducted her analysis of projected market returns in case U-21806 earlier in 2025, her expected market return was 12.04%, or 50 basis points less than in this case.<sup>246</sup> The Commission should give no weight to this projected MRP methodology given this substantial swing in the stock market return over a short timeframe.

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<sup>245</sup> Coppola, 3 TR 2546.

<sup>246</sup> *Id.* at 2546 – 2547.

Second, many of the companies in the list of S&P 500 Index with dividend yields and long-term growth estimates are omitted from the Company's analysis.<sup>247</sup> Mr. Coppola notes that approximately 125 companies or 25% of the named companies in the S&P 500 are not represented in the calculation of the 12.58% stock market return. And that large technology companies have an oversized impact because high growth prospects have a larger than normal weighting in the calculation of the 12.58% return due to their relatively large market capitalization.<sup>248</sup>

Third, Mr. Coppola's uses long-term historical market returns in his risk premiums analysis, whereas witness Bulkley utilizes an extremely short period of three to five years to measure stock market return in her MRP analysis.<sup>249</sup> The Company's projected MRP does not include a complete cycle of economic expansion and contraction, which is what occurs over the long-term. To adopt the Company's approach would be akin to only selecting the positive return years over the 98-year historical period of stock market returns used by Mr. Coppola and not the losses in the downturn years.<sup>250</sup> The result is a far higher overall return for the market and

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<sup>247</sup> *Id.* at 2547. *See also*, Exhibit A-14 (AEB-1), pages 16 to 21.

<sup>248</sup> Coppola, 3 TR 2547.

<sup>249</sup> Coppola, 3 TR 2547.

<sup>250</sup> Coppola, 3 TR 2547.

a far higher MRP, which is the flawed result achieved by witness Bulkley's 12.58% market return and her forecasted MRP.<sup>251</sup>

To determine an appropriate expected market return and risk premium, multiple economic cycles over a long timeframe must be considered. Otherwise, the calculations of MRP would result in very high ROEs during periods of economic expansion, and very low and perhaps even negative ROEs during periods of economic decline. Dr. Roger Morin who favors the use of the longest possible period for calculating a MRP also discusses these concerns.<sup>252</sup> On page 114 of his book "New Regulatory Finance" Dr. Morin states the following:

Therefore, an historical risk premium study should consider the longest possible period for which data are available. Short-run periods during which investors earn a lower risk premium than they expect are offset by short-run periods during which investors earn a higher risk premium than they expect. Only over long time periods will investor return expectations and realizations converge. Clearly, the accuracy of the realized risk premium as an estimator of the prospective risk premium is enhanced by increasing the number of years used to estimate it...

Clearly, Ms. Bulkley's approach to calculating a projected market risk premium is not academically or practically sound. It only serves to inflate the ROE result for the Company. The Commission should not give any weight to ROE calculations relying on the Company's MRP methodology.

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<sup>251</sup> *Id.*

<sup>252</sup> *Id.* at 2548.

The PFD also rejected the Company’s use of the ECAPM noting that the Company did not identify any order where the Commission recognized the use of ECAPM and that FERC does not recognize its use.<sup>253</sup> “More significantly, this PFD notes that the Commission “has consistently taken a traditional approach” to determining a just and reasonable ROE.”<sup>254</sup>

In her initial brief, the Attorney General argued that the Commission should also give no weight to the Company’s use of the ECAPM method in calculating ROE. The underlying premise for using the ECAPM method is flawed. First, the original study used raw betas and not the adjusted Value Line betas, which Mr. Coppola uses, and which other cost of capital experts normally rely upon. Second, the original studies relied upon short-term risk-free rates. Instead, cost of capital witnesses, including Mr. Coppola, who have been involved in the Company’s rate cases use long-term risk-free rates in the CAPM model. The ECAPM method tends to overstate and inflate the true cost of capital and should not be used.<sup>255</sup> The Commission should give no weight or reliance to this alternative method. .

For the reasons discussed above and in the Attorney General’s Brief, the Commission should adopt a ROE that is no higher than 9.80%.

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<sup>253</sup> PFD, p 512.

<sup>254</sup> *Id.*, quoting Order dated December 9, 2021, Case No. U-20940, p 91.

