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September 16, 2020

Ms. Lisa Felice
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7109 West Saginaw Highway
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Re: Case No. U-20697 – In the matter of the application of Consumers Energy Company for Authority to increase its rates for the generation and distribution of electricity and for other relief.

Dear Ms. Felice:

Enclosed for electronic filing in the above-captioned case is the **Reply Brief of Consumers Energy Company**.

This is a paperless filing and is therefore being filed only in a PDF format. I have enclosed a Proof of Service showing electronic service upon the parties.

Sincerely,

RWB

Digitally signed by Robert W. Beach
Date: 2020.09.16 15:46:56 -04'00'

Robert W. Beach

cc: Parties per Attachment 1 to Proof of Service

S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **CONSUMERS ENERGY COMPANY** for authority to increase its rates for the generation and distribution of electricity and for other relief.	))))))	Case No. U-20697

REPLY BRIEF OF CONSUMERS ENERGY COMPANY

September 16, 2020

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S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **CONSUMERS ENERGY COMPANY** for authority to increase its rates for the generation and distribution of electricity and for other relief.	))))))	Case No. U-20697

REPLY BRIEF OF CONSUMERS ENERGY COMPANY

I. INTRODUCTION

Consumers Energy Company ("Consumers Energy" or the "Company") files this Reply Brief in accordance with the schedule established in this matter. The Company has attempted to focus this Reply Brief on matters involving a material dispute among the parties. To the extent the Company does not address a particular issue in this Reply Brief, the Company refers the Administrative Law Judge ("ALJ") and the Michigan Public Service Commission ("MPSC" or the "Commission") to its Initial Brief.

II. TEST YEAR

A. Reply to RCG

A test year is used to establish representative levels of revenues, expenses, rate base, and capital structure for use in setting rates. MCL 460.6a(1) permits a utility to "use projected costs and revenues for a future consecutive 12-month period in developing its requested rates and charges." Consistent with this statutory authority, Consumers Energy used a projected 12-month test year ending December 31, 2020 for determining final rate relief in this case. 6 TR 2212. In developing projected test year data, Consumers Energy began with a 2018 historical period (6 TR 2205), which was then adjusted to reflect updated sales and projections of investments, expenses,

and revenues. The MPSC Staff's ("Staff") evidentiary presentation also utilized a 12-month projected test year ending December 31, 2021. Staff's Initial Brief, page 1.

The Residential Customer Group ("RCG") argues for the adoption of a historical test year in this case. See RCG's Initial Brief, pages 1, 14-15. Aside from the flawed legal arguments that RCG uses to support its position, as addressed below, RCG's proposal should be rejected because it would not result in just and reasonable rates. The use of a historic test year is unreasonable, in a period where the Company is undertaking significant investments in its electric system. 3 TR 81. The Company premises its general rate proceedings on the objective of determining a reasonable level of expenses for a future period. This is a better reflection of the business conditions during the period where rates are expected to be in effect. Consumers Energy needs to be able to spend the necessary funds to run its business, provide service, and invest in its system. As a result of their prospective nature, rates are designed to be representative of the price necessary to recover all reasonable and prudent costs that the utility is likely to incur during the future period of time that rates will be in effect, plus a reasonable rate of return. The use of a historic test year does not accomplish this objective. Among other things, requiring the Company to set rates based exclusively on historical data would: (i) limit the Company's ability to adequately plan for future customer needs; (ii) increase regulatory lag; (iii) delay system upgrades that benefit customers; and (iv) potentially result in increased costs as a result of delayed investments.

It should be noted that RCG failed to present <u>any</u> testimony or evidence in support of the use of a historical test year to establish rates. In support of its request, RCG pointed to the historical test year presentation of Company witness Heidi J. Myers claiming that this is sufficient evidentiary support for the Commission to adopt a different test year than the one utilized by Consumers Energy. RCG's Initial Brief, pages 2-3. However, Consumers Energy did not present

the 2018 historical information for the purpose of setting rates, but rather provided the information consistent with the Commission's filing requirements. RCG did not explain how information presented in this case could reasonably be used for setting rates.

Contrary to RCG's conclusory statements, the Legislature has made a policy decision recognizing the appropriateness and value of future test years and the time periods in which a utility may request rate relief from the Commission. Test years are premised on the goal of determining a reasonable level of expenses for a future period. In Case No. U-15645, one of the first rate cases conducted after the enactment of 2008 Public Act ("PA") 286, the Commission recognized that MCL 460.6a(1) provided a shift in the regulatory ratemaking paradigm - changing from the use of historical, known, and measurable costs, with known and measurable adjustments, to forward-looking, projected costs. In that proceeding, over 10 years ago, the Commission interpreted MCL 460.6a(1) stating that the statute provides utilities with "explicit authorization to rely on projections of its future costs and revenues," and recognized that the "debate regarding the proper test year was decided by the Legislature and the Commission finds the use of a future test year to be the proper measure of projected costs and revenues." MPSC Case No. U-15645, November 2, 2009 Order, pages 8-9. MCL 460.6a(1) expressly provides a utility the right to have its rates based on a projected test year. When faced with this issue in the Company's previous rate case, the Commission agreed with this conclusion. See MPSC Case No. U-20322, September 26, 2019 Order, page 10.

As support for its argument that the Company's projected test year is contrary to MCL 460.6a(1), RCG contended that the statutory language requires the projected test year to be the 12 months immediately following the date of the rate case filing. RCG's Initial Brief, pages 4-10. RCG's argument is incorrect. The primary goal of statutory interpretation is to give effect

to the intent of the Legislature, and if a statute is unambiguous, it is presumed that the Legislature intended the meaning expressed. *MCI Telecomm v Michigan Bell Tele Co*, 460 Mich 396, 411; 596 NW2d 164 (1999). It is not proper to infer the Legislature's intent beyond the words employed in the statute. *Id*. at 414. The statutory requirement that permits the Company to "use projected costs and revenues for a future consecutive 12-month period in developing its requested rates and charges" does not require the "future consecutive 12-month period" to begin immediately following the rate case filing date. RCG's argument that the "future consecutive 12-month period in developing its requested policies, rates, and charges' must logically relate at most to the consecutive 12-month period commencing with the date the utility files its rate application" (RCG's Initial Brief, page 5) is contrary to the plain language of the statute and reads a requirement into the statute that is simply not there.

Pointing to the use of the word "consecutive" in MCL 460.6a(1), RCG claims that the projected test year must immediately follow the date of the rate case filing. RCG's Initial Brief, page 5. In interpreting a statute, words are given their plain and ordinary meaning. *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 598; 822 NW2d 159 (2012). "Consecutive" is defined as "following one after the other in order." *Merriam-Webster Dictionary* (accessed June 11, 2019). Thus, the plain and ordinary meaning of the phrase "a future consecutive 12-month period" is a period of time in the future that encompasses 12 months "following one after the other in order." While the future 12-month period must include 12 "consecutive" months, the statute plainly does *not* associate the future 12-month period with the rate case filing date and does *not* require that this 12-month period immediately follow the rate case filing. If the Legislature had intended to limit the 12-month period to immediately following the date of the rate case filing, the statute would have said so. See *Farrington v Total Petroleum, Inc*, 442 Mich 201,

209-210; 501 NW2d 76 (1993). RCG's argument improperly presumes that the Legislature intended a meaning not expressed in the statute.

In an attempt to further bolster its argument for a historic test year, RCG pointed to the "used and useful methodology" as support. See RCG's Initial Brief, page 9. However, RCG fails to mention that the Commission has historically used a number of different methodologies to determine what is properly included into a utility's rates. These different methodologies include, but are not limited to, the "used and useful test," the "fair value rule," and the "prudent investment test." And while RCG implies that the use of the "used and useful" standard is required, this is incorrect. In *ABATE v Pub Serv Comm*, the Court of Appeals rejected the argument that the Commission "has no authority to apply anything other than the 'used and useful' test in setting rates." *ABATE v Pub Serv Comm*, 208 Mich App 248, 258; 527 NW2d 533 (1994); see also MPSC Case No. U-5108, May 27, 1977 Opinion and Order, pages 27-28 ("The principle advanced by the attorney general, that customers should only pay for property presently used and useful, was originally formulated and applied with reference to problems of watered stock, artificially inflated rate bases, and jurisdictional allocations which plagued the early twentieth century. The principle was not intended and has not been used as an iron law preventing arrangements which are just and rational under present conditions."). Michigan courts have held that the MPSC is not bound by any particular method or formula in exercising its function of determining just and reasonable rates. *Michigan Bell Telephone Co v Pub Serv Comm*, 332 Mich 7, 36-37; 50 NW2d 826 (1952); *Building Owners & Managers Ass'n v Pub Serv Comm*, 424 Mich 494, 510; 383 NW2d 72 (1986). Ultimately, the ratemaking process involves a balancing of investor and consumer interests. *Building Owners*, 424 Mich at 510; *Detroit v Pub Serv Comm*, 308 Mich 706, 716, 14 NW2d 784 (1944). The Commission is charged with determining whether the rates being set are just and

reasonable, and in doing so, the Commission may consider all lawful elements, which includes cost, fair value of property used, obsolescence, and risks of business. MCL 460.557(2).

Moreover, RCG's arguments have been considered by the Commission. See, e.g., MPSC Case No. U-20162, May 2, 2019 Order, page 4; see also MPSC Case No. U-20322, September 26, 2019 Order, page 10. In fact, in May of this year, the Commission addressed RCG's argument. Once again, the Commission highlighted the statutory language indicating that "MCL 460.6a(1) provides that '[a] utility may use projected costs and revenues for a future consecutive 12-month period in developing its requested rates and charges.'" MPSC Case No. U-20561, May 8, 2020 Order, page 11. The Commission continued stating that "the statute contains no limitation on the future consecutive 12-month period, no requirement to use an historical test year, and no information or limitation regarding the relationship between the date of the application and the test year. The test year may be in the future, and the 12 months must be consecutive; those are the requirements of the statute." *Id*.

RCG further disagreed with the use of the Company's projected test year due to the frequency in which the Company has filed its requests for rate relief. RCG's Initial Brief, pages 12-13. No statutory authority exists that prohibits the Company from selecting a projected test year as a result of the frequency of rate case filings. The Company's rate case presentation is within its statutory rights to choose to use a projected test year under MCL 460.6a(1), and to file a general rate case application no earlier than 12 months after the date of the filing of a prior general rate case application under MCL 460.6a(6).

The Commission should reject RCG's recommendation to require the use of a historical test year in this case. As discussed above, the Legislature has made the policy decision to provide utilities the ability to choose to "use projected costs and revenues for a future consecutive

12-month period in developing its requested rates and charges." MCL 460.6a(1). The Company provided compelling reasons in support of this policy decision, including that a projected test year better reflects future expectations and investments, as opposed to a historic test year that is stuck looking at past expenses. As the Commission previously stated, the "statute contains no limitation on the future consecutive 12-month period and no requirement to use an historical test year." MPSC Case No. U-20162, May 2, 2019 Order, page 4. Consistent with applicable law and the Commission's guidance, Consumers Energy used a projected test year in this case and fully supported its projected costs with detailed supporting explanations and underlying assumptions.

III. RATE BASE

A. Net Utility Plant

1. Distribution Capital Expenditures

a. Reply to Staff

Staff recommends a $86,064,000 reduction to the Company's following Distribution investment programs: (i) New Business; (ii) Reliability; (iii) Demand Failures; (iv) Asset Relocation; and (v) Electric Other. Staff also addressed the Company's proposed System Average Interruption Duration Index ("SAIDI") glidepath. The Company extensively responded to Staff's proposed reductions to Distribution investments on pages 9 through 24 of the Company's Initial Brief and continues to rely on that response here. For the reasons discussed in the Company's Initial Brief, Staff's proposed reductions should be rejected. See Consumers Energy's Initial Brief, pages 9-24. In addition to the response to Staff provided in the Company's Initial Brief, the following sections address adjustments that Staff has made to its recommendations in its Initial Brief.

(i.) New Business

Strategic Customers – High Voltage Distribution

On pages 10 through 13 of its Initial Brief, Staff proposed a $1,500,000 reduction to the Company's 2020 spending in the Strategic Customers – High Voltage Distribution ("HVD") subprogram of the New Business Program. However, Staff previously also recommended a reduction of $945,500 for this subprogram in 2021 but withdrew that proposed reduction in its Initial Brief. See Staff's Initial Brief, page 12. Staff indicated that it was still proceeding with its recommended reduction for 2020 because the Company has not yet identified projects for this spending amount. This recommendation should be rejected. In responding to Staff, the Company continues to rely on the arguments set forth in pages 11 through 12 of its Initial Brief and will not restate the totality of those arguments herein.

As an initial matter, Staff's recommendation for 2020 should be rejected because it pertains to Staff witness Nicholas M. Evans' "placeholder" argument for yet to be identified projects. The Company established in the record that, contrary to Mr. Evans' representation, it has not simply included placeholders in its Distribution investment plan. If there is spending in a specific program for a to be determined project, it is not based on an unsupported guess and is instead based on reasonable expectations, given historical spending levels and observed trends, that additional projects will emerge. 6 TR 1321. See the Company's Initial Brief, pages 9-11.

The Company also established that, with respect to 2020 spending for this subprogram, the Company continues to receive emergent customer requests for work requiring completion later in 2020. 6 TR 1323. Company witness Richard T. Blumenstock provided an example of such a customer request by explaining that a customer in southwest Michigan contacted the Company in July 2020 regarding expedited relocation of several spans of 46 kV line to accommodate a factory expansion. 6 TR 1323. This customer request illustrates the importance of allowing the Company

to have some unidentified spending in the 2020 bridge year. While Staff appears to take issue with the amount of testimony provided by the Company with respect to new 2020 projects (see Staff's Initial Brief, page 12), that position fails to refute Mr. Blumenstock's sworn testimony which establishes that there are additional projects which have been identified for 2020 and therefore, the $1,500,000 identified by Staff is necessary for this subprogram. Even if the Company did not have newly identified projects for 2020 by the time of the rebuttal filing in this case, which it does, Staff's recommendation should still be rejected because the Company's projected spending in this subprogram was not the result of an unsupported guess and instead was based on the Company's experience and historical work.

For the reasons outline above, and provided in the Company's Initial Brief, Staff's proposed 2020 spending reduction for the Strategic Customers – HVD subprogram should be rejected.

(ii.) <u>Reliability</u>

Staff is proposing a $64.077 million total reduction in spending to the following four subprograms within the Reliability program: HVD Lines Reliability, Low Voltage Distribution ("LVD") Repetitive Outages, HVD Lines and Subs Rehabilitation, and LVD Lines Rehabilitation. The reductions to these subprograms are based on Staff's "placeholder" argument which was extensively addressed in the Company's Initial Brief. In responding to Staff, the Company continues to rely on the arguments set forth in pages 12 through 18 of its Initial Brief and will not restate the totality of those arguments herein. For the reasons discussed in the Company's Initial Brief, and discussed below, Staff's recommendation should be rejected.

Lines Reliability – HVD

Staff recommended that the Commission disallow $4,546,000 in 2020 and $15,936,000 in 2021 for the Lines Reliability – HVD subprogram of the Reliability Program.[1] Staff's Initial Brief, page 14. Staff claims that the Company reserved these amounts for unidentified pole replacement and switch replacement projects and therefore these spending amounts represented "placeholders." 8 TR 4902. However, in rebuttal the Company established that all spending for 2020 for this subprogram has now been assigned to specific projects and also that the amount of spending for projects yet to be identified has been reduced to $2,723,000 for 2021 HVD pole replacements and $450,000 for 2021 HVD switch replacements. 6 TR 1326. This is illustrated in Exhibit A-143 (RTB-19). Even though Staff acknowledges these developments in its Initial Brief, Staff indicates that it "still cannot support recovery" because "this information is being provided too late for projects in a planned program." Staff's Initials Brief, page 15. Staff's position should be rejected because it is entirely unreasonable.

Staff's position fails to support, or explain, the position that the Company is providing the aforementioned information "too late." As an initial matter, the Company provided updated Lines Reliability – HVD project information to Staff in discovery in April 24, 2020. See 6 TR 1326. Since the information was submitted to Staff two months prior to the filing of Staff's direct testimony in this case, it is not clear what Staff means with its assertion that the information was provided "too late." The record reflects that the Company provided update information about Lines Reliability – HVD projects to Staff with sufficient time for that information to be considered in this case. The Company appreciates Staff's concession with respect to consideration of updated

[1] On page 12 of the Company's Initial Brief, the Company inadvertently used the incorrect heading "Lines Reliability – LVD" instead of the correct heading of "Lines Reliability – HVD" for this subprogram.

2021 spending in the Strategic Customers – HVD subprogram and submits that the updated spending for the Lines Reliability – HVD should also be considered in this case.

Staff's position with respect to the Lines Reliability – HVD subprogram should also be rejected because it completely misses why the Company provided updating spending for this subprogram in discovery and its rebuttal testimony. At the time of the Company's filing in this matter, portions of the spending for this subprogram was based on yet to be identified projects to ensure that pole replacements and switch replacements are identified based on the most recent inspection information and so that the Company can best prioritize the replacement work. 6 TR 1325. Certain investment categories in the Lines Reliability – HVD subprogram, namely, the HVD line rebuilds and HVD pole top rehabilitations, consist of large-scale projects that need to be identified and planned well in advance. However, pole replacements and switch replacements have a shorter lead time. 6 TR 1326. Therefore, for these shorter lead time projects, the Company left room for yet to be identified projects based on the Company historical experience for this subprogram. The updated projects and spending amounts provided to Staff in discovery, and as provided by Company witness Blumenstock in rebuttal, establish that the Company's rolling approach to identifying pole replacements and switch replacements will result in the Company spending the amounts initially projected for 2020 and 2021 in this proceeding.

Even if the Company's rolling project identification approach is not found to be reasonable, which the Company disagrees with, the record still does not support Staff's proposed spending reduction of $4,546,000 in 2020 and $15,936,000 in 2021 for the Lines Reliability – LVD subprogram. As established by the Company all spending for 2020 for this subprogram has now been assigned to specific projects and the amount of spending for projects yet to be identified has been reduced to $2,723,000 for 2021 HVD pole replacements and $450,000 for 2021 HVD switch

replacements ($3,173,000 total). 6 TR 1326; see also Exhibit A-143 (RTB-9). It is entirely unreasonable for Staff to propose a spending reduction of $20,482,000 for yet to be identified projects when the record reflects that only $3,173,000 is now reserved for yet to be identified projects. It is also unreasonable for Staff to recommend any cost reductions for this subprogram when the record reflects that the Company is on track to spend what it initially projected.

Repetitive Outages – LVD

Staff proposes spending reductions of $5,355,000 for 2020 and $7,672,000 for 2021 for the Repetitive Outages – LVD subprogram of the Reliability Program. Staff's Initial Brief, page 15. The position is again based on Staff's "placeholder" argument for yet to be determined projects which should be rejected for the reasons discussed in the Company's Initial Brief and this Reply Brief.

The Company established that, the primary purpose of this subprogram is to specifically target areas of the LVD system that consistently experience recurring customer interruptions, based on the number of customers who experience five or more interruptions annually (known as the "CEMI-5+" index). 6 TR 1183-1184. Since this subprogram is designed to target these specific high-outage areas, it is essential that the Company be able to rely on the most recent possible data to identify circuits for projects. That means that, contrary to Staff's position, specific projects are not known far in advance for this subprogram. 6 TR 1326-1327.

The Company also established that it has made progress in identifying projects for 2020. 6 TR 1328. By using a rolling identification of projects, as discussed in the Company's Initial Brief, the Company has identified additional projects for 2020, as shown in Exhibit A-144 (RTB-20). This exhibit shows that, as of early July 2020, the Company identified $2,633,000 of Repetitive Outages – LVD projects for 2020. The Commission should not treat the remaining

unallocated spending for 2020 as a "placeholder," but instead recognize that the Company is making progress toward identifying optimal projects based on up-to-date outage data. 6 TR 1328. For the same reason, the Commission should also not treat any spending for 2021 as a "placeholder."

Although Staff acknowledges the progress that the Company has made toward identifying Repetitive Outages – LVD subprogram projects, Staff indicates, without explanation, that it "has not changed its position concerning these repetitive outage projects." Staff's Initial Brief, page 16. Staff's position is unsupported and should be rejected. First, Staff has presented no evidence which refutes the Company evidence establishing that projects in this subprogram are not known far in advance. Mr. Blumenstock is a Distribution planning expert with extensive experience planning the Company's Distribution investment work. His testimony should be given more weight than Staff's unsupported assertions about when Repetitive Outages – LVD subprogram projects should be identified. Second, the record now reflects that $5,355,000 no longer represents the amount in 2020 for yet to be identified projects. Exhibit A-144 (RTB-20). Since Staff's 2020 position is no longer accurate, it should be rejected. Moreover, since Staff used its inaccurate 2020 amount to project 2021 spending, Staff's proposed 2021 spending amount should also be rejected.

Lines and Substations Rehabilitation – HVD

Staff proposes a 2021 spending reduction of $12,681,500 for the Lines and Substation Rehabilitation – HVD subprogram of the Reliability Program. Staff's Initial Brief, page 17. This position is again based on Staff's "placeholder" argument which, for the reasons discussed in the Company's Initial Brief, and this Reply Brief, should be rejected.

The Company established in the record that, while this subprogram contains multiple investment categories covering different types of work, all of the projects in the subprogram are

intended to address issues where failure has not yet occurred, but is imminent, to maintain reliability. 6 TR 1193-1194. In order to facilitate this, the Company maintains a robust inspection program. 6 TR 1329-1330. Mr. Blumenstock explained that all projects are not identified far in advance and how identifying projects too far in advance could cause negative consequences. See 6 TR 1329-1330.

The Company's spending in this subprogram is also not based on an unsupported guess but is instead based on historically observed work trends. 6 TR 1330. Prior to 2020, this subprogram was part of the HVD Lines and Substations Demand Failures subprogram, and during that time, the Company observed relatively consistent year-over-year levels of inspection results indicating that assets presented a risk of imminent failure. The Company also observed relatively consistent year-over-year actual failures, with approximately 80% of the historical HVD Lines and Substations Demand Failures spending on imminent failures and approximately 20% to actual failures. 6 TR 1330. Based on the Company's historically observed rates of imminent failure, it is reasonable to expect that all the projected spending for 2021 in this subprogram will have projects identified on the rolling basis detailed above.

In addition to the above, the Company has also made progress identifying projects for this subprogram since the filing of the Company's case in late February 2020. Additional projects have been identified, as shown in Exhibit A-145 (RTB-21). 6 TR 1331. This exhibit shows (a) all HVD Lines Rehabilitation projects that have been identified to date for 2021, and (b) all HVD Substations Rehabilitation projects that have been identified to date for 2021 in addition to the projects that were already identified in the Company's direct case. The projects listed in Exhibit A-145 (RTB 21) reflect an additional $566,500 in HVD Lines Rehabilitation projects and an additional $661,500 in HVD Substations Rehabilitation projects. 6 TR 1331. Even with these

developments, the Commission should not treat the remaining unallocated spending as a "placeholder," but instead recognize that the Company is making progress toward identifying timely projects based on the most recent inspection results.

Without support, Staff asks that the Company's rolling approach to identifying Lines and Substation Rehabilitation – HVD subprogram projected be rejected and that the spending developments for the Lines and Substation Rehabilitation – HVD subprogram be ignored. Similar to the Repetitive Outages – LVD subprogram, the Company's explanation for how projects are identified for this subprogram should be given more weight than Staff's unsupported assertions. Furthermore, the project developments presented by the Company in the record establish that the $12,681,500 amount identified by Staff no longer represents the amount for yet to be identified projects and that the Company's rolling approach for identifying projects will result in the Company's spending its initially projected amount for this subprogram in 2021.

Lines Rehabilitation – LVD

Staff proposed spending reductions of $7,084,000 for 2020 and $11,893,000 for 2021 for the Lines Rehabilitation – LVD subprogram of the Reliability Program.[2] Staff's Initial Brief, page 18. This position is again based on Staff's "placeholder" argument which, for the reasons discussed in the Company's Initial Brief, and this Reply Brief, should be rejected.

There are two investment categories in this subprogram: (i) security assessment repairs; and (ii) imminent rehabilitation. The security assessment repairs category follows a fixed inspection schedule in a way that allows for projects to be identified in advance. 6 TR 1332. However, contrary to Staff's position, projects which fall within the imminent rehabilitation investment category are not able to be identified far in advance. This is because the imminent

[2] On page 17 of the Company's Initial Brief, the Company inadvertently used the incorrect heading "Lines Reliability - LVD" instead of the correct heading of "Lines Rehabilitation – LVD" for this subprogram.

rehabilitation investment category is intended to quickly identify and address situations of imminent failure that are identified outside of a normal inspection cycle. 6 TR 1332. Therefore, projects are identified for this investment category on a rolling basis, with the projects having short lead times. 6 TR 1332. Furthermore, as was the case with the Lines and Substations Rehabilitation - LVD subprogram, it would not be prudent to schedule imminent rehabilitation projects many months or more in advance, because in the intervening time the risk of an actual failure would be high. 6 TR 1332.