<sup>255</sup> Attorney General’s Initial Brief, pp 153 – 154 and Coppola 3 TR 2548 – 2550.

### **III. Adjusted Net Operating Income.**

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

##### **1. Distribution O&M**

##### **a. Non-Forestry Reliability**

##### **i. LVD Lines Reliability**

The Company is forecasting \$8 million in the projected test year for the LVD Lines Reliability O&M expense. The Company incurred \$0.6 million for this category of expenses in the historical year 2024 and the largest amount incurred in this area in the last five years was \$1.1 million in 2022.<sup>256</sup> The Attorney General asked the Company to provide the actual expense during the first eight months of 2025. The Company indicated that it only spent \$607,360 in the first eight months of 2025, which is an annualized spending level of \$911,000.<sup>257</sup> Adding inflation adjustments to this amount brings the expense for the projected test year to \$940,000, compared to the Company's forecasted amount of \$8.0 million for the projected test year. As a result, the Attorney General recommended that the Commission remove the difference of \$7,060,000 from the O&M expense forecasted for the projected test year.<sup>258</sup>

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<sup>256</sup> See, Exhibit A-124 (MPK-14), line 4 and Coppola, 3 TR 2578 – 2579.

<sup>257</sup> See, Attorney General's Initial Brief, pp 171 – 172.

<sup>258</sup> *Id.*, at p. 172.

The PFD recommended a disallowance of \$5.684 million noting it is unlikely that the Company would spend \$7 million in the projected test year. The PFD did not explain how it calculated its recommended disallowance amount and the Attorney General filed an exception to the recommendation.<sup>259</sup>

The Company also filed an exception to the recommendation arguing that the Commission should reject the PFD's recommendation because it would be unreasonable to approve projected test year O&M, which begins in March 2026 based solely on the actual spending in the first six months of 2025.<sup>260</sup> It also claims that its spending in the first half of 2025 was constrained because of the storms in March and April of 2025.<sup>261</sup> It is not entirely clear what the Company means by constrained, however because it states that its ability to defer storm related costs allowed it to focus on other O&M expenses, the constraint must have been related to funding. The Company claims that if the Commission adopts the PFD's recommendations, it will not be able to achieve significant benefits for customers.<sup>262</sup>

While the Attorney General estimated the likely amount that the Company would spend based on its partial year work, she also has concerns about the level of expenditures proposed by the Company. As noted above, the Company incurred

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<sup>259</sup> See, Attorney General's Exceptions to PFD, pp 84 – 85.

<sup>260</sup> Consumers' Exceptions, p 105.

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

only \$0.6 million for this category of expenses in the historical year 2024 and over the last five years, the largest amount it has incurred in this area was \$1.1 million in 2022. That included years other than 2025.

Although it claims that historical spending was not sufficient to complete all the Institute of Electrical and Electronics Engineers (IEEE) recommended work and the increased funding is needed to do so, the Company has previously admitted that it has not followed IEEE recommendations and best practices for maintenance and inspections.<sup>263</sup> Clearly, it is trying to catch up on and best practices for inspection and maintenance.<sup>264</sup> It is unreasonable for the Company to undertake an 8-fold escalation in expense in less than two years to reverse past poor practices.<sup>265</sup> It is also questionable that it would be able to do so. The dramatic increase proposed by the Company in this case is excessive and unreasonable. The Commission should adopt the Attorney General's recommended disallowance.

#### **b. HVD Lines Demand**

The Company is forecasting O&M expenses for Lines Demand for the HVD system of \$2,979,000 for the projected test year. The expense was only \$898,000 in 2024 and has not exceeded \$1.1 million in the previous five years.<sup>266</sup> The Company

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<sup>263</sup> Coppola, 3 TR 2578.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> Exhibit A-124 (MPK-14), line 9; See also, Coppola, 3 TR 2576.

did not make any claims regarding the need for additional preventive maintenance in its last rate case.<sup>267</sup> Further, the O&M expense for the first eight months of 2025 were only \$453,130, reflecting an annualized expense level of \$680,000. This amount is significantly below the Company's 2025 projection of \$2.2 million. Based on the level of spending in recent years, it is apparent that the forecasted expense amount for the projected test year is overstated. Therefore, the Attorney General recommended that the projected test year spending level should be set at \$1,086,000, which is the highest expense incurred in the past five years. This amount is \$1,893,000 lower than the \$2,979,000 forecasted by the Company. She recommended that the \$1,893,000 be disallowed. Staff also recommended a disallowance of \$2.451 based on the actual spending in the first six months of 2025.

The PFD recommended approval of Staff's proposed disallowance amount. The Company filed an exception to this recommendation arguing that it does not reflect the work the Company has identified and will perform during the projected test year.<sup>268</sup> The Company also claims that is projecting a modest increase in HVD Lines Reliability work in the test year and that it will allow the Company to complete more HVD Lines Demand work in 2026 and 2027 to meet the projection.

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<sup>267</sup> Coppola, 3 TR 2576.

<sup>268</sup> Consumers' Exceptions, p. 107.

The Commission should reject the Company's arguments. As discussed above, the Company has not shown evidence that the pace of work will support the projected expense level. To the extent that the level of work for this spending category is tied to HVD Lines Reliability, disallowances have also been recommended for that spending categories under that expense, which if adopted would make the spending level for the HVD lines demand program less likely.

The Attorney General is not challenging the PFD's recommendation that \$2.451 million be disallowed based on Staff's recommendation. However, if the Commission has concerns regarding that level of disallowance, then the Attorney General recommends that it adopt her proposed disallowance of \$1,893,000 since the Company failed to support its test year projection.<sup>269</sup>

## **2. Service Restoration O&M Expense**

Company witnesses Mr. Snider discusses the Company's proposal for two mechanisms – the Service Restoration and Resiliency Fund and the Extraordinary Storm Accounting.<sup>270</sup> The proposed mechanisms, are not necessary and should be rejected by the Commission in this case.

### **a. Service Restoration Resiliency Fund and Extraordinary Storm Accounting**

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<sup>269</sup> Coppola, 3 TR 2576.

<sup>270</sup> See, Snider, 3 TR 2143 – 2152 and Snider Rebuttal, 3 TR 2170 – 2175.

The Company has proposed to funding mechanisms related to Service Restoration. The first, is the Service Restoration Resiliency Fund. According to Mr. Snider, “the Resiliency Fund is a reserve of surplus service restoration dollars from any prior year that be used as the first source of funds when actual costs for service restoration exceed base spend levels. The fund will be capped at \$30.7 million in the test year, with any dollars exceeding those levels refunded to customers through a bill credit.”<sup>271</sup> Of course a refund is not required until the Resiliency Fund accumulates an additional \$10.7 million above the cap.<sup>272</sup> The Company provides a few scenarios and examples of how it envisions the Resiliency Fund working.<sup>273</sup> The Company describes it as a savings plan for ratepayers because it ensures that all dollars allocated for service restoration are spent n service restoration or refunded. According to the Company there is also likely to be underspend because there will be “re-baselining” of Service Restoration risk based on prior year actuals.

The Extraordinary Storm Accounting (ESA), it the second proposal. The “ESA allows the Company to use deferred accounting for service restoration costs for extraordinary storms that exceed base spending levels. The Company defines “extraordinary storms” as storms that cause at least 300,000 customer outages over a seven-day period or that result in a State of Emergency declaration from the

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<sup>271</sup> Sinder 3 TR 2143.

<sup>272</sup> *Id.* at 3 TR 2144.

<sup>273</sup> *Id.*

Governor's office."<sup>274</sup> The Company also provides an example of how the ESA would operate.<sup>275</sup>

Both the Resiliency Fund and Extraordinary Storm Accounting (ESA) are complex proposals that require more research and study to assess how they would work in practice and their impact on cost recovery before they are adopted. These proposals will likely reduce financial risk for the Company, which has considerable implications for the Company's ROE. A major reduction in risk and the likelihood of increased cost recovery of historical storm restoration costs would need to be reflected in a significant decrease in the approved ROE rate for the Company.<sup>276</sup>

The few examples that the Company has referenced in Mr. Snider's testimony are not compelling.<sup>277</sup> No evidence has been presented of how well or poorly those mechanisms have worked for customers and the companies he referenced. The examples are primarily utilities that are smaller than the Company and that have less financial flexibility to handle peaks and valleys in annual restoration costs. So, the Company has not demonstrated that these mechanisms should be adopted.