The Company also established that it has made progress identifying projects for this subprogram after the filing of the Company's direct case in late February 2020. 6 TR 1333. Mr. Blumenstock provided all imminent rehabilitation projects for 2020 in Exhibit A-146 (RTB-22). As shown in that exhibit, the Company has now identified projects for all $10,117,000 that the Company projects to spend in this investment category in 2020. 6 TR 1333. This means that there is no longer any "to be determined" spending for 2021 and Staff's proposed $7,084,000 reduction for 2020 for "placeholder" spending is no longer accurate. The developments for 2020 further establish that the Company will identify imminent rehabilitation projects for 2021 later, on a rolling basis.

Staff asks that the Company's rolling approach to identifying imminent rehabilitation projects be rejected and that the spending developments for imminent rehabilitation projects be ignored. Similar to the other Reliability subprograms addressed above, the Company's explanation for how projects are identified for this subprogram should be given more weight than Staff's unsupported assertions. Furthermore, the project developments presented by the Company in the record establish that the $7,084,000 amount identified by Staff no longer represents the amount for yet to be identified projects for 2020 and that the Company's rolling approach for

identifying projects will result in the Company's spending its initially projected amount for this subprogram in 2021.

(iii.) Demand Failures

Streetlighting Center Suspension

On pages 22 through 24 of Staff's Initial Brief, Staff recommends that the Commission reject the entire $5 million of spending for Consumers Energy's proposed new program for center-suspension streetlight replacement in 2021. The Company anticipated and responded to concerns with the program offered by Staff witness Evans in his direct testimony in this case as part of its Initial Brief. See Consumers Energy's Initial Brief, pages 18-21. Staff's Initial Brief now claims that the Company's center-suspension replacement spending should be rejected because "no plan" exists for the spending in this program. But, that claim is incorrect, and is not consistent with or supported by the concern raised by Mr. Evans in his testimony. As discussed in the Company's Initial Brief, Mr. Evans' testimony only expressed concern that the Company had not yet completed a precise list of the exact lights that would be replaced during 2021. 8 TR 4896. He did not claim that there was absolutely "no plan" for how the center-suspension streetlight replacement program would operate in 2021. Staff's new claim in its Initial Brief is not correct and not supported by the record.

With respect to the question of why it is reasonable to proceed with the program without a precise list of the center-suspension lights the Company will replace in 2021, the Company addressed that issue in its Initial Brief and will not repeat those arguments here. The Company responds further on that topic only to offer the observation that the intent of the program is to replace all of the Company's center-suspension streetlights over several years. The program will start in 2021 by replacing 650 to 700 center-suspension lights out of its 11,000-light fleet of center-suspension lights. 6 TR 2435. Given that the goal of the program is to replace all 11,000

center-suspension streetlights, the lack of a final prioritized list of the first 700 provides no rational support for rejecting all of the spending for the program in its first year. Even if, for some reason, Staff felt strongly that one, or even two dozen, lights in the fleet should be prioritized into the second or subsequent year in the program, the Company would just move the next highest priority lights forward to still complete around 700 replacements in 2021 at its planned program cost of $5 million. The question of the priority does not affect the issue of the first increment of spending.

The more important question would be whether the program, in its entirety, makes sense to pursue in the first place. Staff addressed that question with skepticism in Mr. Evans' testimony, which Consumers Energy addressed in its rebuttal testimony and its Initial Brief. There, the Company offered additional insight into the reasons for pursuing this program, which included both crew and traffic safety concerns and reasons related to improved energy efficiency and reliability. In Staff's Initial Brief, Staff attempts to refute the Company's response by minimizing the Company's safety concerns and basically disregarding its efficiency and reliability improvement benefits. Staff's Initial Brief claims that "granting cost recovery on the sole basis of preventing a safety incident when one has not even occurred would set a precedent for approving cost recovery of virtually any project, so long as the Company could claim that it might prevent a future injury or fatality." Staff's Initial Brief, page 24.

Staff's claim is faulty in at least two respects. First, the Company has not asked for cost recovery "solely" on the basis of preventing a safety incident. As already discussed, the program is also based on the known and undisputed energy efficiency and reliability benefits that are associated with replacing older streetlighting technologies with light emitting diode ("LED") technology. Staff's Initial Brief includes an offhanded remark that those benefits "should be quantified to the extent possible and included in the Company's next electric rate case." Staff's

Initial Brief, page 23. But, that ignores the fact that the energy efficiency and reliability benefits of LED conversion are already known to the Commission and have been accepted in connection with the LED conversion of older technologies with respect to all of the Company's non-center-suspension light fixtures. These LED conversions are not somehow less energy efficient or reliable than those.

Second, Staff's claim is faulty in characterizing the safety concerns as minimal or illusory because a safety event "has not even occurred." Again, that is not completely accurate. Consumers Energy did not state that no safety incidents related to dangerous work in the roadway had occurred. Consumers Energy merely asserted that no such incident had happened to a Consumers Energy worker who was specifically working on center-suspension lighting. However, Consumers Energy has experienced a fatality of a worker engaged in road-related work on other types of projects, and Consumers Energy also provided statistics in rebuttal testimony regarding road-work injuries and fatalities experienced by other companies. 6 TR 2435-2436. The evidence shows that, in fact, there were 5,808 work zone crashes and 17 work zone fatalities in 2019 alone. 6 TR 2436. So, Consumes Energy's safety concerns regarding workers in dangerous roadway conditions is not unwarranted. Contrary to Staff's claims in its Initial Brief, approving funding for a program with known energy efficiency and reliability benefits, that also addresses a rational, reasonable, and documented safety risk, does not set a precedent that allows parties to gain funding for any conceivable project based on wildly speculative and unlikely safety claims in future cases. Staff's claim is hyperbole.

The Company's center-suspension LED replacement program will provide clear benefits to customers and improve the safety of the working conditions for Consumers Energy's crews in the field. Though the Company has not finalized its priority list of the first approximately 700

lights that will be replaced, there is plenty of work available to support the planned program spending included in this case, and the reasons for waiting to finalize the priority list, as discussed in the Company's Initial Brief, make sense. The Commission should reject Staff's proposal to disallow the $5 million for the program in 2021 and should approve the spending to be included in the calculation of test year rates in this case.

(iv.) <u>Asset Relocation</u>

<u>Lines Relocations – LVD</u>

Staff recommends a spending reduction of $5,688,000 for 2020 and $6,178,000 for 2021 for the Lines Relocations-LVD subprogram of the Asset Relocations Program. Staff's Initial Brief, page 25. Staff's reduction is broken down into three components: (i) the removal of $4,000,000 in 2020, based on work that the Company stated had been removed from its plan in the discovery process; (ii) the removal of $1,688,000 in 2020, based on work that the Company, stated was for emergent HVD-driven relocation projects in the discovery process; and (iii) the removal of $6,178,000 in 2021, based on work identified by the Company as emergent HVD-driven relocation projects. Staff's recommendation should be rejected. In responding to Staff, the Company continues to rely on the arguments set forth in pages 21 through 22 of its Initial Brief and will not restate the totality of those arguments herein.

While the Company agrees with Staff that $4,000,000 has been removed from the Lines Relocations - LVD subprogram, this amount should not be removed entirely from the Company's Distribution investment plan. This money was redeployed to the Lines Reliability - HVD subprogram of the Reliability Program. 6 TR 1324. This redeployment was done to fund additional HVD pole top rehabilitation work in 2020 and does not represent a net reduction in the Company's 2020 investment plan. Therefore, the $4,000,000 should not be completely removed from the Company's Distribution plan.

The Company disagrees with Staff's proposed reductions to 2020 and 2021 spending because these reductions are based on Staff's flawed "placeholders" argument. Staff claims that, although most Asset Relocations spending is reactive to third-party requests, which prevents the assignment of all spending to specific projects, projects to accommodate HVD work are driven by internal Company activities and should be known in advance by the Company. Staff's Initial Brief, page 26. The Company established in the record that just because a project is internally driven does not mean the Company must know about it many months in advance. Company witness Blumenstock explained that, although the HVD work in this subprogram is known in advance, LVD work emerges through the year to support the HVD work and address "underbuild" situations in which LVD assets are attached to HVD poles. 6 TR 1324-1325. The Company therefore refuted Staff's position that projects to accommodate HVD work should be known in advance.

In its Initial Brief, Staff attempts to respond to the Company's evidence which establishes that projects to accommodate HVD work are not known in advance. Staff claims that "[i]n Staff's opinion, if the Company wants cost recovery for an internally driven project, then it *should* know about it many months in advance." Staff's Initial Brief, pages 26-27. However, this statement is completely unsupported. Staff presents absolutely no evidence to explain why all internally driven projects should be known "many months in advance." As explained above, the Company is the only party which has sufficiently established how and when the Company becomes aware of Company-driven work in this subprogram. Staff's speculation does not justify any cost reductions.

(v.) <u>Electric Other</u>

Staff proposes to reduce 2021 spending in the System Control subprogram in the Electric Other Program by $2,305,000 on the basis that the Company had not yet identified locations for HVD remote monitoring and control projects at the time of a discovery response dated April 24,

2020. 8 TR 4907. This position should be rejected. In responding to Staff, the Company continues to rely on the arguments set forth in pages 22 through 23 of its Initial Brief.

The Company established in the record that all HVD remote monitoring and control projects for 2021 have been identified, as provided in Exhibit A-147 (RTB-23). 6 TR 1333. Therefore, the $2,305,000 that was previously reserved for projects yet to be identified is now fully allocated to projects and there is no longer any spending for projects yet to be identified in this subprogram. Staff's request that this information be ignored is not reasonable. See Staff's Initial Brief, page 28. As explained above, this information establishes that: (i) there is no longer any yet to be identified spending for 2021; and (ii) the Company's approach to identifying spending is reasonable.

The Commission should reject Staff's recommended reduction of $2,305,000 for the 2021 spending in the System Control subprogram and approve the Company's projected spending in its entirety.

(vi.) <u>Developments in Subprograms of the Distribution Program</u>

Beginning on page 20 of its Initial Brief, Staff asserts that the Company should not be permitted to recover the capital expenditures that were assigned to projects identified beginning in April (i.e. during the discovery process) and in the Company's rebuttal filing in July. Staff claims that permitting the Company to recover these investments would "allow[ ] the Company to file an incomplete case and then use the rebuttal filing to supply information that should have been provided months earlier in the initial filing." Staff likens this updated information to updated contingency costs that were rejected in Case No. U-20322, a Company gas rate case, and also claims that Staff has not had enough time to review the Company's updated information. Staff's

Initial Brief, pages 20-21. Staff's arguments, and overall position, with respect to the developments in certain subprograms of the Distribution Program should be rejected.

Staff's position is based on the false premise that the Company could have identified all projects in the above discussed subprograms prior to the filing of this proceeding in late February 2020. The Company has provided extensive evidence in this case which establishes that, while the Company does endeavor to identify as many projects as possible prior to a given year, it is simply not possible, or prudent to pre-identify all possible projects. See, e.g., 6 TR 1329-1330. Instead of providing any evidence to refute the Company's position, which is based on years of experience implementing Distribution subprograms, Staff simply ignores the Company's explanation and doubles down that the Company must identify projects which are not possible or prudent to identify in advance. This position is entirely unreasonable and demonstrates that, in this instance, Staff is more concerned with preserving its disproven cost reduction rather than setting just and reasonable rates. The evidence provided by the Company in this case establishes that the Company's initially provided investment projections are reasonable, especially given the progress the Company has made identifying projects for to be determined investment, and those initially provided projections will serve as an appropriate means of setting just and reasonable rates.

As explained above, Staff also misses the point of the updated information provided by the Company in discovery and rebuttal. The point of that information is not to provide new project information which could have been provided in the Company's initial filing. Rather, the point was to establish how the Company's rolling project identification approach works and also establish that this approach will result in the Company spending what it initially projected to spend. In other words, the Company did not present subprogram investment proposals with spending

"placeholders" but instead presented a working approach to addressing investment needs on the Company's system with the best available information. This approach is based on the historical implementation of the Company's Distribution subprograms and is not similar to contingency, as Staff claims.

Staff's claim that it has not had sufficient time to review the updated developments in the Company's Distribution subprograms is without merit. As explained above, and as conceded by Staff in its Initial Brief (see Staff's Initial Brief, page 20), extensive amounts of information pertaining to the Company's Distribution subprograms was provided to Staff in discovery beginning in April, which is approximately four months before the record closed in this matter. It is not reasonable for Staff to take the position that approximately four months is an insufficient amount of time to review developments in the Company's Distribution subprograms. Even if the Company had provided these spending developments for the first time in rebuttal, which the Company does not agree is the case, it still would have provided Staff with sufficient time to review the developments, submit discovery to the Company, and conduct cross examination. There is no basis for Staff's position that it had insufficient time to review the developments to the Company's Distribution subprograms. Again, it should be noted that the Company was not providing these developments to provide new information to supplement an incomplete filing, as Staff claims, but instead providing the information to show that the Company's rolling project identification approach, as historically used by the Company, will result in the Company spending consistent with what the Company initially projected in this case.

Staff's position would also unreasonably punish the Company for providing a more granular level of detail and greater transparency in its rate case filings. Until the Company's most recent electric rate case, Case No. U-20134, the Company did not typically provide subprogram

and project level detail with respect to its Distribution investments. In electric rate cases prior to that time, Distribution investment levels were primarily set based at the program level (i.e. New Business, Reliability, Capacity, Demand Failures, etc.) and not the subprogram or project level. See, e.g., Case No. U-17990, February 28, 2017 Order, pages 14-24. Since Case No. U-20134, the Company has endeavored to provide a greater level of detail in support of its Distribution investments, including greater detail of subprograms, specific lists of projects, and even project description documents. In providing that information, the Company is not suggesting that every dollar of the investments projected in this case should have an assigned project. Instead, the Company is providing concrete examples of what it will accomplish with the investment proposed in this case. As explained above, there are numerous Distribution subprograms where it is not possible to know all projects far in advance but, based on historical performance, the Company has a reasonable basis to project that a certain amount will be spent in a given year. By suggesting that a reasonable projection of future investment is no longer good enough, and every investment dollar must be tied to a specific project, Staff unreasonably moves the goal post. Such a standard has not been used in prior electric rate case proceedings and threatens to force the Company's evidentiary presentation backwards, not forward. The Company should not be punished for providing a more granular level of detail and greater transparency in its rate case filings.

For the reasons discussed above, and in the Company's Initial Brief, Staff's request that the Company not be permitted to recover Distribution investments related to projects identified between April and July should be rejected. These developments establish that Staff's identified amounts for spending "placeholders" as not accurate and that the Company's rolling approach for project identification is reasonable.

(vii.) SAIDI Glidepath

On pages 28 through 30 of its Initial Brief, Staff claims that its proposed Distribution spending reductions "will have little to no effect on the Company's planned SAIDI reduction." The Company disagrees. In responding to Staff, the Company continues to rely on the arguments set forth in pages 22 through 23 of its Initial Brief.

Staff claims that, since over 90% of the Company's SAIDI reduction will be due to Forestry work, Staff's proposed reductions in Distribution capital spending should not affect the Company's ability to improve SAIDI. Staff's Initial Brief, page 29. However, the Company's SAIDI glidepath includes a System Average Interruption Frequency Index ("SAIFI") improvement of 0.089 from 2020 to 2025 (with SAIDI improvements being a product of SAIFI improvements and Customer Average Interruption Duration Index ("CAIDI") improvements.) 6 TR 1320. While the SAIFI improvement due to Forestry is 0.081, which represents more than 90% of the total SAIFI improvement, that should not be understood to mean that other areas of investment "will have little to no effect on the Company's planned SAIDI reduction."

Other SAIFI improvement activities still contribute to the Company's glidepath, and for each area where investment is reduced, the modeling indicates that SAIDI will increase. 6 TR 1320. Furthermore, while trees are a leading cause of outages on both the HVD and LVD systems, trees do not cause 90% of the outages. Various types of equipment failure also play a prominent role in causing both HVD and LVD outages. Therefore, investment in HVD and LVD assets remains of paramount importance. 6 TR 1321.

Therefore, for the reasons discussed above, it should not be understood that Forestry is the only area of high value in the overall Distribution spending program.

b. Reply to the Attorney General

On pages 21 through 49 of her Initial Brief, the Attorney General presented numerous recommendations with respect to the Company's proposed Distribution investments. However, the Attorney General did not address any of the record evidence provided by the Company which refutes the Attorney General's positions. The Company responded to each of the Attorney General's Distribution investment positions on pages 24 through 45 of the Company's Initial Brief. Since the Attorney General presents no new or different arguments in its Initial Brief, the Company rests on its arguments. For the reasons discussed in the Company's Initial Brief, the Attorney General's proposed reductions to the Company Distribution investments should be rejected.

c. Reply to the MEC Coalition

(i.) Distribution Planning Generally

On pages 36 through 52 of its Initial Brief, the Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and the Citizens Utility Board of Michigan (collectively the "MEC Coalition") criticizes the Company's Distribution planning process. The MEC Coalition takes issue with: (a) the purported lack of robust data and integrated planning to support the Company's requested Distribution spending; (b) the purported lack of context beyond the test year to consider the Distribution system planning and investments; and (c) the Company's alleged resistance to integrating non-wires alternatives ("NWAs") into its Distribution investment. The MEC Coalition's Initial Brief, page 37. The end result of the MEC Coalition's criticisms is a request that the Commission disallow the recovery of certain investments and also "provide guidance in this case in order to improve the 2021 distribution system plans and the 2021 rate case." MEC Coalition's Initial Brief, pages 42, 50-52. These criticisms and recommendation should be rejected. The Company extensively addressed and refuted the MEC Coalition's

Distribution planning criticisms on pages 52 through 61 of its Initial Brief and continues to rely on that responses, in addition to the arguments provided herein.

The majority of the section of the MEC Coalition's Initial Brief focused on the Company's Distribution planning represents an attempt by the MEC Coalition to encourage the ALJ and Commission to ignore the Company's evidence which established that the MEC Coalition's Distribution planning criticisms, as primarily advanced by MEC Coalition witness Christopher Villarreal, are unfounded. As set forth in the Company's Initial Brief, the record reflects that the Company has an extensively integrated Distribution planning process which prioritizes projects and does not silo the Company's different Distribution programs and subprograms. See, e.g., Consumers Energy's Initial Brief, pages 52-54.

Contrary to the MEC Coalition's claims, the Company established that the Distribution spending proposed in this rate case is not "untethered" from the Company's 2018 Electric Distribution Infrastructure Investment Plan ("EDIIP") and also that the Company is not disregarding Commission direction. MEC Coalition's Initial Brief, page 47. The Company established that this rate case relies on strategies outlined in the 2018 EDIIP. 6 TR 1360. Furthermore, even though this rate case relies on strategies from the 2018 EDIIP, this rate case is not a simple continuation of the 2018 EDIIP, nor is it the Company's next EDIIP, which is due to be filed in the Summer of 2021. Since EDIIPs are not filed as frequently as electric rate case proceedings, there will inevitably be updates which must be made to Distribution spending plans and it is reasonable for the updates to appear in the rate case proceedings which fall in between EDIIP filings. Like five-year Power Supply Cost Recovery ("PSCR") forecasts under MCL 460.6j and Integrated Resource Plan ("IRP") capacity forecasts under MCL 460.6t, the Company's Distribution planning forecasts, as presented in the EDIIP, are based on the best available

information at the time the forecast is made and cannot be used to predict the future with 100% certainty. The Company's Distribution planning process cannot be rigid and must be able to continue to evolve to provide the best Distribution solutions to customers.[3]

It is also not correct that the Company has somehow failed to follow Commission guidance on Distribution planning. To further this argument, the MEC Coalition conflates multiple regulatory proceedings, some of which are ongoing outside of this proceeding. The Commission originally required the Company to develop and file a five-year Distribution plan in Case No. U-17990. 6 TR 1361. When the Company filed the 2018 EDIIP in that docket on March 1, 2018, it fulfilled the Commission's requirement at that time. Subsequent to the filing of the Company's 2018 EDIIP, the Commission created Case No. U-20147 to allow utilities, Staff, the Commission, and other stakeholders to discuss expectations for a future five-year electric distribution plan. Through Case No. U-20147, the Commission has the Company to file a new five-year distribution plan in the Summer of 2021. The MEC Coalition cites to material presented in Case No. U 20147; however, that material is oriented towards what will be included in that June 2021 filing, and does not provide valid grounds to criticize the Company's presentation in this case. When the Company files its 2021 EDIIP, parties will be able to evaluate how the Company has incorporated Commission guidance and policy proposals from other stakeholders. Until the 2021 EDIIP is filed, criticisms with respect to what has been provided in Case No. U-20147.

The MEC Coalition's allegation that the Company failed to appropriately consider NWAs in this case should also be rejected. MEC Coalition's Initial Brief, pages 48-50. The Company

[3] There is a notable contradiction between the MEC Coalition's recommendations with respect to Distribution planning and its Distribution investment recommendation which undermines the validity of both recommendations. Although the MEC Coalition criticizes the Company for modifications to its 2018 EDIIP and claims that the Company's proposal in this case is "untethered" from the EDIIP, the MEC Coalition has proposed a spending amount for 2021 that is hundreds of millions of dollars below the amounts projected in the EDIIP. 8 TR 3653-3654. While the MEC Coalition asks for consistency between the EDIIP and rate case proceedings, the MEC Coalition's proposed spending reductions make clear that it does not actually believe that such consistency is necessary.

established that NWAs cannot currently be fully considered as a Distribution solution because NWAs are not economical at scale, involve long lead times, and the reliability performance of NWAs has not been clearly established. 6 TR 1367. The MEC Coalition criticizes the Company's position as a "chicken and egg approach" which "dooms NWAs" (see MEC Coalition's Initial Brief, page 49); but this position misunderstands the Company's approach to NWAs. The Company supports the consideration of NWAs when they become more viable. The Company has been working through pilots to better understand the economics, lead times, and performance parameters. 6 TR 1367. Since this issue is being thoroughly addressed in Case No. U-20147, it should be considered in that proceeding and in the Company's 2021 EDIIP, and not used as grounds to criticize the Company's Distribution plan, as presented in this case.

The MEC Coalition's criticism of the Company's consideration of NWAs should also be rejected because NWAs will not serve as a solution for all Distribution projects where the MEC Coalition criticized the Company for not considering NWAs. For instance, the MEC Coalition criticized the Company's Substations Reliability - LVD subprogram for not giving proper consideration to NWAs but it is not clear how NWAs would be suitable for addressing the animal mitigation issues or transformer issues that this subprogram is focused on. 6 TR 1368. In addition, the Company prioritizes many projects, including those in the Substations Reliability – LVD subprogram, based on the most current available performance data which make these projects difficult to identify years in advance. It is not clear how the Company could identify these performance issues years in advance in order to facilitate using an NWA to address a reliability problem. 6 TR 1368.

The record also reflects that the Company did consider NWAs in the development of its Distribution spending plan, as presented in this case. Mr. Blumenstock testified that, in identifying

sites for its NWA pilots, at the Swartz Creek, Four Mile, and Standish substations, the Company did indeed look years in advance to identify potential capacity issues that could be addressed by an NWA. 6 TR 1368. However, even in these instances, given generally flat load, there is not a large population of sites where NWAs may be useful. Moreover, those areas that do show significant load growth are not driven by broad, trend-based, easily forecasted growth, but by situations where new load has emerged on a shorter term than the three to five years that the MEC Coalition asserts is necessary to plan for and establish an NWA. 8 TR 1369; see 8 TR 3866.

On pages 50 through 52 of its Initial Brief, the MEC Coalition concludes by recommending that, with respect to the Company's 2021 Distribution system plan and the 2021 rate case, the Commission: (i) require that future load forecasts should be based upon customer Advanced Metering Infrastructure ("AMI") data and other data available to the Company from other places; (ii) require the Company to support its rate case Distribution investments with planning justification and forecasts beyond the immediate one-to-two years, to align with the five-year Distribution planning process; and (iii) direct the Company to consider NWA solutions as an alternative to wires-and-poles infrastructure investment. For the reasons discussed above, and those discussed on pages 52 through 61 of the Company's Initial Brief, these recommendations should be rejected. The MEC Coalition's criticisms of the Company's Distribution planning were refuted in the record by the Company. Furthermore, recommendations for the Company's 2020 EDIIP should be focused on Case No. U-20147, which is intended to provide guidance for distribution investment and maintenance plans moving forward, and not this proceeding. Moreover, the MEC Coalition's criticism regarding the Company's integration of Distribution planning should be rejected because they are unsupported and do not present any flaws in the Company's planning process and instead represent the MEC Coalition's one-sided view of an

appropriate integrated planning process. It should be noted that the Commission has initiated the MI Power Grid initiative which, among other things, will focus on integrated resource planning. See MPSC Case No. U-20645, October 17, 2019 Order, page 4. The MI Power Grid is the appropriate forum for collaboration for the appropriate means of integrated resource planning, not this proceeding.

(ii.) Distribution Investment Reductions

Beginning on page 52 of its Initial Brief, the MEC Coalition proposes an extreme spending reduction to the Company's proposed 2021 Distribution investment of approximately $323 million. The extreme nature of this proposed reduction is exemplified by the fact that the MEC Coalition's proposed reduction exceeds the combined reductions proposed by Staff ($86,064,000) and the Attorney General ($227,900,000) and those reductions applied to both 2020 and 2021 Distribution investment, not just 2021 as the MEC Coalition proposes. See Staff's Initial Brief, page 10; see also 8 TR 3410. The MEC Coalition's proposed 2021 Distribution spending reductions are not just extreme in amount but they are also unsupported in the record. The vast majority of the MEC Coalition's proposed adjustments ($300 million) were proposed by MEC Coalition witness Robert G. Ozar. Mr. Ozar concedes in the record that his proposed reduction is not based on a review of the projects that the Company extensively supported in this case in the Company's six Distribution programs and 49 subprograms. 8 TR 3651-3652. Mr. Ozar instead opted to slash significant portions of the Company's 2021 Distribution spending plan based on unsupported policy considerations. The MEC Coalition's proposed reduction to the Company's 2021 Distribution investment should be rejected because it is entirely unreasonable, inconsistent with the law, and inconsistent with the Commission's past rate case orders. In responding to the MEC Coalition's Initial Brief, the Company continues to rely on its arguments, as presented on pages 46 through 80 of its Initial Brief, in addition to the arguments contained herein.

The MEC Coalition attempts to build its case for massive cuts to the Company's proposed 2021 Distribution investment around the recent economic impacts of the COVID-19 pandemic and a purported "holistic approach" which balances "the tradeoffs between achieving the lowest possible rates to customers and maintaining adequate service quality." See MEC Coalition's Initial Brief, page 53. Relying on the testimony of Mr. Ozar, the MEC Coalition further concedes that this position is not actually based on the extensive record evidence provided by the Company or the projects proposed by the Company. Rather, the MEC Coalition's proposed reductions are based on Mr. Ozar's vaguely described "policy consideration[s]." 8 TR 3653. This is because, in the MEC Coalition's opinion, a review of the evidence which the Company actually provided in the record to support its Distribution spending "would be exceptionally difficult, given the asymmetry embedded in the regulator process."[4] MEC Coalition's Initial Brief, page 56.

The MEC Coalition's purported policy-based approach to Distribution investment is unreasonable because it amounts to an argument that the Commission should adopt sweeping and extreme disallowances of proposed Company investment in order to prioritize a policy goal of lower rates, even though Mr. Ozar openly conceded in the record that "[c]ustomers would certainly prefer the lowest possible rates and the highest level of service quality." 8 TR 3647. As explained in the section of the Company's Initial Brief focused on Rate Affordability, the Company established in the record that the Company's rates are affordable, and the Company also provides numerous offerings to help customers pay their bills. 3 TR 112-113. The MEC Coalition's

[4] It should be noted that Staff indicated no difficulty in reviewing the extensive evidence provided by the Company to support its 2019, 2020, and 2021 Distribution investments. In fact, with respect to numerous Distribution subprograms, Staff has taken the position that the Company should have presented an even greater amount of information to remove what Staff describes as "placeholders" in the Company's spending plan. See, e.g., 8 TR 4899-4900. While the Company disagrees with Staff's placeholder argument for the reasons discussed in the prior sections of this Reply Brief, Staff's position illustrates that the MEC Coalition's difficulties reviewing the Company's evidence in support of its proposed Distribution investments is an issue unique to the MEC Coalition and not the other parties in this case.

assertions regarding the economic impact of the COVID-19 impact on customers are also entirely speculative and unsupported. It should be noted that the rates proposed in this case will go into effect in 2021, not 2020. The MEC Coalition did not present any evidence which addresses the economic status of Michigan when the Company's rates will actually be implemented. Without actual data, Mr. Ozar only claims that there "is current economic stress in Michigan" (8 TR 3647) and then infers that the referenced economic stress will continue. As a general matter, the MEC Coalition's high-level assertions about the Company's Distribution investment proposals and unsupported statements about the economy fail to support his proposed extreme policy-based approach to projecting Distribution investment which results in a spending reduction of $300 million for 2021.

The MEC Coalition's proposed 2021 Distribution investment reduction is also unreasonable because, if approved, the Company distribution reliability would markedly suffer. 6 TR 1339-1340. The Company established in the record that it needs to invest at a certain level every year in order to address enough of the system to break even against system deterioration. 6 TR 1340. Mr. Blumenstock testified that, even the investment levels proposed by the Company for the 2021 test year in this rate case do not reach the point of keeping up with deterioration, as human and material resource constraints prevent a larger ramp-up of work. However, the Company's proposed 2021 Distribution investment still does put the Company on a glidepath towards improving reliability.

Given that the Company's proposed investment amounts do not reach the point of keeping up with deterioration, Mr. Ozar's recommendations, if adopted, would create an even greater investment gap against the break-even level and would only result in the Company falling further behind against system deterioration. 6 TR 1340. This result would lead to worsening reliability,

not nominal improvement, or maintenance of the status quo, the MEC Coalition claims. The Company's average investment levels in the 2014 through 2018 period contributed to worsening deterioration and therefore, returning to that level of investment will yield more of the same result. 6 TR 1340.

On page 59 of its Initial Brief, the MEC Coalition attempts to respond to the Company's evidence which refuted its position. However, the MEC Coalition's arguments are speculative and unsupported by the record. The MEC Coalition starts its argument from the flawed position that "[t]he Company defines 'system deterioration' in terms of equipment age." MEC Coalition's Initial Brief, page 59. That is not the case. The Company's definition of system deterioration is condition based and that deterioration increases the frequency and duration of outages because the assets are in a worse condition, not just because the assets are older. 6 TR 1341. Mr. Blumenstock testified that, at any given wind speed above approximately 22 miles per hour, the Company's Distribution system has experienced more incidents in recent years than it did further in the past, indicating that the system is less resilient. 6 TR 1342. Therefore, the appropriate conclusion is that system performance is getting worse each year, not because assets get one year older, but because assets deteriorate each year and the system is in overall worse shape.

The MEC Coalition does not just misinterpret the causes of system deterioration but also uses its flawed understanding of system deterioration to build a strawman argument regarding Figure 4, as presented in Mr. Blumenstock's direct testimony. The MEC Coalition argues that Figure 4 does not show what the Company needs to spend to keep up with system deterioration. MEC Coalition's Initial Brief, pages 61-66. However, the MEC Coalition's arguments are misplaced.

The purpose of Figure 4 is to illustrate the scale of investment versus system needs and not to establish that deterioration exists in the first place. Figure 4 is a simplified and high-level illustration of what the Company would need to invest in its Distribution system to breakeven with system deterioration. This figure is not intended to represent the entirety of the Company's Distribution spending need but instead focuses on certain portions of Distribution investment (LVD Lines - Overhead; LVD Lines - Underground; HVD Lines; LVD Substations; and HVD Substations) and Forestry Operating and Maintenance ("O&M") expense. 6 TR 1042-1043. Mr. Blumenstock testified that Figure 4 does not include annual investments in other Distribution investment programs, such as New Business, Asset Relocations, and Electric Other. Figure 4 is also simplified from the standpoint that it only focuses on replacing assets when they reach the end of their lifecycle, not all factors which drive deterioration. 6 TR 1436. Additionally, the "Equivalent Units/Year," as used in Figure 4, are "simply the number of units divided by the [ ] assumed lifespan." 6 TR 1439. Therefore, Figure 4 is not intended to represent the only drivers for system deterioration or the exact units/projects which the Company will achieve with the amount of proposed spending.

In criticizing Figure 4, the MEC Coalition ignores substantial amounts of the Company's testimony which explains the need for the Company's 2021 Distribution investment amounts. That evidence includes, but is not limited to: (i) a detailed analysis of the factors which contribute to system deterioration, including worsening weather (6 TR 1044-1049); (ii) the Company's historical system performance, which details the negative impacts of insufficient Distribution investment (6 TR 1049-1059); (iii) the specific details supporting the Company's Distribution investment plan at a subprogram and project level (6 TR 1064-1278); and (iv) Confidential Exhibit A-150 (RTB-26) which contains 522 pages of details regarding the specific projects that the

Company is proposing to invest in. In addition to Figure 4, the aforementioned evidence all establishes the need for the Company's Distribution investments proposed in this case and the fact that, without these investments, the Company's reliability will markedly suffer. For the most part, the MEC Coalition made no effort to rebut the Company's evidence which supported its spending needs in this case.

The MEC Coalition's position concerning Figure 4 is a position of convenience, rather than a position which exposes anything flawed in the Company's evidentiary presentation. Instead of addressing the totality of the Company's evidentiary presentation on the need for increased Distribution investment, the MEC Coalition takes one example provided in the Company's testimony (i.e. Figure 4) and attempts to distort it. The MEC Coalition's position notably has no response to the Company's evidence addressing system deterioration. That evidence specifically establishes that severe weather is worsening, and that for a given level of severe weather, system performance is worsening. 6 TR 1044-1049. The MEC Coalition also does not address Figure 9 (see 6 TR 1048), which establishes that the Distribution system is deteriorating and becoming less resilient. The Company's proposed spending in this filing takes this detailed information into account regarding deterioration to systematically reduce SAIDI along a glidepath going forward. 6 TR 1049.

It should also be noted that the witness that supported the majority of the MEC Coalition's Distribution investment reductions, Mr. Ozar, did not present any real analysis as to the overall system reliability impacts of his proposed deep cuts. Instead of supporting its positions and establishing how system reliability will not worsen with deep cuts to 2021 Distribution investment, the MEC Coalition essentially takes the position of "tell us why we are wrong." The Company presented substantial evidence which establishes a need for its proposed 2021 Distribution

investment, and which also establishes that any amount less would not keep up with system deterioration. However, the MEC Coalition has failed to uphold its burden of supporting its $300 million investment reduction proposal in this case and the resulting impact on system reliability. See *Kar v Hogan*, 399 Mich 529, 539; 251 NW2d 77 (1976) ("The party alleging a fact to be true should suffer the consequences of a failure to prove the truth of that allegation.") It is not sufficient for the MEC Coalition to simply announce a position, as it has done here, and then leave it to the Company, the ALJ, or the Commission to figure out the resulting consequences.

The sheer magnitude of the MEC Coalition's proposed spending reductions also demonstrates that Distribution reliability will markedly suffer if the MEC Coalition's recommendations are approved. By proposing over $300 million in spending cuts to 2021 Distribution investment, the MEC Coalition proposes a Distribution spending level for 2021 that is on par with what the Company spent in 2016. See Exhibit A-29 (RTB-2), line 56, column (e). The Company's Distribution investment level at that time contributed to worsening deterioration on the Distribution system. See 6 TR 1047-1048. Returning to that level of investment will lead to more deterioration and erase the progress that the Company has achieved by increasing Distribution investment for the purpose of maintaining and improving the reliability of the Distribution system. 6 TR 1340.

For the above reasons, and those discussed in the following sections of this Reply Brief and the Company's Initial Brief, the Commission should reject the MEC Coalition's arbitrary policy-based reductions to 2021 Distribution investment. The MEC Coalition improperly requests that the Commission disregard the extensive detail in the record supporting the Company's requested Distribution investment, which includes descriptions of the Company's Distribution programs and subprograms and even descriptions of the individual projects which the Company

intends to pursue. The MEC Coalition also fails to support its positions with evidence, which is contrary to the law and the Commission's direction in prior rate case orders.

(a.) New Business

Beginning on page 67 of its Initial Brief, the MEC Coalition proposed reducing the Company's New Business Program investment for 2021 from $145.1 million to $62.7 million, a reduction of $82 million. This recommendation should be rejected because it is based on a speculative argument, as advanced by Mr. Ozar, that "the expectation for high demand and investment levels for new and expanded business 'now has a high degree of uncertainty'" due to the impact of the COVID-19 pandemic. In addition to the arguments below, the Company continues to rely on the response provided on pages 61 through 63 of its Initial Brief.

The crux of the MEC Coalition's argument is that New Business Program investment should be reduced to actual levels spent by the Company in 2014. The MEC Coalition takes the position that 2014 was somewhat close to the Great Recession that followed the 2007-2009 global financial crisis and is therefore a useful proxy for current economic conditions. MEC Coalition's Initial Brief, page 67. The MEC Coalition also incorrectly claims that despite the fact that some customer-specific projects may have been disclosed by customers to the utility in advance, like projects within the Strategic Customers New Business – HVD subprogram, such projects are uncertain as they are not based on customer commitment. MEC Coalition's Initial Brief, page 67.

Contrary to the MEC Coalition's position, the evidence provided in this proceeding establishes that New Business investment has not been dramatically affected by the COVID-19 pandemic. The Company established that customer-specific projects within the New Business Program are in fact based on commitments. 6 TR 1354. For example, in the Strategic Customers New Business- HVD subprogram, firm projects are developed in response to customer requests. Mr. Blumenstock further confirmed that, as of the date of the Company's rebuttal filing in mid-

July 2020, the customers that made project commitments have not backed out of their plans, even though the COVID-19 pandemic has been ongoing for several months. 6 TR 1354. Therefore, these projects are not uncertain.

The Company further established that, while housing started to fall in April 2020, that was due to Governor Gretchen Whitmer's "Stay Home, Stay Safe" order and the moratorium on construction which expired on May 7, and not necessarily a lack of customer requests. 6 TR 1354. While some New Business Program activity did decrease in April, due to the Governor's order and construction moratorium, it has since rebounded. The Company established that it is on track to invest slightly more in this subprogram in 2020 than was shown at the time this case was filed in Exhibit A-29 (RTB-2), line 1, column (j). 6 TR 1355. Therefore, the MEC Coalition's argument that New Business Program activity will be significantly depressed into 2021 is not supported by any facts and is instead based on speculation.

In addition, the MEC Coalition's use of 2014 as a proxy for 2021 New Business investment should be rejected. The use of 2014 as a proxy for 2021 is completely arbitrary since that date is not actually closely tied to the Great Recession. 6 TR 1356. The MEC Coalition has failed to connect 2014 to 2021, other than by loosely asserting that, in 2014, the Great Recession was still a somewhat recent event.

In its Initial Brief, the MEC Coalition attempts to respond to the Company's record evidence with conjecture. The MEC Coalition claims that a rebound in 2020 New Business Program activity provides "little assurance on the state of the economy in 2021" and that the use of historic 2014 year as a proxy for 2021 New Business Program investment is not arbitrary. MEC Coalition's Initial Brief, page 68. However, the MEC Coalition relies on zero evidence to support these positions. As explained above, the Company provided actual evidence that New Business

Program activity in 2020 has rebounded and is actually on track to exceed the Company's projections. On the other hand, the MEC Coalition's claims of "still-evolving pandemic responses and economic conditions" (see MEC Coalition's Initial Brief, page 68) are not based on anything in the record. The MEC Coalition accuses the Company of speculating as to the state of New Business Program activity in 2021 but, contrary to the MEC Coalition's claims, the Company is the only party to show, with real data, that activity has not dipped.

The record also establishes that the MEC Coalition's use of historic 2014 New Business Program data is arbitrary. The MEC Coalition asserts that its use of the 2014 year is based on the state of the economy that followed the 2007-2009 Great Recession. 8 TR 3663. However, the MEC Coalition fails to link the economy in 2014, which was seven years after the onset of the Great Recession, to the expected economy in 2021, which begins less than a year after the onset COVID-19 pandemic. In addition, the MEC Coalition fails to link the Great Recession, which was caused by a mortgage crisis, to economic conditions experienced in 2020 due to temporary government forced shutdowns related to the COVID-19 pandemic. The ALJ and Commission should reject the MEC Coalition's arbitrarily selected 2014 year and instead rely on 2020 New Business Program activity as an indicator that the Company's New Business Program projections will come to fruition.

Finally, the MEC Coalition argues that its cuts to 2021 New Business Program investment should be approved because it agrees to allowing the Company to use regulatory asset/liability treatment for New Business over/under spending. MEC Coalition's Initial Brief, pages 68-69. However, such treatment is not necessary because the Company has established in the record that it will spend what it projected to spend on the New Business Program. Under the rate case law, MCL 460.6a, the Company is entitled to use projections in the establishment of new rates. The

Company has demonstrated in this case, through record evidence, that its New Business Program projections are valid and reasonable. The ALJ and Commission should reject the MEC Coalition's attempts to set the Company's 2021 New Business Program investment based on the historic 2014 year.

(b.) Reliability

Reliability Subprograms

On page 72 of its Initial Brief, the MEC Coalition proposes to reduce the Company's "Reliability subprogram" investment within the Reliability Program for 2021 by 50%, from $157,844,000 to $78,742,000. See "Reliability subprograms" in Exhibit A-29 (RTB-2), lines 9 through 14, column (k). For the reasons discussed below, and on pages 63 through 66 of the Company's Initial Brief, this position should be rejected.

At the outset, the MEC Coalition's large-scale reductions to Reliability Program investment should be rejected because they are rooted in Mr. Ozar's unsupported "policy" based recommendation (see MEC Coalition's Initial Brief, page 73), which is addressed in the prior sections of this Reply Brief. The MEC Coalition's proposed 50% reduction to the reliability subprograms, as advanced by Mr. Ozar, is arbitrary and unsupported by any review of the investments actually proposed by the Company. In its Initial Brief, the MEC Coalition argues that its policy-based recommendation is ok because the Commission may make decisions with policy "by balancing the interest of public utility investors and the consuming public." MEC Coalition's Initial Brief, page 73. However, neither the MEC Coalition, nor its witness Mr. Ozar, are the Commission. A party to a regulatory proceed must support its positions with fully documented evidence, rather than unsupported conclusory statements. See MPSC Case No. U-15645, November 2, 2009 Opinion and Order, page 9. Michigan Administrative Procedures Act and the Michigan Constitution also require decisions of administrative agencies, such as the Commission,

to be based exclusively upon the record evidence entered onto the record in the case and any matters officially noticed. MCL 24.285; Const 1963, art VI, § 28. By simply proposing Distribution investment reductions, without adequate justification, the MEC Coalition has not provided the Commission with sufficient evidence to rely on.

The MEC Coalition states that the Company "appears entirely unwilling to concede" some reductions in Distribution investment but such a position ignores the Company's substantial evidence supporting the need for its proposed investments. MEC Coalition's Initial Brief, page 73. The Company supported the need for its proposed investments with detailed explanations of its subprograms in Mr. Blumenstock's direct testimony. See 6 TR 1132-1220. The Company also provided a detailed explanation of major projects in Confidential Exhibit A-150 (RTB-26). In addition to supporting its proposed projects, the Company also demonstrated the need for its investment. Specifically, the Company showed that the Distribution system is deteriorating, is less resilient, and needs increased investment. 6 TR 1044-1049; see also Figure 9 at 6 TR 1048. This demonstrates that the Company is not just proposing spending for projections that can be adjusted, the Company is proposing spending for real projects that will improve system reliability.

The MEC Coalition's argument that the Company's reliability subprogram investment for 2021 "is substantially out of line with historic spending" is not entirely correct. MEC Coalition's Initial Brief, page 72. As demonstrated by Exhibit A-29 (RTB-2), with exception of the Lines Reliability – HVD subprogram, the reliability subprograms are within a reasonable range of the Company's annual spending levels reached in the years 2014 through 2020. Although the Company is proposing an increase to the Lines Reliability – HVD subprogram, this investment is greatly needed to address the lines, pole tops, and poles targeted by this subprogram because they are among the assets that the Company needs to address to better catch up with the system

deterioration. 6 TR 1149. Reliability projects in this subprogram form a critical part of the Company's glidepath for reaching 170 SAIDI minutes in 2025. 6 TR 1153. This is demonstrated on Figure 2 in Mr. Blumenstock's direct testimony. 6 TR 1040. Therefore, the MEC Coalition's proposal to slash investment in the reliability subprograms of the Reliability Program will not cut "out of line" spending. It will instead unreasonably cut investment in subprograms that are in line with historical spending amounts and also unreasonably cut investment in the reliability subprogram that has a significant role in reducing the Company's SAIDI minutes which will make the Distribution system more reliable.

Even where the MEC Coalition attempted to present rationale to support its proposed reductions, that rationale was flawed. The MEC Coalition singled out certain Reliability subprograms for large reductions (i.e. Lines Reliability - LVD, Lines Reliability - HVD, Substations Reliability - LVD, Substations Reliability - HVD, System Protection, Repetitive Outages - LVD, and Metro Reliability subprograms) and claimed that these Reliability subprograms are based largely on age-based, rather than condition-based, replacement schedules. MEC Coalition's Initial Brief, page 74. However, that conclusion is incorrect. The Company does not replace assets solely due to age, but due to a variety of condition-based assessments. 6 TR 1345. The Company also established in the record that the above identified Reliability subprograms are based on condition-based asset replacements, rather than age-based asset replacements. See 6 TR 1345-1346. Furthermore, the Company provided a number of concept approval documents, describing specific justifications for proposed Reliability Program projects, in Confidential Exhibit A-150 (RTB-26), which included projects initially listed in Exhibit A-41 (RTB-14). 6 TR 1346. Therefore, the idea that certain Reliability subprograms should be cut because they are based largely on an age-based replacement schedule is in error.

In addition, the MEC Coalition is incorrect that the Company's Distribution investment approach equates to "maximizing reliability." MEC Coalition's Initial Brief, page 72. Contrary to the MEC Coalition's claims, the Company prioritizes work based on asset condition, as determined through various inspection programs and reliability data. 6 TR 1343. Furthermore, the Company is not seeking a Distribution investment approach that "maximizes" reliability, partially because there is insufficient human and material resources to do so. 6 TR 1043. It should be noted that even the investment levels proposed by the Company for the 2021 test year in this rate case do not reach the point of keeping up with deterioration and therefore the Company is not even proposing the maximum amount of spending truly needed. 6 TR 1340. It should also be noted that in the Company's 2018 EDIIP, the Company established that it would need $4.5 billion to replace all assets beyond their expected lifespan but the Company is not, in this case, seeking to replace the entirety of the $4.5 billion in total assets beyond expected lifespan that were identified for the 2018 EDIIP. 6 TR 1344.

Substations Reliability - LVD

Beginning on page 75 of its Initial Brief, the MEC Coalition proposed to reduce the Company's requested investment in its Substations Reliability – LVD subprogram of the Reliability Program by $2.25 million, from $15.5 million to $13.25 million. This results in a reduction of 50% of the Company's proposed new or rebuilt substation investment category in this subprogram. 8 TR 3852. The MEC Coalition's position is essentially a proposed penalty due to MEC Coalition witness Villarreal's belief that the Company did not properly consider NWAs. MEC Coalition's Initial Brief, page 75. For the reasons discussed below, and on pages 67 through 68 of the Company's Initial Brief, this position should be rejected.

In its Initial Brief, the MEC Coalition contests that its position amounts to a penalty, arguing that its position is "reasonable and supported." MEC Coalition's Initial Brief, page 76. However, the MEC Coalition did not support its position with any evidence that NWAs could have been a solution to the Company's proposed projects and therefore its position is not reasonable or supported. The MEC Coalition's position amounts to a penalty for the Company for not adhering to Mr. Villarreal's preferred policy objectives. Instead of attempting to penalize the Company for not adhering to policy objectives, the Company's proposed investments should be evaluated based on whether they are reasonable and prudent, particularly based on the information provided in Confidential Exhibit A-150 (RTB-26) which shows detailed plans for the Company's Distribution projects. Mr. Blumenstock further explained that, by disallowing this Reliability spending, system deterioration will continue, and reliability will be negatively impacted. 6 TR 1370.

In its Initial Brief, the MEC Coalition criticizes the Company for pointing out that NWAs are not suitable for all solutions to the Substations Reliability – LVD subprogram, such as animal mitigation and load growth. MEC Coalition's Initial Brief, pages 76-77; see also 6 TR 1368. The MEC Coalition goes on to try to point out situations where NWAs may be useful. However, in doing that, the MEC Coalition reinforces the Company's point. Not all projects within the Substations Reliability – LVD subprogram could be "solved" with an NWA. The MEC Coalition made no effort to distinguish between these different circumstances in the record and has not identified any specific circumstances where NWAs could have been used by the Company. Therefore, the MEC Coalition's position amounts to a penalty.

Furthermore, the Company established in the record that the proposed projects for the new or rebuilt substations investment category of the Substations Reliability – LVD subprogram could not have been solved with NWAs. Specifically, Mr. Blumenstock explained that the substations

that this subprogram is focused on will not be impacted by the NWA options that the MEC Coalition is attempting to force the Company to pursue in this proceeding. 6 TR 1370. This is because the Company is only proposing to rebuild existing substations in this case, not build any new substations. The Company has demonstrated a need for these substation rebuilds, as shown in Confidential Exhibit A-150 (RTB-26), pages 211 through 225. 6 TR 1370.