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<sup>274</sup> *Id.*, at 3 TR 2147.

<sup>275</sup> *Id.*

<sup>276</sup> See, Attorney General's Initial Brief, pp 180 and 181 and Coppola, 3 TR 2572 – 2573.

<sup>277</sup> Snider, 3 TR 2145, 2150 testimony.

However, if the Commission were inclined to consider the proposals, it should not do so in this rate case.<sup>278</sup> Instead, the Commission should open a new docket to seek and review various proposals that could be applied not only to the Company but to other electric utilities in Michigan, since they all face the issue of volatility in service restoration costs.<sup>279</sup>

The PFD recommended that the Commission should not adopt either of the proposals because neither are reasonable nor fair to ratepayers.<sup>280</sup> The Company excepts from that recommendation.<sup>281</sup> As discussed above the proposals are lacking in detail that should be developed if the Commission decides that the proposals have merit. Therefore, a docket to do that should be established before such proposals are adopted and implemented.

#### **IV. Other Issues**

##### **A. Accounting Requests – Rate of Return for Line Clearing costs.**

As part of its accounting request to defer line clearing costs above \$\$164.5 million and securitizing the deferred ramp up related expense conditional on the ability to receive the prevailing pre-tax weighted average cost of capital (pre-tax

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<sup>278</sup> Coppola 3 TR 2573.

<sup>279</sup> *Id.*

<sup>280</sup> PFD, p. 691.

<sup>281</sup> *See*, Consumers Exceptions, pp 115 –123.

WACC) on the balance until the cost are securitized.<sup>282</sup> The Attorney General and other parties proposed that a different rate of return than proposed by the Company be applied to the deferred line clearing costs from the ramp-up expense until securitization.<sup>283</sup> She recommended that the short-term debt rate be used in this rate case and that it be revised going forward for any changes to the short-term interest rate in future rate cases.<sup>284</sup>

This treatment would be consistent with the treatment of deferred surge in tree trimming cost in Case No. U-20162 for DTE Electric.<sup>285</sup> In that case, the Commission established that the short-term interest rate was most appropriate during the time that the Company holds the costs in a regulatory asset and until those costs are financed through securitization. Mr. Coppola calculated the appropriate return by using the 4.92% short-term interest rate included in Exhibit A-14, Schedule D1 and calculated a proposed return of \$1.8 million.<sup>286</sup> The Attorney General recommends that the Commission approve this amount and methodology.

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<sup>282</sup> PFD, p 998.

<sup>283</sup> The Attorney General also recommended a lower baseline amount, which would have increased the amount securitized. The PFD recommended rejecting the Attorney General's recommendation, which she addressed as part of her exceptions.

<sup>284</sup> *See*, Attorney General's Initial Brief, pp 197 – 198 and Coppola 3 TR 2593.

<sup>285</sup> *Id.*

<sup>286</sup> *See*, Attorney General's Initial Brief, p 197, Coppola, 3 TR 2593, and Exhibit AG-59 for the calculations which is based on a deferred amount of \$76.5 million using her recommended baseline of \$110.2 million.

The PFD agreed with Staff, the Attorney General, and MNSC that the short-term debt rate is appropriate until the Company arranges to securitize the cost.<sup>287</sup> The Company excepts from this recommendation stating that it conditioned its proposal on receiving a return at the pre-tax WACC.<sup>288</sup> It also argues since the regulatory asset will not be short term, it cannot finance the regulatory asset with debt because it would add strain to the Company's credit metrics and would not match the financing costs with the return the Company earns on the regulatory asset.<sup>289</sup> It argues that the Commission should study the individual facts and circumstances for this case instead of relying on the DTE Electric case.<sup>290</sup>

It is not intended for the deferred amount to be held long term. And, the Company has not demonstrated that its situation is significantly different than DTE Electric's situation. The short-term interest rate is appropriate because it reflects the short period that the costs will be held in the regulatory asset until securitization and will provide an added incentive to securitize the costs sooner than later. Further, the Commission should maintain consistent treatment between Consumers Energy and DTE Electric. Therefore, the Commission should require the use of the short-term interest rate.

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<sup>287</sup> PFD, pp 1006 – 1007.