The MEC Coalition incorrectly points to three projects in Confidential Exhibit A-150 (RTB-26) which it claims could have used NWAs, the Mt. Morris, Maple City, Tawas, and Thornton substation rebuild projects. MEC Coalition's Initial Brief, pages 77-78. In making this argument, the MEC Coalition completely ignores the stated purposes of these projects. The Mt. Morris, Maple City, and Tawas Substation rebuild projects are intended to modernize the substations and replace outdated Allis Chalmers transformers with modern transformers. See Confidential Exhibit A-150 (RTB-26), pages 211-221; see also 6 TR 1203-1205 which addresses the need to replace Allis Chalmers transformers. The Thornton substation rebuild project is to move the project out of a flood zone near the Stanford Dam which had a catastrophic flood in the Spring of 2020. See Confidential Exhibit A-150 (RTB-26), page 222. Therefore, in all situations cited by the MEC Coalition, the Company is proposing a one for one rebuild of existing substations and therefore NWAs would not serve as a solution.

In addition, the MEC Coalition's proposed disallowance is based in general on Mr. Villarreal's arguments that the Company allegedly does not have a sufficiently integrated Distribution planning process, or an appropriate planning horizon, does not properly use AMI data, and does not suitably consider NWAs. For the reasons discussed above in this Reply Brief, and pages 52 through 61 of the Company's Initial Brief, which address the MEC Coalition's Distribution planning arguments, these arguments should be rejected and do not serve as a valid

basis to disallow 50% of the Company's proposed new or rebuilt substation investment category in the Substations Reliability - LVD subprogram of the Reliability Program.

Grid Capabilities - Automation

On page 79 of its Initial Brief, the MEC Coalition recommends that the Company's 2021 proposed investment in the Grid Capabilities – Automation subprogram of the Reliability Program be reduced from $60 million to $45 million. In an attempt to support this argument, the MEC Coalition points to Mr. Ozar's testimony and the alleged "critical need in this case to balance distribution spending needs against the customer impacts of that spending." For the reasons discussed below, and on pages 68 through 69 of the Company's Initial Brief, this position should be rejected because it is unsupported.

Prior to addressing the MEC Coalition's arguments in its Initial Brief, it is important to note the record support from Mr. Ozar that the MEC Coalition relies on to support its $15 million cut to the Grid Capabilities – Automation subprogram. In his testimony, Mr. Ozar described how his reduction for the Grid Capabilities – Automation subprogram was developed as follows:

> The Automation subprogram was reduced by 25%, from $60,421,000 to $45,316,000, bringing it in line with both the 2019 spend and 2020 bridge year projection, and thus delaying some investment into future years. [8 TR 3654-3655]

The above excerpt from Mr. Ozar's direct testimony represents the totality of his explanation of how he developed his reduction for the Grid Capabilities – Automation subprogram and the totality of his discussion of the subprogram in general. Beyond the above, Mr. Ozar does not address any specifics of the Grid Capabilities – Automation subprogram or any of the projects that the Company is proposing in 2021.

Now, for the first time in its Initial Brief, the MEC Coalition attempts to address specific aspects of the Grid Capabilities – Automation subprogram, even calling certain portions arbitrary.

See MEC Coalition's Initial Brief, pages 79-81. However, these assertions are not based on the record, as the MEC Coalition's witness did not address any specific aspect of the subprogram. The MEC Coalition claims that the Company's proposed 2021 spending simply represents a desire to increase spending but that is not the case. The Company provided substantial evidence describing the Grid Capabilities – Automation subprogram and the need for the spending proposed in this case. See, e.g., 6 TR 1059-1064, 1166-1169. The Company's proposed investments in this subprogram are part of Grid Modernization which represents the planned process of investing in grid infrastructure improvements (poles, wires, relays, transformers, etc.) for the utility's electric grid; incorporating new technologies and applications into the electric system to increase reliability; optimizing the delivery system; and facilitating the integration of more diverse energy resources. 6 TR 1059. Targeted Grid Modernization investments in key areas on the distribution system: (i) significantly improve reliability, by improving SAIDI, and resilience; and (ii) enable the Company to make the transition to cleaner energy resources and integration and optimization of Distributed Energy Resources ("DERs"), part of building for the future. 6 TR 1061. As explained in the Company's testimony in this case, the Company's Grid Capabilities – Automation subprogram investments proposed in this case are part of the ongoing process of identifying locations to deploy advanced technologies on the Company's Distribution system and are not arbitrary. 6 TR 1170-1171.

The Company also established that, an across-the-board 25% cut in investment does not constitute a careful paring back of the Company's proposed spending amount. 6 TR 1349. The MEC Coalition's proposed cuts will impede the Company's ability to implement its Grid Modernization strategy in a cost-effective manner for multiple reasons. The Company established that its Grid Modernization strategy relies on a multi-year deployment plan that consists of many

interdependencies among asset types. 6 TR 1350. This is consistent with the U.S. Department of Energy's Modern Distribution Grid Next Generation Distribution System Platform, which illustrates the interrelationships of key functions and technology investments in Grid Modernization. 6 TR 1350. Due to the interdependencies in Grid Modernization investment, it would not be straightforward to simply cut or defer certain investments out of sequence without compromising the entire logic of deploying Grid Modernization.

The MEC Coalition's proposed cuts will also unreasonably impede the Company's strategy encompassing increasing integration of DERs as part of the Company's intention to build for the future. 6 TR 1350. Without appropriate investments in the Company's Grid Modernization strategy, built on interdependent assets, the Company will not be able to integrate DERs effectively onto its system in support of its IRP. The Company also established that, without sufficient investment in the Grid Capabilities – Automation subprogram, Grid Capabilities – Advanced Technologies subprogram investments, like Advanced Distribution Management System ("ADMS"), which the MEC Coalition supports (8 TR 3655), will not be able to deliver their full benefits. 6 TR 1350.

For the reasons discussed above, the MEC Coalition's proposed cuts to the Company's Grid Capabilities – Automation should be rejected.

Grid Capabilities – Advanced Technologies

The MEC Coalition proposes the total removal of all 2021 investments for the ADMS and Distributed Energy Resources Management System ("DERMS") technologies, which are part of the Grid Capabilities – Advanced Technologies subprogram of the Reliability Program ($7.1 million in total). MEC Coalition's Initial Brief, page 82. In support of this recommendation, the MEC Coalition relies on its witness, Mr. Villarreal, who opined that the Company's Grid

Capability – Advanced Technologies subprogram (also referred to generally as "Grid Modernization") strategy amounts to an argument that this strategy is not sufficiently connected to the rest of the Company's Distribution planning process. 8 TR 3862. For the reasons discussed below, and on pages 69 through 72 of the Company's Initial Brief, this position should be rejected.

The MEC Coalition's proposed removal of 2021 ADMS and DERMS investments from this case should be rejected because it is based on the MEC Coalition's flawed criticisms of the Company's Distribution planning. As explained in the section of this Reply Brief which addresses the MEC Coalition's criticisms of the Company's Distribution planning process, and pages 52 through 61 of the Company's Initial Brief, the Company's Distribution planning, including its Grid Modernization planning, is integrated, and not actually siloed, as the MEC Coalition claims.

In addition to the above, it is not correct that the ADMS and DERMS technologies are not connected to the Company's broader Distribution planning strategy. MEC Coalition's Initial Brief, page 83. The Company established that both projects fit into the Company's broader Distribution planning strategy, namely, the overall Grid Modernization strategy and the Company's strategy to build for the future by developing capabilities to integrate more DERs into the system to support IRP goals. 6 TR 1372; see also 6 TR 1172-1177. The Company provided substantial detail on ADMS, which illustrates how ADMS fits into the broader strategy. The Company also substantial provided detail on DERMS and how that technology fits into the Company's broader strategy. The MEC Coalition's criticisms lack merit.

The MEC Coalition is incorrect in its suggestion that the Company will utilize this technology. MEC Coalition's Initial Brief, pages 82-83. The Company established that the primary benefits of Grid Modernization are operational benefits such as real-time system visibility, line sectionalizing to correct faults, controlling grid devices, and controlling DERs. 6 TR 1373.

The Company also established that Company planners do, in fact, already use information from Grid Modernization applications, such as using data from Distribution Supervisory Control and Data Acquisition ("DSCADA") and from line sensors to identify outage trends and capacity overloads. 6 TR 1373-1374. Therefore, the Company does use Grid Modernization investments to help the Company better plan, operate, and optimize its system to the benefit of its customers.

On pages 83 and 84 of its Initial Brief, the MEC Coalition essentially argues that ADMS is of no use if the Company is not using it for planning purposes. That is incorrect. What the MEC Coalition misses is that ADMS is not meant to solely be a planning tool; it primarily provides operational benefits. 6 TR 1374. In its direct case, the Company identified and quantified the numerous operational benefits of ADMS. 6 TR 1174-1175. In making this argument, the MEC Coalition has ignored the primary purpose of ADMS and attempts to add its broader erroneous arguments regarding the Distribution planning, which should be rejected for the reasons discussed above.

MEC Coalition's opposition to ADMS and DERMS investment in this case is focused on achieving the correct benefits, according to the MEC Coalition, not the absence of any benefits or sufficient benefits to justify investment. This further exemplifies the penalty cost reduction approach that the MEC Coalition has taken in this case. In the record, the Company has established numerous benefits for ADMS and DERMS which more than justify the investments proposed in this case. As new technologies, it is not necessary for the company to extract all possible benefits from ADMS and DERMS from day one. As the Company further implements these technologies, the Company will continue to utilize more benefits as they become available.

For the reasons discussed above, and in the Company's Initial Brief, the MEC Coalition's proposed removal of 2021 ADMS and DERMS investments from this case should be rejected.

Rehabilitation Subprograms

Beginning on page 84 of its Initial Brief, the MEC Coalition proposes to reduce the Company's 2021 investment in the Lines Rehabilitation – LVD; Substations Rehabilitation – LVD; Lines and Substations Rehabilitation – HVD; and Metro Rehabilitation subprograms of the Reliability Program (which the MEC Coalition refers to as the "rehabilitation subprogram") by 25%, from $95.5 million to $71.6 million. For the reasons discussed below, and on pages 63 through 66 of the Company's Initial Brief, this position should be rejected.

In an attempt to support this reduction, the MEC Coalition groups the "rehabilitation subprogram" investment with the "reliability subprogram" investment, as addressed above, and claims that reliability and rehabilitation subprogram investment should be reduced for Mr. Ozar's flawed policy reasons. MEC Coalition's Initial Brief, pages 84-85. That reasoning should be rejected. The MEC Coalition's proposed 25% reduction to the rehabilitation subprograms, as advanced by Mr. Ozar, is arbitrary and unsupported by any review of the investments actually proposed by the Company. The MEC Coalition has not supported its position with fully documented evidence and instead bases its position on unsupported conclusory statements. The MEC Coalition's position is also belied by its own admission that the rehabilitation subprograms "have a stronger foundation" and that "the Company has undertaken a significantly more extensive and comprehensive survey of its distribution assets and as a result has a 'deeper understanding of point of potential imminent failure as the basis for increased projected spending.'" MEC Coalition's Initial Brief, page 85. Despite these admissions, the MEC Coalition has failed to provide a specific basis, or project level basis for its 25% cut to the Company's rehabilitation subprogram investment. Similar to the MEC Coalition's other recommendations, the MEC Coalition blindly proposes to chop significant amounts of spending and then takes the position of

"tell us why we are wrong." By simply proposing Distribution investment reductions, without adequate justification, the MEC Coalition has not provided the Commission with sufficient evidence to rely on. The MEC Coalition has also not met its burden of supporting its recommendations in this case.

The MEC Coalition's position also misses that the Company's 2021 investment levels are in part due to subprograms being re-grouped from other Distribution programs into the Reliability Program, rather than the Reliability Program significantly exceeding historical levels. See Exhibit A-29 (RTB-2), lines 18-21. The MEC Coalition's proposed reduction is built around Mr. Ozar's flawed understanding that "[t]he Company is requesting an increase in rehabilitation spending of $75,024,000 above the 2019 spend of $20,473,000." 8 TR 3658. The record established that Mr. Ozar's understanding is incorrect.

The Company established in the record that, in 2019, the Company incurred rehabilitation spending of $20,473,000, entirely in Lines Rehabilitation – LVD subprogram. 6 TR 1347. The spending that is now included in the other three rehabilitation subprograms within the Reliability Program (Lines and Subs Rehabilitation - HVD, Substations Rehabilitation – LVD, and Lines Rehabilitation Metro) was included in the Demand Failures Program in 2019. The Company's spending in the Demand Failures Program notably decreased after 2019 to emphasize this point. See Exhibit A-29 (RTB-2), line 43. Therefore, the Company is not proposing to increase its rehabilitation component of Reliability Program investment from $20,473,000 to $95,497,000, as Mr. Ozar suggests. 8 TR 3654. This alleged increase is not a real increase in Reliability Program investment but instead due to the general shift of rehabilitation work away from the Demand Failures Program. 6 TR 1348. In its Initial Brief, the MEC Coalition appears to concede that Mr. Ozar's understanding was flawed by stating that "[i]t may be the case that, due to the

reclassification, *Rehabilitation* spending was more than $20 million in 2019." MEC Coalition's Initial Brief, page 85.

Still, after appearing to acknowledge that Mr. Ozar's position with respect to the Company's rehabilitation subprograms was flawed, the MEC Coalition continues to argue that "much of the increase" was not due to reclassification of rehabilitation subprograms. MEC Coalition's Initial Brief, page 85. In an attempt to support this point, the MEC Coalition furthers essentially two conflicting arguments. The MEC Coalition argues: (i) that the Company did not sufficiently show historical rehabilitation subprogram spending which caused Mr. Ozar to reach his flawed conclusion; and (ii) historical rehabilitation subprogram detail in the record, as provided by the Company, shows that spending for these subprograms is significantly increasing. See MEC Coalition's Initial Brief, pages 85-86. These arguments should be rejected.

The MEC Coalition's first argument should be rejected because the Company provided numerous Distribution capital expenditure exhibits, such as Exhibit A-29 (RTB-2), which identified historic Distribution spending back to 2014 and made clear that numerous Reliability Program subprograms were added in 2018, 2019, and 2020. The Company also explained in Mr. Blumenstock's direct testimony that "in 2019 the Company moved all work formerly in the 'imminent' Demand Failures Program into new sub-programs referred to as Rehabilitation" and that "[a]ll of the work discussed in the Demand Failures sub-programs below consist of 'reactive' work." 6 TR 1095. In other words, a simple review of the record would have alerted Mr. Ozar to the fact that his conclusion about historic rehabilitation subprogram spending was wrong.

The MEC Coalition's argument should also be rejected because it amounts to improper burden shifting. The Company is not proposing to cut rehabilitation spending, that is the position of the MEC Coalition. As explained above, at least part of Mr. Ozar's logic for reducing

rehabilitation subprogram spending is based on a flawed understanding of historic spending levels. It is not a valid argument for the MEC Coalition to claim in its Initial Brief that the Company should have somehow anticipated its argument and provided a more granular level of detail in its direct case. It was the MEC Coalition's burden to support its own argument and, as explained above, it failed to do that.

Furthermore, as made clear by the MEC Coalition's second argument, the Company did in fact provided detailed support for historic rehabilitation subprogram spending in the record. In addition to what was provided in the Company's direct case and in rebuttal, the Company extensively addressed historic rehabilitation subprogram spending in discovery. 6 TR 1348. For example, Exhibit A-151 (RTB-27), which is a discovery response provided to Staff and all other parties in April, shows that 80% of work in the Lines and Substations Failures – HVD subprogram in 2017 through 2019 was for projects that are now included in the Lines and Substations Rehabilitation - HVD subprogram. 6 TR 1348. Exhibit A-152 (RTB-28), which was also provided in discovery, illustrated that certain Substations Failures – LVD subprogram investment categories were reclassified wholesale to Substations Rehabilitation - LVD from 2020 forward.

Contrary to the MEC Coalition's second argument, the above information, along with other information provided by the Company in the record, establishes that, on a subprogram level, the Company's proposed rehabilitation subprogram investment levels for 2021 are increasing but are not necessarily out of line with amounts spent in some historical years. For instance, the Company spent over $10,000,000 in the Substations Rehabilitation – LVD in 2018 and 2019 and plans to spend $11,500,000 in this subprogram in 2020. See Exhibit A-152 (RTB-28); see also Exhibit A-29 (RTB-2). For 2021, the Company is proposing to increase that spending to $14,500,000. See Exhibit A-29 (RTB-2). Furthermore, for the Lines Rehabilitation – LVD subprogram the

Company spent $31,949,000 in 2018 and proposes to spend $37,723,000 in 2021. See Exhibit A-29 (RTB-2). While the Company is proposing to invest a significant amount in the Lines and Substations Rehabilitation - HVD subprogram, historic spending in "HVD Rehabilitation," as provided in Exhibit A-151 (RTB-27) should not be viewed as a limiting factor because the Lines and Substations Rehabilitation - HVD subprogram is a newly defined subprogram and, as explained below, will address real projects where failure is imminent. 6 TR 1198.

The Company's proposed increases in rehabilitation subprogram spending in 2021 were extensively supported in the record. As explained above, the Company provided extensive evidence in this case which established that the condition of the Company's Distribution system is deteriorating, and increased investment is needed. See 6 TR 1043-1059. This evidence establishes that historical spending levels, or the reduced spending levels proposed by the MEC Coalition, will not improve the condition of the Company's Distribution system, and will actually lead to greater deterioration. The MEC Coalition has failed to refute any of the Company's evidence supporting the need for greater investment levels. The MEC Coalition only focuses on the amount of the increase in investment, not the need for the increase or the substantial support for the increase.

Furthermore, it should be noted that the Lines and Substations Rehabilitation - HVD subprogram, which is the biggest driver of the increase to rehabilitation subprogram investment in 2021, is backed by a plan to invest in real projects where failure is imminent. For instance, $28,900,000 of the total 2021 investment level of $38,921,000 is for HVD substation failure projects. 6 TR 1197. The Company provided detailed support for these projects in its testimony, Exhibit A-42 (RTB-15), and Confidential Exhibit A-150 (RTB-26). The MEC Coalition did not present <u>any</u> record evidence which addresses the projects within the Lines and Substations

Rehabilitation - HVD subprogram or how these projects could be deferred beyond 2021. Therefore, the MEC Coalition has only pointed out that there is an investment increase and has not established that the proposed increase to this subprogram is not needed or is not reasonable.

In its Initial Brief, the MEC Coalition attempts to suggest, for the first time, that the projects within the rehabilitation subprograms do not support the Company's requested investment levels. MEC Coalition's Initial Brief, page 87. These arguments should be rejected because they are incorrect and also not supported in the testimony which the MEC Coalition relies on to support its position (i.e. the testimony of Mr. Ozar). First, the MEC Coalition claims that concept approvals for the Morrow and Higgins substations projects suggest that the projects are needed by mid-2022 and therefore they are not imminent. MEC Coalition's Initial Brief, page 87. What the MEC Coalition misses here is that just because the project is not needed until 2022 does not mean that investment, and construction, should not start in 2021, which is the Company's proposal in this case. These are complex projects where Michigan Electric Transmission Company collaboration is needed. See Confidential Exhibit A-150, pages 276-283, 290-293. These is no support in the record for the position that these projects could be delayed.

Second, the MEC Coalition suggests that the Company's lines rehabilitation projects (in the Lines and Substations Rehabilitation – HVD subprogram) were based on historical spending, not on known lines showing risk of imminent failure, and gives support to Mr. Ozar's proposal. MEC Coalition's Initial Brief, pages 87-88. However, the MEC Coalition's position does not provide grounds to delay any projects. The Company established in the record that it utilizes a rolling process of identifying projects based on the most up-to-date data and has made progress identifying projects for the Lines and Substations Rehabilitation – HVD subprogram since the filing of the Company's case in late February 2020. 6 TR 1331. The record reflects that the

Company used this approach for 2020 investment has identified more project investment than was initially projected in this case. 8 TR 4904. Furthermore, Mr. Blumenstock explained that additional 2021 lines rehabilitation projects have been identified, as shown in Exhibit A-145 (RTB-21). 6 TR 1331. The record therefore establishes that the Company's rolling project identification approach is reasonable, appropriately identified projects for 2020, and is actively identifying projects for 2021. The MEC Coalition's position is unsupported in the record and fails to refute the Company's evidence or establish how any of the aforementioned projects can be delayed.

The MEC Coalition's third argument takes aim at the Substation Rehabilitation – LVD and Lines Rehabilitation – LVD subprograms. The MEC Coalition infers that projects in these subprograms could be delayed because they "address longer-term ongoing and regulatory projects." However, the MEC Coalition is entirely speculative. Its witness, Mr. Ozar, admittedly did not review the Company's projects within these subprograms. 8 TR 3651-3652, 3657-3659. The MEC Coalition's speculative comments in its Initial Brief regarding the nature of projects within these subprograms do not controvert the Company's evidence which establishes that these projects address assets on the Distribution system which have been assessed to be at risk of failure in the near term. See, e.g., 6 TR 1200, 1208. The Company also established that the Lines Rehabilitation – LVD subprogram has a large impact on SAIDI, and the Company's SAIDI glidepath. 6 TR 1040. Therefore, there is an urgent need to invest in these projects to address system deterioration and make the Company's Distribution system more reliable.

The MEC Coalition's position that the Company can delay rehabilitation investments through monitoring of the system is unsupported. MEC Coalition's Initial Brief, page 87. This position is based on Mr. Ozar's unsupported claim that the Company can defer projects due to

"aggressive monitoring" is also flawed. 8 TR 3658. Mr. Ozar's entire monitoring proposal was essentially made in two high-level sentences. See 8 TR 3658-3659. It is not clear what Mr. Ozar meant by "aggressive monitoring," and Mr. Ozar did not offer any explanation to suggest that the Company's current monitoring of assets is not "aggressive" enough. The Company established in the record that it already engages in various inspection regimes to identify assets at risk of imminent failure. Through these existing inspections, the Company has already identified assets at risk of imminent failure, and the Company is proposing to address these imminent failures through its projected $95,497,000 in its 2021 rehabilitation investments. 6 TR 1348; see also Exhibit A-29 (RTB-2). Since existing monitoring has already identified assets at risk of imminent failure, it is not clear how even more monitoring would suddenly allow these projects to now be deferred without simply increasing the risk of actual failure. 6 TR 1348-1349. The Company also established that, instead of reducing costs, further increases to monitoring will likely result in even more specific examples of asset deterioration being identified, generating even more potential cases of imminent failure. 6 TR 1349.

For the reasons discussed above, the MEC Coalition's proposed reduction to spending in the Company's rehabilitation subprograms should be rejected.

Grid Storage

The MEC Coalition proposes that the Company not be permitted to invest in the Standish Portable Battery Storage Project which is included as part of the Grid Storage subprogram in the Reliability Program. MEC Coalition's Initial Brief, page 89. For the reasons discussed below, and on pages 72 through 74 of the Company's Initial Brief, this recommendation should be rejected.

The MEC Coalition's position does not establish that the Standish Portable Battery Storage Project is not reasonable or has not been supported. Instead, the MEC Coalition attempts to apply

Mr. Ozar's hollow policy-based position and argues that this project should be deferred to a future case. This position should be rejected because the Company has established a need for the project. The goal of this project is to help develop the Company's ability to use batteries themselves as NWAs. 6 TR 1351. In order to facilitate transition to considering NWA solutions in the future, the Company needs to keep taking steps now to develop its capabilities. 6 TR 1351. If the Company does not pursue the Standish Battery Storage Project to develop its capabilities, it will have fewer potential NWA options to use in the future when batteries may become consistently cheaper alternatives to traditional substation capacity upgrades. 6 TR 1351.

The Company also established that any new technology that may be used as an NWA comes with some uncertainties regarding cost, timeline, and performance. 6 TR 1374-1375. Since the Company has recognized that a portable battery like the Standish Portable Battery Storage Project may be used as an effective NWA, it proposed this project to further examine the concept and develop its capabilities. 6 TR 1375. If the project is not executed, then those capabilities will not be developed, inhibiting the Company's ability to consider NWAs in the future. If the project is executed, as the Company proposes, future costs can be avoided in the form of more accurate projections of NWA costs and because NWAs can be more readily deployed as cost-effective solutions.

The MEC Coalition's recommendation with respect to the Standish Battery Storage Project costs should be rejected. The Company has established a need to pursue the Standish Battery Storage Project and has provided detailed support for the project in the record.

(c.) <u>Capacity</u>

<u>Capacity Program Generally</u>

Beginning on page 92 of its Initial Brief, the MEC Coalition proposes to reduce the Company's proposed 2021 Capacity Program investment from $66,323,000 to $34,759,000. 8 TR

3663. For the reasons discussed below, and on pages 74 through 75 of the Company's Initial Brief, this position should be rejected.

On pages 92 through 95 of its Initial Brief, the MEC Coalition embarks on a journey to rehabilitate the testimony provided by its witness, Mr. Ozar. The problem with Mr. Ozar's position, and ultimately the position of the MEC Coalition, is that it is not supported with any substance. The entirety of Mr. Ozar's Capacity Program recommendation was provided in the record as follows:

> **Q. How did you develop the reduced capex proxy for the Capacity Program?**
>
> A. I started with the Company's 2021 projection for the Capacity Program of $66,323,000. I removed: 100% of the New Business segment ($11,777,000), 100% of the LVD New Substations ($8,500,000); 100% of the new Right-of-Way procurement ($3,035,000); and 100% of the *to-be-decided* HVD Lines/Substations ($2,084,000). I took 75% of the remaining balance and added back 43% of the New Business segment ($5,064,000). The New Business Capacity subprogram was reduced to 43% of projected test-year spend in the same ratio as historical 2014 New Business Program expenditures to the Company's 2021 New Business projection. The final proxy is $35,759,000. [8 TR 3663]

As is demonstrated by the above, there is no real analysis supporting Mr. Ozar's cuts. Mr. Ozar simply moved around and cut dollars as he saw fit for "policy" reasons. Mr. Ozar did not address any actual projects or the Company's actual need to pursue any projects.

Furthermore, Mr. Ozar proposed to cut 100% of projected investment in the new substation investment category in the Substations Capacity-LVD subprogram and 100% of the right-of-way procurement investment category in the Lines and Substations Capacity-HVD subprogram but offered <u>no evidence</u> to justify why these categories should be disallowed wholesale. Mr. Ozar also proposed to disallow 100% of the Lines and Substations Capacity -LVD subprogram investment

that was intended for projects yet to be determined, but the Company has identified how this investment will be spent. These projects are shown in Exhibit A-153 (RTB 29).

In its Initial Brief, the MEC Coalition attempts to do what Mr. Ozar did not do, address specific Capacity Program projects. However, that discussion is rife with speculation and not supported by anything that Mr. Ozar, the witness that supported the MEC Coalition's position, provided in the record. For instance, based on concept approval documents, the MEC Coalition attempts to argue, for the first time in its Initial Brief, that certain substation projects could be delayed. See MEC Coalition's Initial Brief, pages 93-94. The MEC Coalition also argues that $3 million for right-of-way procurement "appears to support an amalgamation of future projects" and "appears ripe for reprioritization to later years." However, the Company established a need to pursue these projects in the record (see, e.g., 6 TR 1234-1238) and there is no evidence provided by the MEC Coalition establishing otherwise. These speculative comments, made for the first time in its Initial Brief, are not record evidence and do not somehow invalidate the Company's substantial record evidence.

On pages 94 through 95 of its Initial Brief, the MEC Coalition proposes to disallow a portion of the New Business Capacity - LVD subprogram ($11.8 million to $5 million) based on the belief that the impacts of COVID-19 will decrease customer requests for service. However, this position is inconsistent with the evidence in the record. The Company established that the New Business Program investment has not been dramatically affected by the impacts of COVID-19. 6 TR 1355. The MEC Coalition has failed to present any record evidence to refute the evidence by the Company and therefore, its proposed reduction to the New Business Capacity - LVD subprogram cannot stand.

For these reasons, the MEC Coalition's proposed reduction to the Capacity Program should be rejected.

Lines Capacity – LVD

The MEC Coalition recommends that the Commission disallow 50% of the Company's Lines Capacity - LVD subprogram of the Capacity Program. MEC Coalition's Initial Brief, page 95. This recommendation represents a proposed a penalty for not adhering to MEC Coalition witness Villarreal's Distribution planning policy objectives. For the reasons discussed below, and on pages 75 through 76 of the Company's Initial Brief, this recommendation should be rejected.

Similar to the MEC Coalition's proposed penalty for the Substations Reliability – LVD subprogram, which is addressed above, this recommendation is entirely unreasonable and arbitrary. The Company's proposed investments should instead be evaluated based on whether they are reasonable and prudent, particularly based on the information provided in Confidential Exhibit A-150 (RTB-26) which shows detailed plans for the Company's Capacity projects. By disallowing this Capacity spending, customers would be penalized through Capacity spending reductions, since the identified projects are already intended to address existing overloads. 6 TR 1370.

The MEC Coalition argues in its Initial Brief that it could not have reviewed the reasonableness and prudence of the Company's Lines Capacity – LVD projects because they were not included in Confidential Exhibit A-151 (RTB- 26). However, that is incorrect. Confidential Exhibit A-151 (RTB-26) includes numerous large Lines Capacity – LVD projects. See, e.g., Confidential Exhibit A-151 (RTB-26), pages 363-392. Furthermore, the Company provided Exhibit A-42 (RTB-15) in its direct case which lists 2021 Lines Capacity – LVD projects. See Exhibit A-42 (RTB-15), pages 27-28. Besides being incorrect about what information is or is not

in Confidential Exhibit A-151 (RTB-26), the MEC Coalition provided no real project-level analysis about what additional information could have been considered by the Company or how the Company could have considered things like NWAs. Even if the MEC Coalition were somehow impeded by Confidential Exhibit A-151 (RTB-26), which it was not, it still had the full list of the Company's Lines Capacity – LVD projects in Exhibit A-42 (RTB-15) and had approximately four months to analyze that information between the filing of the Company's direct case and the filing of intervenor testimony. The Company is not obligated to anticipate every possible argument an intervenor may make. However, intervenors, like the MEC Coalition, are obligated to support their positions in the record and the MEC Coalition did not uphold its burden here.

At the end of the day, the MEC Coalition's position hinges on Mr. Villarreal's arguments that the Company allegedly does not have a sufficiently integrated Distribution planning process, or an appropriate planning horizon, does not properly use AMI data, and does not suitably consider NWAs. As extensively addressed in the above sections of this Reply Brief focused on Distribution Planning Generally and Substations Reliability – LVD, Mr. Villarreal and the MEC Coalition are attempting to advance policy objectives, rather than demonstrating any deficiencies in the Company's case. These arguments should be rejected and do not serve as a valid basis to disallow 50% of the Company's proposed Lines Capacity – LVD subprogram investment. The MEC Coalition's penalty cost reduction is not justified.

(d.) <u>Demand Failures</u>

Beginning on page 97 of its Initial Brief, the MEC Coalition recommends a downward adjustment of 25% to the Demand Failures Program ($122.6 million to $91.9 million). This recommendation should be rejected for the reasons discussed below and on pages 76 through 77 of the Company's Initial Brief.

The MEC Coalition's recommendation is based on the testimony provided by Mr. Ozar. Similar to Mr. Ozar's other Distribution Program adjustments, like the proposed adjustment to the Capacity Program, Mr. Ozar's Demand Failures Program adjustment is not supported by any substance. The Mr. Ozar's Demand Failures Program recommendation was provided in the record as follows:

> **Q. How did you develop the reduced capex proxy for the Demand Failures Program?**
>
> A. The Company's 2021 projection for the Demand Failures Program was reduced by 25%, resulting in a level of $91,926,000. This brings it in line with the capital spend incorporated in the Company's current rates ($87,000,000). In my opinion, this is a fair reduction. The lower projection does several things. First, it mitigates the rate increase to be borne by the Company's customers, considering uncertainty regarding the duration of the Covid-19 induced economic recession. Secondly, the lower Demand Failures projection recognizes: (1) the increased ability of Company to survey and monitor its distribution assets; (2) the vastly increased spending anticipated by the Company during 2020 and 2021 for rehabilitation of assets deemed at risk of imminent failure; and (3) the expanded line clearing program. It is only reasonable to assume that these three efforts by the Company (at considerable cost to ratepayers) will reduce unanticipated demand failures and their associated reactive replacement. Importantly, my recommendation includes a regulatory asset and regulatory liability for the revenue requirements associated with any potential over/under spend in the Demand Failures program, thereby mitigating the financial risk to the Company and to its ratepayers since the actual capital requirements during 2021 are unknown at this time. [8 TR 3662-3663].

Mr. Ozar did not offer any supporting calculations to justify this 25% cut and instead arbitrarily proposes a reduction on "policy" grounds. Mr. Ozar also failed to address what exactly is being cut from this program. For the reasons discussed in the prior sections of this Reply Brief,

Mr. Ozar's policy-based arguments should be rejected because they are flawed and unsupported in the record.

Mr. Ozar's additional reasons for cutting Demand Failures Program investment are incorrect and should therefore be rejected. Mr. Ozar has not established how increased monitoring can reduce the need for Demand Failures investment. Mr. Blumenstock explained that it is not clear how even an increase in monitoring would reduce actual failures on the system. 6 TR 1352. Although monitoring can identify areas of imminent failure for the rehabilitation subprograms to address, due to factors such as system deterioration and ongoing weather events, actual failures will continue to occur. 6 TR 1352. Moreover, as explained in the section of this Reply Brief focused on the rehabilitation subprograms within the Reliability Program, the Company already monitors its system. Mr. Ozar has failed to establish how the Company's existing monitoring approach is in any way flawed.

Mr. Ozar is also incorrect that rehabilitation spending has increased over historical spending amounts. As explained in the section of this Reply Brief focused on the rehabilitation programs within the Reliability Program, Mr. Ozar's identified "increase" in rehabilitation spending ($20,473,000 to $95,497,000) consists of significant spending that was simply moved from the Demand Failures Program to the Reliability Program. 6 TR 1352. Even if this were as dramatic of an increase in spending as Mr. Ozar suggests, which the Company does not agree, that increase would only be addressing already-identified imminent failure conditions. Mr. Blumenstock clarified that continued or expanded monitoring would simply add to the list of imminent failure conditions, meaning without even further rehabilitation increases, actual failures would still occur. 6 TR 1352.

Furthermore, Mr. Ozar is incorrect that Forestry work will reduce failures. The Company established that, while the Company's proposed increase in Forestry spending will reduce actual failures over time, the proposed increase in Forestry work is part of a multi-year ramp-up to get the Company to a seven-year effective clearing cycle for the LVD system. 6 TR 1352. In 2021, the Company will only be in the first year of this ramp-up, and more dramatic reductions in actual failures will take time to manifest themselves.

In its Initial Brief, the MEC Coalition attempts, and fails, to respond to the Company's evidence which refuted Mr. Ozar's recommendation. The MEC Coalition claims that the Company's evidence is "not supported by the record" and "not compelling" but, beyond advancing some speculative statements about line clearing and weather-related outages, provides no evidence to prove its allegation. The MEC Coalition's argument about the nature of the Company's evidence is an attempt to improperly shift the MEC Coalition's evidentiary burden to the Company. The Company is not proposing to reduce Demand Failure Program investment by 25%, the MEC Coalition is. It is the MEC Coalition's burden to establish why such a reduction is reasonable. As demonstrated above by Mr. Ozar's conclusory and unsupported testimony, the MEC Coalition has failed to meet its burden. On top of that failure, the Company's evidence establishes that the few reasons that Mr. Ozar gave for his position are incorrect.

For the reasons discussed above, the MEC Coalition's proposed reduction to the Demand Failures Program should be rejected.

(e.) <u>Asset Relocation</u>

On pages 99 through 100 of its Initial Brief, the MEC Coalition proposes to reduce the Company's proposed Asset Relocations Program investment to $19,414,000 from $45,976,000. For the reasons discussed above in response to the MEC Coalition's New Business Program investment reduction, which was made in conjunction with this recommendation (see 8 TR 3663

– 3664), the MEC Coalition's proposed Asset Relocations Program investment should be rejected. The Company has established in the record that investment driven by customer requests, like New Business and Asset Relocations, has not been dramatically reduced by the impacts of the COVID-19 pandemic. In responding to the MEC Coalition on this issue, the Company also continues to rely on pages 77 through 79 of the Company's Initial Brief.

The MEC Coalition's recommendation is based on the testimony provided by Mr. Ozar. Similar to Mr. Ozar's other Distribution program adjustments, like the proposed adjustments to the Capacity Program and Demand Failures Program, Mr. Ozar's Asset Relocation Program adjustment is not supported by any substance. Mr. Ozar's Asset Relocation Program recommendation was provided in the record as follows:

> **Q. How was reduced spending for the New Business and Asset Relocation Program developed?**
>
> A. I substituted as a proxy, the historical 2014 capital expenditures for both the New Business Program ($62,702,000) and the Asset Relocation Program ($19,414,000). I chose to use 2014 historical data for the projected test-year because that year reflected economic conditions coming out of the then-current Great Recession. This would provide an unplanned capex that balances a prior severe economic recession with some level of recovery. The recommendation includes a regulatory asset and regulatory liability for revenue requirements associated with any over/under spend, protecting both the utility and the customers against the upside or downside. [8 TR 3663 – 3664]

Mr. Ozar's proposed reduction is based on arbitrarily "policy" grounds. Mr. Ozar failed to address what exactly is being cut from this program. For the reasons discussed in the prior sections of this Reply Brief, Mr. Ozar's policy-based arguments should be rejected because they are flawed and unsupported in the record. Furthermore, as addressed in the section of this Reply Brief focused on the MEC Coalition's New Business Program reduction, Mr. Ozar's selection of the 2014 year as a

proxy for setting 2021 investment is unreasonable and not supported in the record. Mr. Ozar has failed to connect 2014 to 2021, other than by loosely asserting that, in 2014, the Great Recession was still a somewhat recent event. 6 TR 1356. Mr. Ozar's use of 2014 as a proxy for future investment should be rejected.

In addition to the above, the Company also specifically established that the Asset Relocations Program has not been significantly impacted by the COVID-19 pandemic, contrary to Mr. Ozar's claim. The Company provided the following chart which shows the Company's actual spending in the Asset Relocations program through June 30, 2020:

Month	**Jan Actuals**	**Feb Actuals**	**Mar Actuals**	**Apr Actuals**	**May Actuals**	**June Actuals**	**2020 YE Forecast**
$000s	3,487	3,642	3,789	2,360	2,885	4,300	36,775

The Company's actual spending in the Asset Relocations program through June 30, 2020 establishes that activity in the Asset Relocation program has followed a similar trajectory as Lines New Business – LVD subprogram, as discussed above. 6 TR 1355. Specifically, the Company observed a decrease in April, due to the Governor's order and the construction moratorium, followed by a dramatic recovery and increase since then. The Company also established that, although the Company's forecast for the Asset Relocations Program is somewhat lower for 2020 than was shown at the time this case was filed in Exhibit A-29 (RTB-2), line 47, column (j), that difference is accounted for by the shift of $4,000,000 to Lines Reliability – HVD subprogram. 6 TR 1355. Contrary to Mr. Ozar's claim, the above evidence establishes that the Company is not facing the massive drop-off in Asset Relocations demand. The Company's experience in recent months is that requests for Asset Relocations projects continue to be received at the high levels on which the Company based its projected investment at the time this filing was made. 6 TR 1355.

In its Initial Brief, the MEC Coalition does not really attempt to address the above evidence, which shows that the Company is on track to spend what it projected in the Asset Relocations Program, or attempt to rehabilitate Mr. Ozar's testimony, as it did with other Distribution programs. Instead, the MEC Coalition focuses on the fact that Mr. Ozar's recommendation also included a regulatory accounting component. However, that component of the MEC Coalition's position does not make it reasonable. Regulatory accounting is not necessary because the Company has demonstrated in the record that the impacts of the COVID-19 pandemic have not significantly impacted the Asset Relocations Program. The MEC Coalition has failed to support its position with evidence.

Therefore, for the reasons discussed above, the MEC Coalition's proposed reduction to the Asset Relocation Program spending should be rejected.

(f.) <u>Electric Other</u>

Beginning on page 100 of its Initial Brief, the MEC Coalition proposed to reduce the Company's 2021 Electric Other Program investment by 25% from $11,412,000 to $8,559,000. For the reasons discussed below, those discussed throughout this Reply Brief concerning Mr. Ozar's flawed policy-based recommendation, and those discussed on page 79 of the Company's Initial Brief, the MEC Coalition's recommendation should be rejected.

The MEC Coalition's recommendation is based on the testimony provided by Mr. Ozar. 8 TR 3664. Similar to Mr. Ozar's other Distribution Program adjustments, Mr. Ozar's Electric Other Program adjustment is not supported by any substance. The Mr. Ozar's Electric Other Program recommendation was provided in the record as follows:

> **Q. How was reduced spending for the Electric-Other Program developed?**

> A. I reduced the Company's projected 2021 expenditures ($ 11,412,000) by 25% resulting in a spending proxy of $8,559,000. This puts the 2021 projected capex at a level approximately between the historical 2019 and projected 2020 bridge year spending. As for all six electric distribution capex programs, and in context of the current severe economic decline in Michigan, the purpose of the reduction is to balance the policy goals of low rates and service quality by moving the balance toward lower rates. [8 TR 3664].

As illustrated by the above, Mr. Ozar did not present any real justification for this proposed adjustment and just vaguely cites the Michigan economy and policy considerations. For the reasons discussed in the prior sections of this Reply Brief, and the Company's Initial Brief, Mr. Ozar's unsupported economic argument and arbitrary policy argument fail to support his proposed reduction to this program.

In its Initial Brief, the MEC Coalition claims that the record supports that some portion of the Company's proposed increased spending in the Electric Other Program "may be delayed to future years." MEC Coalition's Initial Brief, page 100. This is similar to the approach that the MEC Coalition used with respect to its New Business Program proposal, as addressed above. This approach is that it completely strays from Mr. Ozar's testimony. Mr. Ozar made no attempt to evaluate the Company's proposed Electric Other Program spending or explain the portions of that program he intends to reduce funding to. However, now, for the first time in its Initial Brief, the MEC Coalition attempts to address specific portions of the Electric Other Program to suggest that it is possible to delay projects. This discussion by the MEC Coalition is entirely speculative.

The MEC Coalition attempts to suggest that certain system control projects within the Electric Other Program, namely, HVD remote monitoring and control investments, could be delayed beyond 2021. MEC Coalition's Initial Brief, page 101. This position is not supported by the record. Mr. Ozar did not address the Company's proposed HVD remote monitoring and control

investments and those investments do not serve as a basis for Mr. Ozar's proposed 25% cut to the Electric Other Program. See 8 TR 3664. The Company's testimony, as provided by Mr. Blumenstock, supports the need for HVD remote monitoring and control investments in 2021 (see 6 TR 1254-1258) and there was no testimony from the MEC Coalition which provided otherwise. There is nothing in the record which establishes that these investments could be delayed. The MEC Coalition's speculative comments, made for the first time in its Initial Brief, are not record evidence and do not somehow invalidate the Company's substantial record evidence.

The MEC Coalition's argument that the Company somehow did not support its burden of supporting HVD remote monitoring and control investments is unreasonable and again, not supported in the record. The record reflects that the Company provided substantial evidence establishing the need for its proposed Electric Other Program investment and that testimony demonstrates that the Company addressed its proposed spending at a subprogram, and even project, level. It was the MEC Coalition, and not the Company that failed to uphold its evidentiary burden. Intervenors, like the MEC Coalition, maintain the burden of supporting their recommendations. See *Kar v Hogan*, 399 Mich 529, 539; 251 NW2d 77 (1976) ("The party alleging a fact to be true should suffer the consequences of a failure to prove the truth of that allegation.") As illustrated above in the Electric Other Program recommendation advanced by Mr. Ozar, which was essentially contained in one paragraph, the MEC Coalition's position is not supported by any review of the Company's actual Electric Other Program projects and does not give any indication what exactly is being cut from the program. The MEC Coalition's position is completely arbitrary and it has not met its evidentiary burden.

For the reasons discussed above, and in the Company's Initial Brief, the MEC Coalition's Electric Other Program recommendation should be rejected.

(g.) <u>Capitalization of System Repairs</u>

On pages 101 through 103 of its Initial Brief, the MEC Coalition recommends that the Company be required to conduct a study of its practices regarding capitalization of system repairs, pointing to the Demand Failures Program as a place where overcapitalization allegedly occurs. The Company disagrees that a study regarding the capitalization of system repairs is necessary. Demand Failures Program work should continue to be treated as capital investment, because Demand Failures work results in new assets being placed in the field. 6 TR 1356. Since repairs of existing assets are already properly addressed in the Company's Distribution O&M programs, such as the Non-Forestry Reliability O&M Program, there is no need to conduct Mr. Ozar's requested study.

In its Initial Brief, the MEC Coalition selectively takes portions of the Company's testimony out of context, attempting to show that the Demand Failures Program includes repairs, as well as replacements. MEC Coalition's Initial Brief, pages 102-103. This argument should be rejected. First, the MEC Coalition does not base its arguments on Mr. Ozar's testimony, which did not specifically address any Demand Failures Program subprograms. See 8 TR 3668-3669. Second, the MEC Coalition ignores Mr. Blumenstock's testimony which explained that the nature of Demand Failures Program investment as follows:

> The purpose of the Demand Failures Program is to address issues related to customer interruptions and failures of equipment on the distribution system. When equipment fails, and customers are interrupted, the Company is obligated to fix the issue and restore customers as quickly as possible. **If the Company replaces failed equipment in this process, the capital expenditures take place in the Demand Failures Program**. [6 TR 1094] (emphasis added).

Through the Company's testimony the Company also explained that the Demand Failures Program is implemented with the Service Restoration O&M Program, whereby repairs of assets are covered by the Service Restoration O&M Program and replacement of assets is covered by the Demand Failures Program. See, e.g., 6 TR 1097. The MEC Coalition's Initial Brief does not address the role of the Service Restoration O&M Program and infers that the Demand Failures Program works in isolation. That is not the case.

The MEC Coalition's request for a study regarding capitalization of system repairs is unnecessary and should be rejected.

(h.) <u>Guidance for 2021 EDIIP</u>

On pages 103 through 105 of its Initial Brief, the MEC Coalition reiterates its positions on Performance-Based Regulation ("PBR"), distribution planning, and capitalization of distribution system investments and requests that the Commission "issue guidance in this rate case to inform the Company's 2021 EDIIP." The Company has addressed and refuted each of the above MEC Coalition positions in other portions of this Reply Brief and the Company's Initial Brief.

For the reasons discussed in the Distribution Planning Generally portion of this Reply Brief, the MEC Coalition's distribution planning arguments and positions should be rejected. Case No. U-20147 is intended to provide guidance for distribution investment and maintenance plans moving forward, and not this proceeding. It should also be noted that the Commission has initiated the MI Power Grid initiative which, among other things, will focus on integrated resource planning. See MPSC Case No. U-20645, October 17, 2019 Order, page 4. The MEC Coalition's positions are not supported in this record and should be addressed, if at all, in Case Nos. U-20147 and U-20645.

For the reasons discussed in the PBR Generally portion of this Reply Brief, the MEC Coalition's PBR arguments and positions should be rejected. The MEC Coalition's PBR

recommendation is premature and would also disrupt numerous ongoing PBR related collaboratives.

Finally, for the reasons discussed in the prior section of this Reply Brief which is focused on the MEC Coalition's request for a study regarding capitalization of system repairs the Commission should not provide EDIIP guidance on that issue, as the MEC Coalition requests. The MEC Coalition's request for a study is also unsupported and unnecessary.

d. <u>Reply to JCEO</u>

(i.) <u>Distribution Planning Generally</u>

Beginning on page 61 of its Initial Brief, the Environmental Law and Policy Center, Vote Solar, Solar Energies Industry Association, Great Lakes Renewable Energy Association, and Ecology Center (collectively the "JCEO") presents criticisms of the Company's Distribution planning. For the reasons discussed below, those provided in response to the MEC Coalition's Distribution planning arguments, and on pages 80 through 82 of the Company's Initial Brief, the JCEO's criticisms and recommendations should be rejected.

JCEO's position is based on JCEO witness Ronny Sandoval's opinion that the Company could have better considered NWAs, specifically customer-owned Distributed Generation ("DG"), in its planning process. Specifically, Mr. Sandoval alleged that the Company "entirely ignores the value of distributed generation on the distribution grid" and also states that "it does not appear that the Company has evaluated the grid benefits of distributed generation in any thorough or systematic manner." 8 TR 4401, 4421. However, Mr. Sandoval's opinion is not correct. The Company did not entirely ignore the value of DG to the Distribution system, as Mr. Sandoval claims.

The Company agreed that, at least theoretically, DG can provide benefits to the grid, including reduced loading on equipment, reduced electrical losses, and voltage support. 6 TR

1406. The Company does not deny or ignore these possible benefits. However, specific DG installations must be able to demonstrate that they can provide these benefits in practice so that the benefits can be directly and appropriately quantified. 6 TR 1406. Since DG penetration currently remains at a low level on the Company's Distribution system, the Company has not observed that DG provides any Distribution system benefit.

The JCEO's request that the Commission "direct the Company to conduct a robust assessment of non-wires alternatives in its next rate case, and work with stakeholders to implement an IDP process that reasonably incorporates NWA analysis prior to its next rate case filing" should be rejected. The JCEO's request fails to address the numerous complexities to such an assessment. From a technical point of view, the value of DG to the Distribution system will be highly dependent on the geographical and electrical location of the DG on the system, the technology used in the DG, the operating profile of the DG (i.e., whether it operates at times of peak demand), and other factors. 6 TR 1406. Therefore, the assessment is not as simple as analyzing the Distribution system and assigning one overall value to every distributed generator.