<sup>288</sup> Consumers' Exceptions, p. 139.

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*, at p 140.

## **RELIEF REQUESTED**

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

Respectfully submitted,

Dana Nessel  
Attorney General

Celeste R. Gill  
Assistant Attorney General  
Michigan Department of Attorney  
General, Special Litigation Division  
Sixth Floor, Williams Bldg.  
525 W. Ottawa Street  
P. O. Box 30755  
Lansing, MI 48909  
(517) 335-7627

Dated: February 26, 2026

**PROOF OF SERVICE - U-21870**

The undersigned certifies that a copy of the *Attorney General's Replies to Exceptions to the PFD* was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 26<sup>th</sup> day of February 2026.

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Celeste R. Gill

**ALJ:**

Hon. Jonathan Thoits  
[thoitsj@michigan.gov](mailto:thoitsj@michigan.gov)

**Consumers Energy Company:**

Spencer Sattler  
Mark Ruszkiewicz  
Gary Gensch, Jr.  
Evan Keimach  
Bret Totoraitis  
Anne Uitvlugt  
[Spencer.sattler@cmsenergy.com](mailto:Spencer.sattler@cmsenergy.com)  
[Mark.ruszkiewicz@cmsenergy.com](mailto:Mark.ruszkiewicz@cmsenergy.com)  
[Gary.genschjr@cmsenergy.com](mailto:Gary.genschjr@cmsenergy.com)  
[Evan.keimach@cmsenergy.com](mailto:Evan.keimach@cmsenergy.com)  
[Bret.totoraitis@cmsenergy.com](mailto:Bret.totoraitis@cmsenergy.com)  
[Anne.uitvlugt@cmsenergy.com](mailto:Anne.uitvlugt@cmsenergy.com)  
[Kelly.hall@cmsenergy.com](mailto:Kelly.hall@cmsenergy.com)  
[Mpsc.filings@cmsenergy.com](mailto:Mpsc.filings@cmsenergy.com)

**Attorney General of Michigan:**

Celeste Gill  
Lucas Wollenzien  
[Gillc1@michigan.gov](mailto:Gillc1@michigan.gov)  
[wollenzienl@michigan.gov](mailto:wollenzienl@michigan.gov)  
[ag-enra-spec-lit@michigan.gov](mailto:ag-enra-spec-lit@michigan.gov)

Sebastian Coppola  
[sebcoppola@corplytics.com](mailto:sebcoppola@corplytics.com)

**GLREA:**

Don Keskey  
Brian Coyer  
[donkeskey@publiclawresourcecenter.com](mailto:donkeskey@publiclawresourcecenter.com)  
[bwcover@publiclawresourcecenter.com](mailto:bwcover@publiclawresourcecenter.com)

**MPSC Staff:**

Lori Mayabb  
Daniel Sonneveldt  
Amit Singh  
Michael Orris  
Nicholas Taylor  
Alena Clark  
Adam Cozort  
[mayabbl@michigan.gov](mailto:mayabbl@michigan.gov)  
[sonneveldtd@michigan.gov](mailto:sonneveldtd@michigan.gov)  
[singha9@michigan.gov](mailto:singha9@michigan.gov)  
[orrism@michigan.gov](mailto:orrism@michigan.gov)  
[taylorl10@michigan.gov](mailto:taylorl10@michigan.gov)  
[clarka55@michigan.gov](mailto:clarka55@michigan.gov)  
[cozort1@michigan.gov](mailto:cozort1@michigan.gov)

**MEIBC/IEI/AEU/EM/FAM:**

Laura Chappelle  
Timothy Lundgren  
Justin Ooms  
[lachappelle@varnumlaw.com](mailto:lachappelle@varnumlaw.com)  
[tjlundgren@varnumlaw.com](mailto:tjlundgren@varnumlaw.com)  
[jkooms@varnumlaw.com](mailto:jkooms@varnumlaw.com)

**ABATE:**

James Dauphinais  
Michael Pattwell  
Stephen Campbell  
Benjamin Holwerda  
Christina Hildebrandt  
Jessica York  
[jdauphinais@consultbai.com](mailto:jdauphinais@consultbai.com)  
[mpattwell@clarkhill.com](mailto:mpattwell@clarkhill.com)  
[scampbell@clarkhill.com](mailto:scampbell@clarkhill.com)  
[bholwerda@clarkhill.com](mailto:bholwerda@clarkhill.com)  
[childebrandt@consultbai.com](mailto:childebrandt@consultbai.com)  
[jyork@consultbai.com](mailto:jyork@consultbai.com)