Furthermore, there is no need to direct the Company to work with stakeholders to implement an Integrated Distribution Planning ("IDP") process. The Company has already been engaged with Staff and other parties in discussions around the future of Distribution planning through the stakeholder process in Case No. U-20147. Based on the Company's own presentations in Case No. U-20147 stakeholder meetings, Staff's reports in Case No. U-20147, and the Company's responses to those reports, the Company anticipates that Case No. U-20147 will lead toward further consideration of hosting capacity analyses, non-wires solutions, enhanced benefit cost analyses, and other techniques that will support further integration of distribution planning and supply planning. 6 TR 1407. On August 20, 2020, the Commission also set up a new

proceeding in Case No. U-20633 to address deeper integration of supply, distribution, and transmission planning. See Case No. U-20633, August 20, 2020 Order Opening Docket ("August 20 Order"). This proceeding will involve a collaborative process that includes representatives from utilities and other interested stakeholders, to review and discuss improvements and ways to better align integrated resource planning and distribution planning. See August 20 Order, page 5. This proceeding will also involve a Staff report of findings and recommendations no later than May 27, 2021. *Id*.

The Company also disagrees with the JCEO's criticisms of the Company's Distribution planning to the extent that they are inferring that all Distribution planning decisions must be supported by an NWA analysis. As explained in response to the MEC Coalition, NWAs are not solutions for all planning situations encountered on the Distribution system. The Company established NWAs currently are not economical at scale, involve long lead times, and the reliability performance of NWAs has not been clearly established. 6 TR 1367-1368. As these issues are resolved, the Company intends to incorporate more NWAs into its planning decisions. 6 TR 1368. The Commission must also approach the JCEO's recommendations regarding third-party owned DG with caution because the recommendations are potentially self-serving. The JCEO, as a party, includes organizations which develop solar resources.[5] NWAs, and specifically customer-owned DG, should not be considered for the sake of providing uneconomical business opportunities to third-party developers. Instead, NWAs should be considered, where feasible, as economic solutions to Distribution planning issues.

[5] The JCEO includes the Great Lakes Renewable Energy Association and the Solar Energy Industries Association which both includes solar developers and other organizations which profit from the sale of solar.

(ii.) Reliability

Grid Storage

On pages 64 through 65 of its Initial Brief, the JCEO presents recommendations with respect to the future consideration of projects in the Grid Storage subprogram of the Reliability Program. The Company responded to the JCEO's recommendations on page 84 of the Company's Initial Brief and continues to rely on that response here.

Grid Capabilities – Advanced Technologies

On pages 67 through 69 of its Initial Brief, the JCEO recommends that the Commission disallow $3,000,0000 related to the Company's proposed investment in DERMS technology which is included as part of the Grid Capabilities – Advanced Technologies subprogram of the Reliability Program. For the reasons discussed below, and those addressed on pages 84 through 86 of the Company's Initial Brief, the JCEO's recommendation should be rejected.

The JCEO's position essentially boils down to three main arguments: (i) that it is too soon to invest in DERMS technology (see JCEO's Initial Brief, pages 67-68); (ii) the Company should pursue a full range of strategies to manage DER interaction with the grid, including voltage optimization and DER self-optimization, before investing in DERMS (see JCEO's Initial Brief, page 68); and (iii) that DERMS investments may be used to control customer-owned resources in future phases (see JCEO's Initial Brief, pages 68-69). These arguments fail to justify the JCEO's proposed investment reduction.

It is not too soon to invest in DERMS. The Company established that the reason for the Company's phased-in approach to DERMS, which includes investing initially at a small scale while DER penetration is low, is to allow the Company to develop capabilities before DER penetration gets higher, with the focus in phase one on Company-owned DERs. 6 TR 1411. If the Company were to use the JCEO's proposed approach and wait until there is higher DER

penetration before starting investment, it will only result in delaying the Company from defining requirements and standards for DER interconnection and hinder future DER development. 6 TR 1411-1412. The Company also established that many other utilities are in earlier phases of DERMS development, similar to what the Company is proposing in this case, even with relatively low DER penetration levels; this includes Pacific Gas & Electric. 6 TR 1412. Therefore, contrary to the JCEO's claims, now is the time to begin investing in DERMS and the Company has presented substantial evidence which supports its proposed investment.

The JCEO's argument regarding other means of DER management, like self-optimization, should also be rejected. The Company established that resources that connect to the Distribution system must have an associated control and coordination scheme, even if they are allowed to self-optimize. 6 TR 1412. The Company's investment in DERMS would also not preclude other future alternatives, as described by the JCEO. See JCEO's Initial Brief, page 68. The Company's investment in DERMS will better define requirements applicable to all DER interconnections, whether they are Company or customer owned. 6 TR 1412.

The JCEO's argument that DERMS investments may be used to control customer-owned resources in future phases, also does not provide a valid basis to reject the Company's proposed DERMS investment in this case. The JCEO concedes in its Initial Brief that "the Company does not intend to use its DERMS to control customer-owned resources in its first phase of deployment," (see JCEO's Initial Brief, page 68) therefore, it is entirely premature to disallow the Company's proposed investment due to DERMS controlling customer-owned resources. Even if the Company did use DERMS to control customer-owned resources in the future, it does not provide grounds to disallow any investment because it is reasonable for resources connected to the Distribution system to be coordinated. There are numerous reasons for the need for Distribution system coordination,

including safety reasons. For instance, if there was a fire on the Distribution system, it would be reasonable to expect coordination of customer-owned generation in the area of the fire so that electricity would not be needlessly sent to the impacted area. If the Company proposes to control customer-owned generation in the future with DERMS, the JCEO's concerns, including how these resources would be compensated, should be addressed at that time.

The JCEO's concerns will also be addressed by the approval of the DERMS investment proposed by the Company in this case. The Company established that the first phase of DERMS will provide the Company with the architecture, configuration, and control requirements to maintain grid operations with increased DER penetration. 6 TR 1412. After the first phase has been implemented, the Company will have information as to how DERs can participate on the Company's system, including participation requirements and the eligibility of different technologies.

For the reasons discussed above, the JCEO's recommended disallowance of the Company's proposed investment in DERMS technology should be rejected.

(iii.) <u>Capacity</u>

<u>Conservation Voltage Reduction</u>

On pages 65 through 67 of its Initial Brief, the JCEO recommends that the Company file periodic Conservation Voltage Reduction ("CVR") reports with the Commission that include: (i) the level of voltage reduction achieved; (ii) the level of loss reduction achieved; (iii) service quality issues encountered; (iv) energy savings achieved; (v) demand reductions achieved; and (vi) greenhouse gas emission reductions attributed to performance. The JCEO's recommendation is not necessary because the Company already files IRP-related reports, such as the one filed by the Company in June 2020 in Case No. U-20165, which addresses CVR costs and performance on an ongoing basis. 6 TR 1379.

e. Reply to Michigan Municipal Association of Utility Issues

The Initial Brief of Michigan Municipal Association of Utility Issues ("MAUI") discussed several criticisms of the Company's capital spending program for municipal streetlighting, including the Company's newly proposed program for conversion of center-suspension streetlights. In general, MAUI takes the position that Consumers Energy's reactive LED streetlight replacement program and its center-suspension replacement program are too expensive, that the Company's performance on streetlight outage identification and restoration is unsatisfactory, and that the Company's fees for streetlight removal are unjust because, MAUI incorrectly claims, they are duplicative of the Company's cost recovery through its depreciation rates. Consumers Energy anticipated and responded to each of MAUI's criticisms and related recommendation as part of its Initial Brief, which demonstrated why each of MAUI's criticisms is without merit. See Consumers Energy's Initial Brief, pages 86-104. The Company will not repeat the arguments offered in its Initial Brief on this topic but does respond here to a handful of new claims and arguments included in MAUI's Initial Brief that require some further discussion.

LED Streetlighting Conversion Costs

On pages 2 through 13 of MAUI's Initial Brief, MAUI makes a number of claims regarding the cost of Consumers Energy's LED streetlight conversion program. Though the Company's Initial Brief refuted many of these claims, MAUI's Initial Brief includes some material purporting to respond to rebuttal testimony provided by Company witness Trevor R. Thomas that the Company has not had the opportunity to address yet. First, on pages 5 through 7 of MAUI's Initial Brief, MAUI discusses the rebuttal testimony offered by Consumers Energy witness Thomas discrediting MAUI's analysis regarding the cost of the Company's reactive LED replacement program. Recall that Mr. Thomas demonstrated that MAUI's anecdotal comparison to two

planned LED replacement projects by other companies was based on non-comparable circumstances and that MAUI also failed to account for and appreciate the cost impacts associated with the Company's union contract requirement that no more than 15% of work may be performed by third-party contract labor.

In an effort to rehabilitate its claim regarding the non-comparability of its anecdotal examples, MAUI argues in its Initial Brief that "[t]hese arguments do not support the reasonableness of Consumers' LED conversion costs." However, MAUI fails to understand the procedural posture of this issue. Consumers Energy first supported the cost structure associated with its LED streetlight fixture replacements in Case No. U-18322, a Consumers Energy electric rate case based on a test year from October 2017 through September 2018. As part of its final order in that case, the Commission reduced the overall dollar amount of the Company's request for its Demand Failure Program, but specifically noted that the amount allowed was intended to still give the Company "room for additional projects or programs that the company may undertake." Case No. U-18322, March 29, 2018 Order, page 17. Among the specific programs that were expressly contemplated in the Commission's discussion was the Company's program to replace failed streetlighting fixtures with new LED fixtures. The Company's LED fixture replacement efforts continued through its next electric rate case in Case No. U-20134 also, which the Commission approved pursuant to the settlement agreement of the parties in that case. See MPSC Case No. U-20134, January 9, 2019 Order Approving Settlement Agreement.

Under the doctrine established by the Michigan Court of Appeals in *Pennwalt Corp v Pub Serv Com'n*, 166 Mich App 1, 9; 420 NW2d 156, 159–60 (1988), a utility is not required to completely relitigate the reasonableness of its costs in every subsequent rate case. Instead, *Pennwalt* places the burden of proof on the party challenging the costs "to establish by new

evidence or by evidence of a change in circumstances that the costs were unreasonable . . . ." *Id*. Here, MAUI attempted to do that by pointing to two anecdotal examples of very different projects by other companies that had a lower per-fixture cost, but the Company's rebuttal witness effectively demonstrated that those examples were not comparable and, thus, were not sufficient new evidence to meet MAUI's burden under the *Pennwalt* doctrine. There is no proper legal basis for MAUI to now claim to shift the burden of proof on this matter back to the Company. The reasonableness of the Company's costs was established in Case Nos. U-18322 and U-20134. Consumers Energy does not have to both disprove MAUI's faulty evidence in this case and also reprove the reasonableness of the entirety of its existing program in this case. Given the prior approval of the costs related to LED fixture replacements, it is sufficient under *Pennwalt* that MAUI's evidence is deficient in order for the Commission to support the continuation of the Company's program costs for ratemaking purposes in this case.

In any case, Consumers Energy submits that the testimony supports the conclusion that the costs presented in this case are the actual costs expected to be incurred by the Company to continue its program and that the reactive LED replacement program, though somewhat more expensive than a planned program, is well justified for other policy reasons. Chiefly, as discussed in the Company's Initial Brief, the program is fair and equitable to all municipal streetlighting customers by: (i) providing a rapid replacement of the Company's entire streetlighting fleet; (ii) in a manner that provides upgrades to all of its municipal streetlighting customers at the same pace; and (iii) with no up-front cost to the many municipalities that have expressed a desire to switch but have been skeptical of their ability to fit such a conversion into their near-term budgets. See 6 TR 2424-2425. The least expensive option is not always the best option, particularly in instances like this where it means providing accelerated replacement to some customers while leaving others

behind or where some customers may not ever be able to afford the up-front cost to convert to the more energy-efficient solution they want.

MAUI goes on to claim in its Initial Brief that "[c]ustomers have much less stake in the timing of their LED conversions now that they no longer pay conversion costs out of pocket, and if a unified unmetered tariff is adopted customers will pay the same tariff regardless of whether they have an HID or LED light at any given time." MAUI also claims that, "[w]hat customers do care about is the return on rate base they must cover for excessively costly conversions, indicating that they would likely be better off if the Company used a third-party provider for LED conversions, or allowed customers to enter into those contracts themselves." As an initial matter, it is important to note that MAUI does not represent, and therefore does not speak for, all of the municipal customers on Consumers Energy's streetlighting system. See MAUI's Petition to Intervene, page 1 ("MI-MAUI's member municipalities participating in this case include the City of Flint, City of Kentwood, City of Mt Pleasant and Meridian Township."). As discussed above, Mr. Thomas testified that the Company's reactive conversion program was implemented to "address[] concerns that the Company has heard from a number of its streetlighting customers" regarding the desire for rapid progress toward conversion while at the same time avoiding the significant up-front costs associated with a planned conversion approach. 6 TR 2424. Mr. Thomas testified:

> The feedback that the Company received from its customers is that they wanted to move to LED lighting versus the existing HID technology as quickly as possible. The Company also received feedback that many of its customers did not want to pay total project cost for the conversions or for conversions at all. Many municipal customers operate under very tight budget constraints and may not have the available resources to execute on a community-wide replacement of all their streetlights which would require a significant up-front customer contribution. Replacing lights on a reactive basis means that our customers do not require any up-front

> contribution. To the extent that the overall cost for a reactive program might be somewhat higher over time than the planned conversion costs that Mr. Bunch attempts to compare to in his testimony, many customers nevertheless prefer to have such an option available in order to manage the timing of their costs for LED conversion. [6 TR 2424.]

So, while the cities of Flint, Kentwood, and Mount Pleasant and Meridian Township may care more about minimizing return on rate base above any other consideration, many other municipal customers appreciate the opportunity to convert their systems quickly over a six- or seven-year horizon without any up-front investment required from the municipality. For those customers, paying a reasonable return over time on the capital that the Company is committing up-front in their place is well worth it.

Furthermore, the Company does not agree that its customers now somehow have less of a stake in the timing of their conversions. First, as discussed in more detail in the Company's Initial Brief and below, with respect to MAUI's unified tariff proposal, the development of a unified tariff will require some time and investment before it can properly be executed. Although the Company agrees in theory with moving in that direction, it is premature to suggest that such a tariff would even be available any time soon to reduce customers' incentive to move rapidly to convert to LED. Second, even if such a unified rate were available immediately, the rate will necessarily be higher for all customers while a significant number of high-consumption streetlighting technologies remain in the field. The thing that will ultimately make such a unified rate more cost effective is the replacement of older technology streetlights with energy efficient LED streetlights. That remains true whether the rate is a unified rate or not.

With respect to the Company's union contract provision prohibiting more than 15% of work from being outsourced to third-party contractors, MAUI cites in its Initial Brief to a discovery response submitted by Mr. Thomas in this case in which he states that, in 2018, the Company had

the potential to contract out for up to 34,000 additional hours of third-party labor without exceeding the 15% limit. MAUI's Initial Brief, page 6. MAUI uses that information to argue that the Company could have and should have, therefore, utilized the additional available contracting room to procure LED streetlight replacement work at a lower overhead cost than it is able to do using Consumers Energy's own union employees.

The Commission should disregard this argument because it is based on non-record evidence. Footnote 27 of MAUI's Initial Brief (page 6) plainly sources the information back to Consumers Energy's discovery response 20697-MAUI-CE-1474(a), which was never offered into evidence as an exhibit in this case. Section 85 of the Michigan Administrative Procedures Act provides that "[f]indings of fact shall be based exclusively on the evidence and on matters officially noticed," and further provides that "[a] decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material, and substantial evidence." 1969 PA 306; MCL 24.285. Since MAUI elected not to introduce this discovery response into the record, it is improper for them to cite it as part of their arguments in this case, and it would be unlawful for the Commission to consider it as part of its ultimate decision on this issue.

Furthermore, Consumers Energy submits that there was a good reason that MAUI elected not to admit discovery response 20697-MAUI-CE-1474 into the record in this case. Although MAUI selectively chose to quote only a portion of one sentence from the discovery response, Consumers Energy's response was actually much more extensive on the issue of the 15% contracting limit than MAUI cares to admit. In further response to MAUI's question about whether the additional available contract capacity under the 15% limit was sufficient to perform

all LED conversions of Company-owned streetlights that were completed in 2018, Company witness Thomas provided the following response in 20697-MAUI-CE-1474:

> A hindsight review of what could have happened in 2018 is not a practical exercise. Advocating that the 15% contractor limit be pushed to accommodate streetlighting work in order to possibly avoid some overheads is unreasonable as it causes the Company to lose its flexibility to perform higher priority electric service work. The Company employees that are currently dedicated to performing streetlighting work are qualified to perform service work on the Company's secondary voltage distribution system whereas our contracted resources are used to complete work on our primary voltage distribution system. Using contractors to perform streetlighting work would result in a reduction in the amount of work on our primary voltage distribution system work that can be completed. Our planning and scheduling team in conjunction with electric operations leadership works to ensure customer/third-party requested work is of the highest priority to be completed by internal company and/or contractor resources as to avoid any labor resource related constraints that might be a barrier to completing such work.

In other words, Consumers Energy is not able to precisely predict at the beginning of each year, or even at any given point within each year, exactly how many total hours of work may be required on each of its various programs by year-end. But, the Company attempts to channel lower-cost contract labor to its highest priority primary voltage distribution work, all while simultaneously working to ensure that the Company does not inadvertently exceed the 15% contracting limit that could render Consumers Energy in breach of its union contract. Even with active management and prudent planning throughout the year, it is possible that the end result may leave some available third-party contracting opportunities on the table. But, that does not mean it would be reasonable to risk misprioritizing potential contract resources to lower priority work. Mr. Thomas alludes to this issue further in his rebuttal testimony where he states, "The avoidance of these overheads for streetlighting customers would simply mean that other customers would experience increased overheads." 6 TR 2427. MAUI should not be permitted to mislead the Commission by selectively relying on non-record evidence taken out of its appropriate context.

On pages 8 through 10 of its Initial Brief, MAUI continues its arguments regarding the cost of Consumers Energy's reactive LED replacement program by claiming that the standard LED replacement fixture chosen by the Company, a 54-watt LED option, is unnecessarily bright. Consumers Energy adequately addressed MAUI's claims regarding the suitability of its standard LED fixture choice in the Company's Initial Brief and will not reiterate those arguments here. However, in the course of responding to Mr. Thomas's rebuttal testimony, MAUI's Initial Brief misunderstands and then mischaracterizes some of Mr. Thomas's rebuttal testimony. Specifically, on page 10 of its Initial Brief, MAUI wrote that Mr. Thomas "also noted that a recent proposal from Leotek indicates that a 44-watt LED is an appropriate replacement for a 100- watt HPS, without explaining why the Company's lighting specifications lead to such a significant departure from Leotek's suggested crossovers." To be clear, the 44-watt LED replacement from Leotek was <u>not</u> one of the available options during the Company's 2018 competitive solicitation for replacement LED fixtures that led to Consumers Energy's current supply contract. So, the Company did not, as MAUI suggests, select a light that was a "significant department from Leotek's suggested crossovers." Mr. Thomas explained clearly in his rebuttal testimony that the Company's selected 54-watt replacement was "the best available product" during the Company's 2018 competitive solicitation after a rigorous review of then-current technology. 6 TR 2431. The Leotek 44-watt option is one of the products that Consumers Energy is *currently* reviewing based on preliminary data provided for the upcoming 2021 competitive solicitation. 6 TR 2433.

MAUI also incorrectly claims on page 10 of its Initial Brief that "Mr. Thomas does not fully explain why at least one of the proposals in the Company's 2018 evaluation recommended a 47-watt LED luminaire, yet the Company still selected the 54-watt option." On the contrary,

Mr. Thomas explained the process that led to the selection of the 54-watt option in detail. He testified:

> [T]he Company worked closely with a lighting consultant to not only develop its LED specification but also developed a method by which the Company could verify that the LEDs submitted for consideration are equivalent to the luminaires they are intended to replace. The method the Company uses ensures the selected LED luminaire will adequately provide equivalent roadway illumination.
>
> * * *
>
> The Company begins its evaluation of alternative LED lighting products by ensuring that the wattage of the replacement LED luminaire is equal to or less than the wattage of the luminaire that it will replace to ensure that the replacement product's monthly rate is the same or less expensive than the existing luminaire, all else being equal. The next step in the equivalency process is to consider the specific roadway application including mounting height and location, average required illumination, and roadway width and type in accordance with industry guidelines. The Company will use the roadway application information, industry guidelines, and the replacement product information to ensure that average luminance, average and maximum uniformity, and maximum veiling luminance (disability glare) are satisfied. The final consideration for the evaluation is to perform a financial analysis among replacement equivalent products for impacts to the customer as well as the Company. [6 TR 2429-2431.]

Mr. Thomas testified that the Company's selection of the 54-watt LED luminaire was made in accordance with this methodology and that "[t]he 54-watt LED luminaire that the Company selected in its 2018 competitive solicitation was the lowest cost LED luminaire that met the application requirements for the existing 100-watt HPS [High Pressure Sodium] luminaire." 6 TR 2429, 2431.

For all of the reasons discussed above, and in the Company's Initial Brief, there is simply no merit to MAUI's claims that the Company's LED streetlight replacement costs are unreasonable.

Streetlight Outage Identification and Restoration Performance

Beginning on page 21 of MAUI's Initial Brief, MAUI criticizes the Company's recent performance in identifying and restoring streetlight outages. In doing so, MAUI makes a number of false and misleading claims regarding the level of streetlighting service relative to the costs that are currently reflected in streetlighting rates. Contrary to MAUI's claims, streetlighting customers are receiving the service that they're paying for. The Company continuously strives to improve its performance with respect to all of its customers. Streetlighting customers are no exception. However, Company witness Thomas discussed two key issues in his rebuttal testimony contributing to the outage performance results for streetlight service that MAUI finds unsatisfactory: (i) bulk outage reporting by municipal customers and (ii) shared use of service workers to address streetlight outages. 6 TR 2440-2441. Mr. Thomas testified that the Company is proactively considering options, within or near to available resources, to help improve the outage performance. However, Mr. Thomas also plainly indicated in his rebuttal testimony that the Company is willing to dedicate significant additional resources to resolve those issues if streetlighting customers are truly interested in paying for that enhanced level of service. 6 TR 2440.[6] Given the opportunity to affirm its interest in purchasing the higher level of service that MAUI claims its members want, MAUI is conspicuously silent in its Initial Brief – completely ignoring Mr. Thomas's offer.

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[6] Mr. Thomas testified:

> The potential expense for the Company's ability to patrol 28,000 square miles of service territory has not been estimated, but it would undoubtedly result in a significant expense to the Company and, ultimately, to customers. If the Commission believes that there is sufficient customer demand for this higher level of service and that customers would be willing to pay for the increased costs it would create, the Company would consider it for future implementation. [6 TR 2440.]

Consumers Energy's Initial Brief already addressed the unpracticality and infeasibility of MAUI's recommendations related to their claim of unsatisfactory outage restoration performance for streetlights and will not repeat those arguments here. However, MAUI's Initial Brief goes beyond the testimony of its witness in this case and, in so doing, mischaracterizes several aspects related to Consumers Energy's streetlight outage restoration performance. Instead of candidly acknowledging that current rates paid by streetlighting customers already account for the lower priority placed on streetlight outage restoration relative to other electric service priorities associated with maintaining service to homes and businesses, MAUI claims that "[r]egardless of whether Consumers' outage service restoration priorities are justified, those priorities should be, but are not, reflected in the rates that streetlight customers pay or in current standards for bill credits." MAUI's Initial Brief, page 22. MAUI cites no evidence or cost-of-service analysis from this case to support the claim that the current priority given to streetlight restoration is not reflected in rates, and it is not true.

As Mr. Thomas explained, the Company does not use dedicated crews for streetlighting restoration work. Instead, the Company uses shared crews that address both streetlight outage restoration and all of the higher priority distribution maintenance and restoration work on the system. As a result, the Company does not incur costs for dedicated streetlighting crews and no such costs are allocated to the Company's streetlighting customers in setting streetlighting rates. Although it is not possible to isolate the specific amount of labor cost associated with the shared service workers in the Company's Cost-Of-Service Study ("COSS") in this case, streetlighting customers are allocated less than 1% (approximately 0.74%) of all jurisdictional distribution maintenance O&M costs in the Company's version 1 COSS and only about 2.8% of all jurisdictional distribution plant-in-service costs. Exhibit A-16 (JCA-1), Schedule F-1, pages 20

and 32. They are, therefore, unquestionably paying for only a small fraction of the service workers' total cost as part of streetlighting rates, consistent with the prioritization of those workers' time.

Similarly, MAUI's Initial Brief draws a logically invalid conclusion regarding the complexity of recent outage restoration work for streetlights from a statement of its witness that does not support the conclusion. On page 23 of its Initial Brief, MAUI refers to its witness Richard Bunch's testimony that there were 7,748 streetlight outages in 2019 that exceeded five days to restore and that, of those, only 3,667 may not have included conversion to LED, meaning that at least 4,081 of those were resolved by conversion to LED. 8 TR 4027. Mr. Bunch suggested in his testimony that converting to an LED fixture is a more simple procedure than repairing "more complicated technical work" that *might* be the reason for any given outage of a high-pressure sodium streetlight or other technology. 8 TR 4027. But the opposite is also true. Converting to an LED fixture is a more complicated procedure than simply replacing a burnt-out bulb, which also *might* be the reason for any given outage of other streetlight technology.

Nevertheless, MAUI's Initial Brief misuses Mr. Bunch's observation to draw the wholly unwarranted and logically invalid conclusion that, "[b]ecause the Company switched midway through 2018 to replacing all non-functioning HID [high intensity discharge] lights with LEDs, rather than attempting more variable and time-consuming repairs, the 'type of work' involved in outage restoration over the 2017-2019 period became considerably simpler and more routine." Mr. Bunch himself admits that we don't know the causes of streetlight reliability issues because the Company doesn't track them. 8 TR 4026. So, Mr. Bunch's observation that converting streetlighting to LED *could have* made outage restoration "simpler and more routine" does not support MAUI's assertion that it *did* make outage restoration "simpler and more routine." As

noted above, converting to LED also could have made outage restoration more complex, depending on the cause of the outage. Furthermore, Consumers Energy submits that an outage due to a burnt-out bulb seems more likely to be a common cause of an outage than an outage due to a "more complicated technical" failure (using Mr. Bunch's words). So, it is very possible that, in fact, converting to LED fixtures during the time period Mr. Bunch discussed actually contributed to, rather than improved, the complexity of the work necessary to restore outages.

MAUI emphasizes the fact that the average length of the Company's outage restoration time increased over the period from 2017 to 2019 and claims that Mr. Blumenstock's testimony that this change reflects year-over-year variations is "unsubstantiated because it is supported by no evidence regarding the location, type of work performed, or other factors." MAUI's Initial Brief, pages 22-23. However, that – again – is not true. There is evidence in this case to help explain the recent increase in the duration of outages, but MAUI chose to ignore it. Mr. Thomas explained in rebuttal:

> During power outages, which can impact tens or even hundreds of thousands of customers, priority work for service workers is power restoration. Power outage cleanup work can often continue well beyond the period during which the bulk of customers were out of power. During and immediately following periods of power outages, streetlight repairs take a lower priority to power restoration. The ability for the Company to catch up on streetlight outage restoration work following a storm is often difficult and increases average streetlight outage restoration times, again due to spikes in workload for which the Company is not staffed to meet. [6 TR 2441.]

Again, this circumstance is reflective of the fact that the Company uses shared service crews to perform streetlighting outage restoration work as well as other distribution system restoration and maintenance work, which creates cost efficiencies reflected in the rates paid by streetlighting customers.

Furthermore, Company witness Brenda L. Houtz explained in her direct testimony that the Company has experienced a significantly increased number of outage events due to tree, wind, and ice events from 2015 through 2019. 6 TR 1887. Ms. Houtz testified that the data shows there has been an upward trend in 35+ miles per hour wind gusts over the past five years. She further testified:

> At 35+ mph, significant gust-related outages generally begin to occur. In 2015, gusts in excess of 35 mph occurred over approximately 1,500 hours. And the trend has increased, with 2019 experiencing gusts above 35 mph over 2,400 hours. In the last four years, the Company has also experienced four ice events. Two of these ice events in 2019 resulted in significant service restoration O&M costs. When ice accumulates to over 0.25 inches on the electric lines, it weighs down the conductor causing stress on and damage to the components. During the thawing process, limbs from trees break off, lodging into and causing damage to equipment. [6 TR 1887.]

As a result of these trending increases in storm activity, the Company has also experienced a clearly steep increase in storm restoration costs during the 2017, 2018, and 2019 time period. 6 TR 1886. The Company's storm-related restoration costs increased sharply over those years from a low cost of $35.5 million in 2016 to $50.2 million in 2017, $53.9 million in 2018, and $83.7 million in 2019 (with the last three months of 2019 forecasted). 6 TR 1886. That's a 136% increase in storm restoration costs from 2016 levels over the 2017 to 2019 period. In other words, MAUI conveniently chose the time period of some of the most catastrophic storm seasons in recent experience to judge the Company's performance on restoring streetlighting after an outage. MAUI's claim that there is no evidence in this case to support the idea that the recent down-trend in outage restoration performance is at least in part due to year-over-year variation is without merit.[7]

[7] Despite the Company's testimony, MAUI asserts on page 25 of its Initial Brief:

The Company is very committed to improving its streetlight outage restoration performance, but it is simply not true to characterize the Company's current performance as deteriorating without good justification or explanation. And, the answer to improving the recent down-trend is not to adopt the unreasonable recommendations proposed by MAUI.

On pages 27 and 28 of MAUI's Initial Brief, MAUI responds to Company witness Thomas's rebuttal of its proposed "standing credits" based on a statistical sampling of the number of outages on the fleet of streetlights. As discussed in the Company's Initial Brief, Mr. Thomas pointed out, among other things, that a full refund of the streetlight rate would be inappropriate because the Company continues to incur costs on behalf of streetlighting customers for a streetlight

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> But storm-related outages have little to do with the problem of streetlight outage durations. Reportable streetlight outages include only events associated with failures of street lighting equipment, not power outages that affect the general area. Further, if streetlight outages were often caused by power outages, they would not take longer to resolve than customer power restoration: they would be resolved at the same moment. Ascribing lengthy streetlight outages to weather events and other natural causes is misleading: the problem is that the Company has too few workers in the field, or too few workers assigned to streetlight restoration, to consistently address routine streetlight outages in a timely manner.

There are no citations to any record evidence supporting any of those claims, and (with the possible exception of the last part of the last sentence) they are not true.

There is no evidence, for example, to suggest that the only streetlight outages that are reported are those independent of a storm outage. There is also no evidence in this case supporting the claim that restoration of other outages after a storm will result in the simultaneous restoration of streetlights, which may well be part of an outage on an entirely different circuit. As the Company's expert testified, Consumers Energy uses shared service crews to perform both streetlight outage restoration as well as its other restoration and maintenance work on its distribution system. Because the other work is prioritized ahead of streetlight restoration, any time there is a surge of work that stretches the capabilities of the existing crews, it will lengthen the response to streetlight outages. Finally, Consumers Energy notes that Mr. Thomas did not solely attribute this situation to *storm*-related outages. Mr. Thomas testified that the Company's shared crews have to prioritize streetlighting restoration behind residential and business outages that are unrelated to storms as well. 6 TR 2441. If the Company's limited number of shared service crews are being dispatched to restore service to homes that are without power due to the failure of a local transformer – even on a clear day – that restoration is rightly prioritized ahead of restoring a failed streetlight.

With respect to MAUI's assertion that there are "too few workers" available to do streetlight restoration work, there are clearly trade-offs that must be balanced between the number of workers hired and the cost of providing the service. Again, Mr. Thomas indicated that the Company is willing to consider investing in more service workers and potentially dedicated streetlight service crews if the Commission believes that there is sufficient customer demand for this higher level of service and that customers would be willing to pay for the increased costs it would create. 6 TR 2440.

whether it is operational or not, including cost-of-service items and even some power consumption associated with the ballast of a failed non-LED light. 6 TR 2443. MAUI's Initial Brief responds by claiming that "when a streetlight is out, the customer is not receiving the service they contracted for." MAUI argues that "[t]he customer contracted with the Company for street lighting service, not for street lighting equipment" and that when a streetlight is not operational, "the customer is receiving nothing of value at all." One would expect that an argument based on what a customer contracted for would begin with some reference to the terms of the contract itself. But, MAUI does not cite any language from the contract governing the relationship between Consumers Energy and its streetlighting customers to support those claims.

Consumers Energy's Commission-approved tariff forms a significant part of that contract. *Valentine v Michigan Bell Tel Co*, 388 Mich 19, 26; 199 NW2d 182 (1972), abrogated on other grounds by *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185; 631 NW2d 733 (2001). Rule C1.1 of the Company's electric tariff book states, with respect to the character of service, that "the Company shall endeavor, <u>but does not guarantee</u> to furnish a continuous supply of electric energy and to maintain voltage and frequency within reasonable limits." (Emphasis added.) Furthermore, Rule C1.1 provides that the Company "shall not be liable for interruptions in the service . . . due to causes or conditions beyond the Company's reasonable control," which "shall be deemed to specifically include, but not be limited to . . . failure, malfunction, breakage, necessary repairs or inspection of machinery, facilities or equipment when the Company has carried on a program of maintenance consistent with the general standards prevailing in the industry." The standard contract that the Company offers to municipal customers for streetlighting service includes similar language and refers directly back to the provisions of the tariff. See, e.g., Exhibit A-185 (TRT-1), page 2, paragraph 3. The Company's standard streetlighting contract also

specifies that, as part of the terms of the contract, the Company "agrees to furnish the Customer with lighting service respecting the luminaires, lamps and other equipment constituting the installation(s) . . . ." (Emphasis added.) Likewise, the Company's electric tariff sheets relating to streetlighting service include terms concerning the Company's installation and ownership of such equipment and setting both "fixture" charges and "service" charges as part of the rate (including a component of the service charge that specifically addresses ballast consumption). See, e.g., Sheet Nos. D-89.00 and D-90.00 under the Company's General Service Unmetered Lighting Rate (GUL). So, when MAUI claims in its Initial Brief that the customers they represent "contracted . . . for street lighting service, not for street lighting equipment," that claim is plainly false and belied by the terms of the contract itself, as is the claim that when a particular streetlight is out, "the customer is receiving nothing of value at all." Even though a small number of streetlights may experience short outages on the Company's system, customers still receive the services that they contracted for, which includes streetlighting equipment and, in some cases, ballast consumption, as well as the range of customer service and other support offered by Consumers Energy to all of its customers. Those valuable services are not without cost. The idea that streetlight customers should be credited with the full amount of their monthly bill because a random sampling of lights might reveal that a few lights are out at the time of the survey (though present experience suggests that they are likely to be out for 8 days or less[8] during that month) is unreasonable.

For all of the reasons discussed in the Company's Initial Brief and this Reply Brief, the Commission should reject MAUI's proposals regarding "standing credits," advanced lighting controls, and its other proposals related to MAUI's unwarranted claims regarding Consumers

[8] MAUI's own witness testified that the average outage duration during 2019, which he characterized as the worst performance for Company outage restoration during the period he reviewed, was 8 days. 8 TR 4025, 4027. He noted that prior to this period, which we know to have been marked by unusually high storm-related outages, the average outage duration was 6 days. 8 TR 4025.

Energy's streetlight outage performance. The Company is already developing an online outage reporting portal that will help improve the Company's awareness of outages in a way that also avoids the bulk reporting problem that can contribute to delays by overtaxing available restoration resources. 6 TR 2442. MAUI's alternative proposals are unreasonable, costly, and unnecessary.

Streetlight Removal Fees

On pages 29 through 32 of its Initial Brief, MAUI discusses its claim that the Company's fees for removing a streetlight are unjust because they duplicate cost recovery that is already obtained through the Company's depreciation rates. This claim is incorrect, as the Company pointed out in its Initial Brief, because the Company's depreciation rates take into account the portion of removal costs that are to be paid by customers as part of their contract for streetlighting. Therefore, Consumers Energy's depreciation rates only include a portion of the removal costs for streetlights. 6 TR 2445.

Consumers Energy responds further in this Reply Brief only to clarify a statement of law offered in MAUI's Initial Brief that was incorrect. On page 31 of MAUI's Initial Brief, MAUI claims that "FERC accounting regulations require the Company to include removal costs in net salvage value – not 'some' removal costs or removal costs net of customer fees or removal costs only for Company-initiated projects." That claim misstates the law.

16 USC 825(a) provides that the Federal Energy Regulatory Commission ("FERC") "may prescribe a system of accounts to be kept by licensees and public utilities and may classify such licensees and public utilities and prescribe a system of accounts for each class." However, 16 USC 824(e) defines "public utility" as "any person who owns or operates facilities subject to the jurisdiction of the [Federal Energy Regulatory] Commission under this subchapter . . . ." 16 USC 842(b)(1) further specifies:

> The [Federal Energy Regulatory] Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this subchapter and subchapter III of this chapter, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

Consistent with these statutory authorities, FERC's Uniform System of Accounts specifies that its requirements apply to any "public utility," which it defines as "any person who owns or operates facilities subject to the jurisdiction of the [Federal Energy Regulatory] Commission under the Federal Power Act." 18 CFR 101(29). Consumers Energy's streetlighting program is a part of its retail electric distribution business, which is not subject to FERC regulation and, hence, is not required to comply with the FERC Uniform System of Accounts by operation of federal law.

Under state law, the MPSC also requires retail electric distribution utilities, such as Consumers Energy, to keep a book of accounts that follows rules established in a uniform system of accounts. See MCL 460.55; MCL 460.556; Mich Admin Code, R 460.9001 *et seq*. Probably for reasons of ease and consistency, the Commission has chosen to use its authority to establish accounting rules to adopt most of the version of the FERC Uniform System of Accounts that was effective on April 1, 2010. R 460.9002(1). However, the Commission also made its adoption of the FERC Uniform System of Accounts subject to several "exceptions and conditions," which modify the FERC Uniform System of Accounts in several respects. Most significantly for purposes of this Reply Brief, the Commission made clear that it was modifying the FERC Uniform System of Accounts as follows:

> All orders and practices of the Michigan public service commission in effect as of the effective date of this rule with accounting impacts that conflict with provisions of the uniform system of accounts for major and nonmajor electric utilities at the request of or affecting each specific utility shall remain in effect, and <u>future orders and practices with such impacts shall supersede the provisions of the</u>

> uniform system of accounts for major and nonmajor electric utilities for Michigan retail jurisdictional. [R 460.9002(1)(a) (emphasis added).]

In other words, in adopting the FERC Uniform System of Accounts, the Commission reserved the right to further modify the application of those accounting rules with respect to a particular utility by order at any time the Commission deemed it appropriate going forward. With respect to depreciation accounting practices, in particular, the Commission periodically requires each state-regulated electric utility to file a depreciation case before the Commission to update the utilities depreciation rates and consider other relevant issues pertaining to depreciation accounting practices. The Commission has established Consumers Energy's depreciation rates and accounting practices in this manner for many years. See, e.g., MPSC Case No. U-17653, May 14, 2014 Order Approving Settlement Agreement.

Contrary to MAUI's claim, therefore, there is not some FERC accounting regulation that requires the Company to include all of its streetlight removal costs in net salvage value or that prohibits the Company from including only "'some' removal costs or removal costs net of customer fees or removal costs only for Company-initiated projects." MAUI cited no legal authority for that claim, and it is false. MAUI's incorrect arguments regarding the Company's fees for streetlight removal are based on a faulty understanding of the law and the Company's Commission-approved accounting practices. For the reasons stated in the Company's Initial Brief and the further reasons provided in this Reply Brief, the Commission should reject MAUI's arguments on this issue.

2. Fossil and Hydro Generation Capital Expenditures

a. The Commission Should Not Adopt Staff's Proposed Reductions

The Commission Staff proposes that the Commission disallow $15,363,000 in generation capital expenditures. Staff's Initial Brief, page 30. For the reasons provided below, the Commission should not adopt the proposed disallowances.

Staff's Initial Brief first focuses on the Company's environmental capital expenditures, and proposes that the Commission disallow $500,000 and $6,390,000 in 2021 non-contingent environmental compliance costs for the 316(b) and Steam Electric Effluent Guidelines (SEEG) projects, respectively. Staff's Initial Brief, pages 33-36. Staff's Initial Brief closely tracks the testimony of its witness, Jonathan J. DeCooman. The Company addressed Mr. DeCooman's proposed disallowances in its Initial Brief, and for the reasons contained on pages 119 through 122 thereof, the Commission should not adopt Staff's position.

Staff next focuses on a number of non-routine electric generation projects. Staff discusses these projects individually and proposes disallowances in amounts that would produce the low end of the expected accuracy range corresponding to the project's class-of-cost estimate, after accounting for the project's contingency costs. Staff's Initial Brief, pages 36-48. For example, Staff proposes a $298,000 disallowance for the Bottom Ash Tanks Chemical Treatment project at the Company's J.H. Campbell ("Campbell") facility. Staff's Initial Brief, pages 36-37. For the reasons provided on pages 111 through 112 of the Company's Initial Brief, which the Company will not repeat in full here, the Commission should not adopt Staff's position. Staff acknowledges that the Company provided information in its rebuttal case to support the project costs, but claims that information came "too late" in the proceeding. Staff's Initial Brief, page 37. The Commission should not accept Staff's position. The rebuttal evidence was directly responsive to

Mr. DeCooman's testimony, and it was unrebutted and unimpeached. The Commission should allow full recovery for the project.

The Commission should also not adopt Staff's proposed: (i) partial disallowance of $400,000 for the Company's re-alignment of the 4,160 volt switchgear with Air Quality Control System ("AQCS") Implementation for 2021 (Staff's Initial Brief, pages 37-38); (ii) partial disallowance for the Company's CO-O_2 monitor replacement project at Campbell Unit 3 for 2021 in the amount of $209,000 (pages 38-39); (iii) partial disallowance of $543,000 in non-contingent 2021 projected capital expenditures for the D.E. Karn ("Karn") Unit 3 Cooling Tower Rebuild (pages 39-40); (iv) $240,000 in non-contingent 2021 projected capital expenditures for the Redundant Sootblowing Air Compressor (page 41); (v) partial disallowance of $540,000 in non-contingent 2020 capital for the Landfill Remedial Action Plan (page 42); (vi) partial disallowance of $116,000 in non-contingent 2021 capital for the project Boiler Feed Pump Automatic Recirculation Valve Replacement (pages 42-43); (vii) partial disallowance of $1,560,000 in non-contingent 2021 capital for the Startup Optimization project (page 42-43); (viii) reduction of projected "Generation: Hydraulic" capital expenditures by $2.301 million (pages 43-46); (ix) reduction of projected "Generation: Pumped Storage" capital expenditures by $0.403 million (pages 46-47); and (x) reducing "Generation: Other Production" capital expenditures by $1,913,000 (pages 47-48). The Company fully supported these projects with extensive and thorough testimony from Company witness Scott A. Hugo, and the Commission should approve them for full recovery. The Company's Initial Brief, at pages 109 through 111, fully discusses why Staff's reliance on the low end of the lower accuracy range for these projects is not appropriate. As Mr. Hugo testified (6 TR 2073), and as discussed in the Company's Initial

Brief (page 110), the projects will likely settle around the Company's projected costs given in their class estimates.

Staff's Initial Brief relies heavily on Mr. DeCooman's arguments related to the state of the Company's supporting documents for these projects. As fully discussed in the Company's Initial Brief, at pages 111 through 112, Staff's position lacks merit. Company witness Hugo testified that most of the projects for which Mr. DeCooman recommended a partial disallowance were at project gate zero or one, which includes documentation of a business case or project initiation. 6 TR 2073. A typical project progresses through six gates through the project life cycle. *Id*. If, in a given case, the Company does not have final scope documents and cost projections at the time that Staff requests them, this does not justify using the low end of the lower accuracy range for these projects. In many cases, as discussed in the above-referenced sections of the Company's Initial Brief, the Company provided updated project status information, as well as provide additional basis for not imposing the recommended disallowance. Mr. Hugo's testimony on why Staff's method was flawed was not rebutted or impeached. The projects are necessary and the Commission should approve their recovery in this case.

Staff's Initial Brief, page 42, states that, while Staff initially recommended a partial disallowance of $816,000 in non-contingent 2021 capital for the Jackson Turbine Control System Replacement project, Staff later removed this disallowance after its initial filing, as shown in Appendix E of its Initial Brief. Therefore, the Commission should not disallow this amount.

Staff's Initial Brief, pages 42 through 43, states that Consumers Energy did not address Staff's recommended adjustments for the Landfill Remedial Action Plan, Boiler Feed Pump Automatic Recirculation Valve Replacement, or Startup Optimization. The Company does not agree. The proposed disallowances are based on Staff's position that the Commission use the low

end of the lower accuracy range for these projects, which, as discussed above, is not a valid methodology or assumption.

Staff's Initial Brief, page 48, states that, based on the Company's project development update, which it provided in its rebuttal case, Staff recommends the Commission disregard its recommended disallowance of $1,260,770 in 2020 capital expenditures for the Enterprise Project Management Organization project. Based on this changed position, the Commission should not disallow this amount. Staff goes on to state, however, that the Company did not refute Staff's recommended adjustment of $1,913,350 in 2021 test year non-contingent expenses. Staff's Initial Brief. The Company disagrees. The Company opposes Staff's proposed reduction for 2021 project costs, as it assumes, without valid basis, the low end of the lower accuracy range for the project.

Staff also opposes the Company's request to recover $17.929 million in contingency for its generation capital expenditures. Staff's Initial Brief, pages 8-10. For the reasons set forth in the Company's Initial Brief, pages 118 through 119, the Commission should not adopt Staff's position. While Staff's Initial Brief (page 9) generally relies on prior orders in which the Commission did not approve recovery of contingency expenditures, in this particular case the Company fully supported its contingency expenditures, and the Commission should approve them for full recovery.

b. <u>The Commission Should Reject the Attorney General's Proposed Reductions</u>

The Attorney General first notes that Consumers Energy spent $4,844,000 less in 2019 than it projected in its direct case for electric generation. Attorney General's Initial Brief, page 53. She advocates that the Commission therefore not include the $4,844,000 in rate base in this case. *Id*. The Company does not oppose this particular reduction.

The Attorney General proposes that the Commission remove $5,209,000 of capital expenditures from the test year for the Company's Dry Ash Cell 6 Landfill Construction project at its Campbell facility. Attorney General's Initial Brief, page 54. For the reasons provided in the Company's Initial Brief, pages 124 through 125, the Commission should reject this position as without merit.

The Attorney General also proposes that the Commission not allow $890,000 in capital expenditures forecasted for 2020, or $9,781,000 forecasted for 2021, for Karn Units 1 and 2 decommissioning. Attorney General's Initial Brief, page 55. The Commission should reject this position for the reasons provided in the Company's Initial Brief, pages 125 through 126.

For the Company's Ludington Pumped Storage Plant ("Ludington") Upgrade and Overhaul project, the Attorney General takes the position that the Commission should remove the entire amount projected for 2020 of $12,707,000, less the contingency amount of $3,177,000 (which she recommends be disallowed on a separate basis), resulting in a net reduction of $9,530,000. Attorney General's Initial Brief, page 57. For the reasons provided in the Company's Initial Brief, pages 130 through 131, the Commission should reject this position.

For the Company's Ludington Reservoir Liner Replacement project, the Attorney General argues that the Commission should remove the entire amount projected for 2021 of $6,610,000, less the contingency amount of $992,000, for a net amount of $5,618,000. Attorney General's Initial Brief, page 58. For the reasons provided in the Company's Initial Brief, pages 131 through 133, the Commission should reject this position.

c. The MEC Coalition's Stance on the Company's Generation Capital and Major Maintenance Spending is Without Merit

The MEC Coalition's Initial Brief proposes to disallow $14.7 million of projected test year spending at the Company's Campbell power plant, claiming that: (i) Campbell Units 1 and 2 do

not provide value to the Company's customers (pages 114-115); and (ii) the Company did not adequately support the proposed capital and major maintenance expenses (pages 115-116). The Company relies primarily on its Initial Brief to respond to these positions, but provides additional argument below.

The MEC Coalition's first argument is that the Company did not support its projected test year spending at the Company's Campbell facility because, according to the MEC Coalition, Campbell Units 1 and 2 do not provide value to the Company's customers in relation to their cost, and should therefore be retired. MEC Coalition's Initial Brief, page 115. The MEC Coalition asserts that $4,829,000 of planned capital and major maintenance expenditures at Campbell 1 and 2 are unnecessary because they could be avoided if the two units were to retire in 2024. *Id*. MEC Coalition's Initial Brief, pages 118-119.

The Commission should reject this position. In no way conceding the validity of the MEC Coalition's claims regarding the value that the Company's Campbell units provide to customers (MEC Coalition's Initial Brief, pages 121-126), or the assertions contained in its summary of prior Commission cases (MEC Coalition's Initial Brief, pages 118-120), the Company responds that such assertions simply provide no support for the MEC Coalition's position. For the reasons provided in the Company's Initial Brief, pages 134 through 135, the issue of whether to change the current planned 2031 retirement date for Campbell Units 1 and 2 will be addressed in the Company's 2021 IRP filing, pursuant to the Commission-approved Settlement Agreement in Case No. U-20165. The MEC Coalition's Initial Brief, page 120, recognizes that the retirement of the Campbell units will be addressed in the Company's 2021 IRP proceeding. The MEC Coalition

cannot assume the outcome of that case.[9] While the MEC Coalition's Initial Brief, page 129, attempts to avoid the issue by arguing that "[t]he Commission is not being asked to determine the appropriate retirement date for Campbell 1 and 2," its argument depends entirely on a 2024 retirement.

The MEC Coalition also claims that the Commission should disallow $9,838,600 of proposed capital and major maintenance expenses at the Campbell plant because, it claims, the Company did not adequately support them. MEC Coalition's Initial Brief, page 115. According to the MEC Coalition, some of these proposed expenditures had inconsistent cost estimates, while others lacked supporting documentation. *Id.* at 115-116, 131-141. The MEC Coalition's Initial Brief closely tracks the testimony of its witness, Tyler Comings. As set forth in the Company's Initial Brief, pages 135 through 141, which the Company will not fully repeat here, Mr. Comings' proposed disallowances were without merit, and the Commission should reject them.