**Customer A:**

Valerie Brader  
[valerie@rivenoaklaw.com](mailto:valerie@rivenoaklaw.com)  
[ecf@rivenoaklaw.com](mailto:ecf@rivenoaklaw.com)

**The Kroger Co.:**

Kurt Boehm  
Jody Kyler Cohn  
Michael Kurtz  
Justin Bieber  
[kboehm@bkllawfirm.com](mailto:kboehm@bkllawfirm.com)  
[jkylercohn@bkllawfirm.com](mailto:jkylercohn@bkllawfirm.com)  
[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)  
[jbieber@energystrat.com](mailto:jbieber@energystrat.com)

**MCTA:**

Sean Gallagher  
[sgallagher@fraserlawfirm.com](mailto:sgallagher@fraserlawfirm.com)

**Walmart, Inc.:**

Melissa Horne  
[mhorne@hcc-law.com](mailto:mhorne@hcc-law.com)

**ELPC/EC/UCC:**

Daniel Abrams  
Katie Duckworth  
Amanda Urban  
Mark Templeton  
Jacob Schuhardt  
Emma Young  
Alexandria Miskho  
[dabrams@elpc.org](mailto:dabrams@elpc.org)  
[kduckworth@elpc.org](mailto:kduckworth@elpc.org)  
[aurbanlaw@gmail.com](mailto:aurbanlaw@gmail.com)  
[templeton@uchicago.edu](mailto:templeton@uchicago.edu)  
[jschuhardt@uchicago.edu](mailto:jschuhardt@uchicago.edu)  
[eyoung28@uchicago.edu](mailto:eyoung28@uchicago.edu)  
[amiskho@uchicago.edu](mailto:amiskho@uchicago.edu)

**METC:**

Richard Aaron  
Courtney Kissel  
Olivia Flower  
Hannah Buzolits  
Josh Kluzak  
[raaron@dykema.com](mailto:raaron@dykema.com)  
[ckissel@dykema.com](mailto:ckissel@dykema.com)  
[oflower@dykema.com](mailto:oflower@dykema.com)  
[hbuzolits@dykema.com](mailto:hbuzolits@dykema.com)  
[jkluzak@dykema.com](mailto:jkluzak@dykema.com)

**MEC/CUB/SC/NRDC:**

Tracy Jane Andrews

Christopher Bzdok

Holly Hillyer

Natasha Fowles

Jackson Neme

Tanya Stasio

Jordan Burt

Tyler Comings

Caroline Palmer

Julielyn Gibbons

Rick Bunch

Matt Bandyk

John Liskey

Sean Clark

[tjandrews@tropospherelegal.com](mailto:tjandrews@tropospherelegal.com)

[chris@tropospherelegal.com](mailto:chris@tropospherelegal.com)

[holly@tropospherelegal.com](mailto:holly@tropospherelegal.com)

[natasha@tropospherelegal.com](mailto:natasha@tropospherelegal.com)

[jackson@tropospherelegal.com](mailto:jackson@tropospherelegal.com)

[tanya.stasio@eaclinic.org](mailto:tanya.stasio@eaclinic.org)

[Jordan.burt@aeclinic.org](mailto:Jordan.burt@aeclinic.org)

[Tyler.comings@aeclinic.org](mailto:Tyler.comings@aeclinic.org)

[cpalmer@synapse-energy.com](mailto:cpalmer@synapse-energy.com)

[jgibbons@5lakesenergy.com](mailto:jgibbons@5lakesenergy.com)

[rbunch@5lakesenergy.com](mailto:rbunch@5lakesenergy.com)

[mbandyk@5lakesenergy.com](mailto:mbandyk@5lakesenergy.com)

[john@liskeypllc.com](mailto:john@liskeypllc.com)

[sean@tropospherelegal.com](mailto:sean@tropospherelegal.com)

**HSO/ST:**

Jennifer Heston

[jheston@potomaclaw.com](mailto:jheston@potomaclaw.com)