The Company does not agree with the MEC Coalition's assertion that "project 5462 is avoidable – is effectively undisputed." MEC Coalition's Initial Brief, page 128. As discussed above, Mr. Hugo addressed the proposed disallowance (6 TR 2097) in response to MEC Coalition witness Comings' assertion that the project was uneconomic based upon a 2024 retirement date. Thus, the MEC Coalition's issue was indeed disputed, and for the reasons stated in the immediately preceding paragraph, the Commission should reject it. The project was fully supported by Mr. Hugo's testimony (6 TR 1974, 1983-1984), and the Commission should approve it for full recovery.

[9] Thus, the Commission's May 2, 2019 Order in Case No. U-20162, and the other cases that the MEC Coalition cites on pages 129 through 130 of its Initial Brief, have no application here, as the present issue is governed by a Commission-approved IRP settlement that currently provides for a 2031 retirement date for Campbell Units 1 and 2.

Most of the MEC Coalition's proposed disallowances for the various electric generation projects center on the Company's documentation in support of its test year projections. As discussed above in connection with Staff's proposed disallowances, such attacks are without merit. The MEC Coalition also emphasizes that some project costs vary significantly from year to year, or that some will only be performed "sporadically" in future years. MEC Coalition's Initial Brief, page 134. This argument also lacks merit. If there is a legal basis to disallow project costs simply because the costs are not planned to occur in even increments each year, the MEC Coalition has failed to provide it.

As discussed in the Company's Initial Brief, pages 137 through 141, many of the projects for which the MEC Coalition proposes a disallowance are routine in nature. The MEC Coalition argues that "a utility's designation of a project as routine does not obviate the need for supporting documentation." MEC Coalition's Initial Brief, page 133. Mr. Hugo testified why the Company does not prepare charter documents for routine projects:

> **Q. Does the Company typically prepare scope documents or project charters for these routine projects?**
>
> A. No. The scope and cost of this routine work is very predictable based on the Company's experience.
>
> **Q. Can you provide some examples of the Company's budgeting process for this routine work?**
>
> A. Yes. For example, the Campbell Unit 1 mill overhaul and the Campbell Unit 2, 2A Condensate overhaul. These examples have recently completed historical project costs which provide the basis for the project forecasts. The Company has completed Campbell Unit 1 mill overhauls in 2014, 2017 and 2019 for $587,000, $640,000 and $668,000 respectively. The projection in 2021 to complete similar work is $696,000. Similarly, the Company completed a Condensate Pump Overhaul on Campbell Unit 1 in 2016 for $208,000 and is projecting a project in 2021 for $210,000 for

> Campbell Unit 2. The pumps are similar in size. [6 TR 2100-2101.]

Thus, the Company had a perfectly valid basis to determine projected costs for its routine projects.[10] The Commission can properly rely on the testimony of a qualified expert and that testimony constitutes competent evidence. *Attorney General v Pub Serv Comm*, 174 Mich App 161, 170; 435 NW2d 752 (1988).

With respect to the MEC Coalition's proposed disallowances in connection with the Company's Campbell Unit 1 Re-align 4160V switchgear with AQCS implementation (MEC Coalition's Initial Brief, page 135), Campbell Unit 3 Reheater Sootblower (page 136), Campbell Unit 2 Overhaul Hydraulic Coupling Rotor (page 137), and Campbell Unit 3 Redundant Sootblowing Air Compressor (page 138), the Company relies on its Initial Brief, pages 138 through 141.

The MEC Coalition's Brief, page 138, states that it no longer opposes rate recovery for Project 5708, the Redundant Sootblowing Air Compressor project. The Commission should allow full recovery for this project.

The MEC Coalition's Initial Brief also takes positions on the Company's next IRP. It seeks guidance from the Commission that any incremental cost estimates that the Company uses in its retirement analysis for its Campbell units "should be robust, well supported, and consistently applied across retirement dates." MEC Coalition Initial Brief, page 142.[11] The Company submits that the request is unnecessary. The Company's 2021 IRP will be governed by the Commission's

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[10] The MEC Coalition's reliance (Initial Brief, page 133) on the Commission's May 8, 2020 Order in Case No. U-20561, page 46, is misplaced. The cited page discussed whether the utility justified a cost projection that was higher than shown in its prior documentation. The cite page did not state that utilities cannot use recently completed historical project costs to provide the basis for the project forecasts.

[11] Staff's Initial Brief makes a similar request, on page 49. ("The Company should explain differences between its near-term capital spending forecast in this case and its forthcoming 2021 retirement study.")

filing requirements, integrated resource parameters, and the commitments made in the Company's 2018 IRP case.

Finally, the MEC Coalition states that Consumers Energy should submit a transparent, publicly-available transition plan for its Karn Units 1 and 2. MEC Coalition Brief, page 145. The MEC Coalition specifically submits that the Commission should direct the Company to "submit an updated, publicly-available Karn community transition plan either (i) in this docket, prior to January 31, 2021; or (ii) as part of the Company's June 2021 IRP." *Id.* at 148. The Commission should decline the request. In response to a similar proposal from MEC Coalition witness Comings, Company witness Hugo testified that the Company does engage/support a community steering committee frequently seeking input:

> While the Company may not be consulting directly with community groups on our community transition plan development, we do engage/support a community steering committee frequently seeking input on a more general level. Company stakeholder engagement is frequently supporting this effort and has also received support from a philanthropic representative influencing the best possible outcome. While the Company is committed to supporting community transition, our position is also to empower local communities in taking ownership of economic sustainability externally, identifying all possible growth opportunities. Local tax base has been addressed in many facets and is aligned with plant retirement and community stakeholder awareness. [6 TR 2105.]

Mr. Hugo also provided a practical reason why the Commission should not grant the MEC Coalition's request. He noted that the Commission would likely not make a decision on the Company's June 2021 IRP filing until early 2022, and that the Company would not have sufficient time to implement potential action(s) as a result of the case prior to the plant retirement in 2023. 6 TR 2106. Finally, the MEC Coalition's request involves a matter that falls squarely in the Company's management discretion. *Union Carbide Corp v Pub Serv Comm*, 431 Mich 135; 428 NW2d 322 (1988). The Commission should therefore decline the request.

3. Facilities Capital Expenditures

a. Staff's and the Attorney General's Proposed Disallowances for the Company's Circuit 501 Project are Not Supported by the Record and Should Not be Accepted by the Commission

In its Initial Brief, Staff takes no issue with the Company's 2019 capital expenditures for the Company's Circuit 501 Project and would, thus, appear to support the preliminary investment already made by the Company in the project. Staff and the Attorney General, however, recommend disallowances for the remaining Circuit 501 Project capital expenditures, with Staff recommending a complete disallowance for 2020 and 2021 and the Attorney General Recommending a complete disallowance for 2019, 2020, and 2021. Staff's Initial Brief, pages 74-76; Attorney General's Initial Brief, pages 62-64. Staff argued that "[t]he Company has not provided the necessary evidence to explain why the Circuit 501 project is needed to improve operations and, ultimately, provide added benefit to the customers." Staff's Initial Brief, page 76. The Attorney General argued that that Company "is in the very early stage of development and appears to be conceptual," and that the Company "has failed to adequately justify this project." Attorney General's Initial Brief, page 64. These conclusions and recommended disallowances, however, are contrary to the evidence in this case and should be rejected by the Commission.

The Company explained in its Initial Brief the purpose of the proposed Circuit 501 Project which ultimately culminates in the delivery of safe, reliable, and affordable energy to the Company's customers. See Consumers Energy's Initial Brief, page 149; 6 TR 1810. The facility is intended to house employees and is also intended to be constructed in a manner that will promote and demonstrate innovative generation, distribution, resiliency, and storage, which is consistent with the Company's IRP. See Consumers Energy's Initial Brief, pages 149-150; 6 TR 1810-1811.

The Company also explained in its Initial Brief, that the facility will be used, among other uses, by Field Operations and Customer Operations, as a demonstration facility for emerging technologies and construction techniques that will highlight the capabilities and outcomes of energy efficient design and execution. Consumers Energy's Initial Brief, page 155; 6 TR 1821. Examples of these capabilities and outcomes include incorporating onsite solar power generation to partially offset building energy consumption, utilizing geothermal ground loops to optimize building energy consumption, and utilizing battery storage to balance building energy load impacts to the overall utility grid. See Consumers Energy's Initial Brief, page 155; 6 TR 1821.

Finally, the Company explained in its Initial Brief, that the Circuit 501 Project will showcase how Company personnel can work as members of cross-functional agile teams that can be paired with customers (residential, small to medium businesses, and industrial) to solve issues to achieve design solutions. Consumers Energy's Initial Brief, pages 155-156; 6 TR 1821.

Neither Staff nor the Attorney General allege that the Circuit 501 Project, which will deliver forward-thinking and forward-moving innovations in energy efficiency design and delivery, can be offered at any other existing Company facility. In fact, Company witness Patrick C. Ennis testified that the Company currently does not have space at existing facilities to highlight energy efficient design and execution as well as collaborate with customers to promote and implement energy efficient technologies and construction techniques. See 6 TR 1821; see also Exhibit AG-1.32. Staff's allegation that the Company has not provided the necessary evidence to explain why the Circuit 501 project is needed to improve operations and, ultimately, provide added benefit to the customers is thus, without merit. Similarly, the Attorney General's argument that the project is only conceptual and has not been justified is also contrary to the record evidence and must be rejected. The Company has already invested over $1.5 million to develop the Circuit 501

Project, which will, in part, promote collaboration with customers, using a 60,000 square foot facility that will demonstrate and promote implementation of energy-efficient technologies and construction techniques for use by customers. Staff's and the Attorney General's proposed disallowances will impair the Company's ability to continue to move forward with this project which, as the evidence demonstrates, will promote and demonstrate innovative generation, distribution, resiliency, and storage, which is consistent with the Company's Commission-approved IRP. In order to avoid this result, the Commission should reject the proposed disallowances proposed by Staff and the Attorney General and approve the 2019, 2020, and 2021 capital expenditures proposed by the Company for its Circuit 501 Project.

b. <u>The Attorney General's Proposed Disallowance for the Replacement of the Lansing, Kalamazoo, and Hastings Service Centers is Inconsistent with Her Position in Case No. U-20650, is Not Reasonable, and Should be Rejected by the Commission</u>

In her Initial Brief, the Attorney General, citing "lack of information regarding the new service centers," the "level of planning," and the "type of operations housed at some of the service centers" concludes that the "projects are still at the very early stages of design and development" and are "premature." As a result, the Attorney General recommends that the Commission "remove the 2020 forecasted expenses and move those expenses to 2021." See Attorney General's Initial Brief, pages 59-62. As discussed in the Company's Initial Brief, the Attorney General supported these projects in April of this year in the Company's Gas Rate Case (Case No. U-20650), and the major shift in position is not only contrary to her position in Case No. U-20650 (only four short months ago), it is also contrary to the record and based on numerous inaccurate facts. See Consumers Energy's Initial Brief, pages 153-155. For the reasons set forth in the record in this matter, as well as the Company's Initial Brief, the Attorney General's proposed disallowance and

request to move funding for the projects to 2022 is without merit, is not supported by facts, and must be rejected by the Commission. See Consumers Energy's Initial Brief, pages 153-155,

c. <u>The Attorney General's Proposed Disallowance for the Company's Unified Control Center Project is Not Supported by the Record and Should Be Rejected by the Commission</u>

In her Initial Brief, the Attorney General, citing the Company's failure to adequately justify the proposed expenditure, recommends that the Commission remove the $1 million of capital expenditures included by the Company in 2021 for its Unified Control Center ("UCC") project. See Attorney General's Initial Brief, pages 64-66. This recommendation is not supported by the record in this case.

As discussed in the Company's Initial Brief, the UCC project will bring the major electric system and electric supply group together and incorporate an emergency operations center function into a single coordinated center. Consumers Energy's Initial Brief, page 150-152; 6 TR 1913-1918. This project will reduce risk in the event of a catastrophe, increase restoration times, enhance understanding of system conditions and dispatch resources, improve resiliency of the facility to adverse natural and man-made disasters, and improve the opportunity for scalability and gained efficiencies. See Consumers Energy's Initial Brief, pages 150-151. The UCC project will also address deficiencies in the current centers, which were constructed in the 1950s and 1960s. See Consumers Energy's Initial Brief, pages 150-151. The Attorney General's proposed disallowance will cause the Company to continue to lag when compared with other utilities in moving to a centralized control room and is without justification. Consumers Energy's Initial Brief, page 156. As discussed in the Company's Initial Brief, this proposed disallowance is without merit, is contrary to the record evidence in this case, and should be rejected by the Commission.

4. Fleet Services Capital Expenditures

a. Staff's Proposed Disallowances are Not Supported by Record Evidence and Should Not Be Accepted

In its Initial Brief, Staff recommends the Commission reduce the Company's Fleet services capital expenditures by $39.569 million. Staff's Initial Brief, page 76; see also 8 TR 5245; Exhibit S-26.0. The calculation of these proposed disallowances for the 2020 bridge year ($13.718 million proposed disallowance) and 2021 test year ($25.851 million proposed disallowance) is explained in the Company's Initial Brief at pages 165 through 166

In testimony, Staff's proposed disallowance for proposed Fleet capital expenditures is based on: (i) Staff's general belief that the Company has not provided appropriate justification to demonstrate the additional spend is a reasonable and prudent investment (8 TR 5240); (ii) Staff's position that "depreciation" was not applied in accordance with Generally Accepted Accounting Practices ("GAAP") (8 TR 5240); (iii) the Company's ability to meet goals of customer on-time delivery, estimated time of restoration, CAIDI, SAIDI, and SAIFI (8 TR 5240-5241); (iv) the Commission's Order in the Company's Gas Rate Case (Case No. U-20322) (8 TR 5241-5242); and (v) Staff's belief that the Company has not adequately provided evidence to support the number of employees they plan to hire as part of the workforce expansion – leaving inadequate justification for adding $24 million for Fleet (8 TR 5243-5244). These issues are also touched on in Staff's Initial Brief. See Staff's Initial Brief, pages 76-81. As discussed in the Company's Initial Brief, Staff's discussion of proposed disallowances results in insufficient capital to support Fleet and does not speak to the reasonableness or prudence of the Company's request. Each of Staff's conclusions are addressed and refuted in the Company's rebuttal testimony and exhibits and discussed in the Company's Initial Brief. See Consumers Energy's Initial Brief, pages 167-170, 290-291. For the reasons set forth in the Company's testimony and exhibits and

Initial Brief, Staff's proposed disallowances should not be accepted by the Commission and the Company's proposed Fleet capital expenditures should be approved as filed.

b. <u>The Attorney General's Proposed Disallowance for the Company's Proposed Fleet Investment Is Not Supported by Record Evidence and Should be Rejected</u>

In her Initial Brief, the Attorney General recommends disallowances for Fleet investment in Transportation Equipment, Fleet investment in workforce expansion, and Fleet investment in Telematics. See Attorney General's Initial Brief, pages 67-74. For the Company's Transportation Equipment, the Attorney General recommends that the Company use a three-year historical average to arrive at a proposed $21.664 million Fleet investment for the Company. See Attorney General's Initial Brief, page 71; see also 8 TR 4994. For the Company's investment in workforce expansion, the Attorney General recommends a 50% disallowance resulting in the removal of at least $12.2 million of the $24.5 million requested. See Attorney General's Initial Brief, pages 71-72. Finally, the Attorney General recommends a disallowance for the Company's Telematics investment.[12] See Attorney General's Initial Brief, page 73. This results in the following proposal by the Attorney General:

2020 Total Proposed Investment (Company Request)	$33.222 million
Less Transportation Equipment ($32.982 - $21.664)	($11.318 million)
Total Proposed Investment (Attorney General)	$21.904 million
2021 Total Proposed Investment (Company Request)	$62.749 million
Less Transportation Equipment ($32.005 - $21.664)	($10.341 million)
Less 50% Workforce Expansion	($12.2 million)
Less Telematics	($6.009 million)
Total Proposed Investment (Attorney General)	$34.199 million[13]

[12] Although the Attorney General's witness promotes a complete disallowance for the Company's investment in Telematics, the Attorney General's Initial Brief did not provide for a disallowance for Telematics in 2020.
[13] This amount deviates from the final numbers set forth in the Attorney General's Initial Brief, which indicates a $34.151 million total proposed investment but mathematically does not match the discussion of disallowances.

The Attorney General's witness, in testimony, used several rationales for his proposed disallowances for Fleet capital expenditures. Those rationales, along with the shortcomings in those rationales are outlined and discussed in the Company's Initial Brief at pages 170-173 and page 291. For the reasons set forth in the Company's Initial Brief, the Attorney General's proposed disallowances for the Company's proposed Fleet capital expenditures must be rejected and the Company's proposed Fleet capital expenditures should be approved as filed.

5. Information Technology Capital Expenditures

a. Reply to Staff

Staff argues that the Commission should reduce the Company's information technology ("IT") capital expenditures by $21.662 million. Staff's Initial Brief, pages 49-69. Staff's Initial Brief closely tracks the testimony of its witness, Ms. Lauren Fromm. The Company's Initial Brief, pages 174 through 186, contains a full discussion of Staff's positions, and the Company will not repeat that entire discussion here. The Company relies primarily on its Initial Brief to address the issues, but provides additional argument below.

Staff argues that the Commission should reduce projected capital expenditures by $311,842 and projected O&M expense by $131,784 for the Commercial Theft Project based on Staff's concerns with how this initiative differs from the residential theft and analytics project already completed and whether the project will be beneficial. Staff's Initial Brief, pages 61-62. For the reasons discussed at page 176 of the Company's Initial Brief, the Commission should not adopt Staff's proposed reduction. The Commercial Theft Project provides for the new work that must be completed to bring the Company's commercial theft capabilities to the same level as the residential theft capabilities. 3 TR 241. Disallowing the funding will prevent the Company from using commercial meter data to gain the necessary insights to improve the identification of commercial theft. *Id.*

b. <u>Reply to the Attorney General</u>

The Attorney General argues that the Commission should reduce the Company's 2021 projected IT capital expenditures for certain projects. Attorney General's Initial Brief, pages 74-82. The Attorney General's argument closely tracks the testimony of its witness, Sebastian Coppola. The Company's Initial Brief, pages 186 through 192, contains a full discussion of Mr. Coppola's testimony, and the Company will not repeat that entire discussion here. The Company relies primarily on its Initial Brief to address the issues, with additional argument below.

The Attorney General recommends removal of projected capital expenditures in the amount of $5.7 million and O&M expense in the amount of $600,000 that the Company is projecting to pursue the Customer Self-Service Mobile Application ("Mobile App") Project. Attorney General's Initial Brief, page 78. In its Initial Brief, pages 68 through 69, Staff agrees with the Attorney General's recommendation. The Commission should reject the Attorney General's recommendation for the reasons provided at pages 187 through 190 of the Company's Initial Brief. As discussed there, the Mobile App meets the growing customer reliance on mobile devices and the growing customer demand for enhanced digital engagement, and the Company has developed detailed project benefits, timelines, and cost projections; has performed the research supporting the need for a mobile app; and has completed the necessary project scope activities. 3 TR 265-266. Expected use of the Mobile App by less than 100% of the Company's customers does not support imposing a fee or rejecting the Mobile App. For example, even though 100% of customers do not make calls to the Company's call centers or access the Company's Direct Payment Offices, the Company does not charge individual access fees for these service channels. 3 TR 265.

The Attorney General also argues that the Commission should disallow $9,114,000 in capital expenditures in 2021 and $1.3 million in O&M expense for the projected test year for the

Bill Design and Delivery Transformation, Move In/Move Out, On Bill Financing, and Move In/Move Out 3.0 projects. Attorney General's Initial Brief, pages 80-81. For the reasons discussed at pages 190 through 192 of the Company's Initial Brief, the Commission should reject the Attorney General's recommendation. The Company has completed evaluation and planning and design work for these projects, and the Commission should approve the projected costs to support these projects moving forward.

6. Demand Response Capital Expenditures

a. Reply to the Attorney General

The Attorney General contends that the Demand Response ("DR") capacity reductions projected in the Company's IRP have not materialized and recommends that the Commission reject approval of the Company's proposed DR pilot programs "until the Company provides a full reassessment of the current program." Attorney General's Initial Brief, pages 83-84. The Attorney General also recommends that the Commission suspend any DR incentive payments until "a true assessment of the benefits of the DR program is completed." *Id*. at 85. As discussed at pages 198 and 348 through 349 of the Company's Initial Brief, the Attorney General's recommendations are based on the incorrect premise that the Company has not achieved the DR capacity reductions projected in the IRP. The Company's DR portfolio is in fact cost effective and the MW achievements are in line with the Company's IRP goals. See 3 TR 268. The projected DR pilot costs should be approved to allow the Company to test the pilot programs before making them full DR program offerings. The Attorney General's recommended "reassessment" is not necessary because the Company already participates in an annual review and reconciliation of DR programs as part of the three-phase regulatory framework for DR established in Case No. U-18369.

7. Customer Experience Expenditures

a. Reply to Staff

Staff argues that the Commission should disallow $4,917,970 in capital and $266,396 in O&M for the Customer Relationship Management ("CRM") project and $1,949,996 in capital and $44,625 in O&M for the Advanced Analytics Hub ("AAH") project. Staff's Initial Brief, pages 69, 72. Staff characterizes the CRM as "elective" and states that the AAH "does not immediately impact the quality of service customers receive." *Id*. at 70, 73. Staff also expresses doubt as to the certainty of the Company's expected project benefits and contends that the Company did not meet the evidentiary standard to support the projects. *Id*. The Commission should reject Staff's proposed disallowance.

Consumers Energy met the evidentiary standard to support the reasonableness of the projected costs for the CRM and AAH projects. Commission orders must be authorized by law and supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Attorney General v Pub Serv Comm*, 165 Mich App 230, 235; 418 NW2d 660 (1987). The Commission can properly rely on the testimony of a qualified expert and that testimony constitutes competent evidence. *Attorney General v Pub Serv Comm*, 174 Mich App 161, 170; 435 NW2d 752 (1988). Expert opinion testimony is considered "substantial" if offered by a qualified expert who has a rational basis for his or her views, whether or not other experts disagree. *Great Lakes Steel Div of Nat'l Steel Corp v Pub Serv Comm*, 130 Mich App 470, 481; 344 NW2d 321 (1983).

As detailed at pages 299 through 304 of the Company's Initial Brief, Consumers Energy presented competent, material, and substantial evidence supporting the reasonableness of the CRM and AAH projects and their expected costs. Company witness Steven Q. McLean testified that the CRM and AAH projects are necessary to meet customer expectations of tailored engagement and

personalized offers by enabling the Company to offer the right customer experience, to the right customers, in the right channel, at the right time. 3 TR 169. The AAH will develop algorithms to allow the Company to provide more predictive and personalized offerings to customers, and the CRM will use the output of the AAH in developing future marketing and sales campaigns. 3 TR 235, 237. The Company identified the many expected benefits of the projects, which include (i) allowing the Company to better predict communication types and costs necessary for effective communication (3 TR 170); (ii) supporting the ability of the Company to recommend personalized utility services and products to customers (3 TR 170); (iii) increased customer insights and improved operational efficiencies for voluntary programs (3 TR 237); (iv) a common platform for customer information (3 TR 171); (v) voluntary program enrollment growth (3 TR 171); (vi) improved operational efficiency and productivity (3 TR 171); (vii) reduction of excessive customer communications (3 TR 173); and (viii) expected cost savings (3 TR 172, 237, 240).

The Company requests the Commission approve the projected costs for these projects to support the Company's ability to offer customers a better, more personalized customer experience, to increase voluntary Clean Energy program growth, and to achieve the expected operational efficiencies and cost savings.

b. <u>Reply to the Attorney General</u>

The Attorney General recommends a $4.1 million reduction in projected capital costs related to the Online Work Scheduling, Service Tracker, and Streetlight Application projects. The Attorney General argues that these projects are "very conceptual and preliminary." Attorney General's Initial Brief, page 79. The Commission should reject the recommended reduction in capital expenditures for these projects for the reasons discussed in the Company's Initial Brief, pages 200 through 202. The Company has engaged in significant planning and design for these

projects, and it is incorrect to characterize the projects as "very conceptual and preliminary." See 3 TR 256-257.

8. Construction Work in Progress

a. Reply to Walmart, Inc.

On pages 4 through 5 of its Initial Brief, Walmart, Inc. ("Walmart") criticizes the inclusion of Construction Work in Progress ("CWIP") in rate base. The Company responded to Walmart's arguments on pages 206 through 208 of the Company's Initial Brief and continues to rely on that response here. For the reasons discussed in the Company's Initial Brief, Walmart's criticisms should be rejected.

IV. RATE OF RETURN AND CAPITAL STRUCTURE

A. Equity Ratio

As discussed in their Initial Briefs, Staff, the Attorney General, the Association of Businesses Advocating Tariff Equity ("ABATE"), and RCG all seek to reduce the equity ratio of the Company. As discussed in the Company's Initial Brief, the Company has calculated a Common Equity Balance of $9,082,412,615, which is reflected in Exhibit A-138 (MRB-13). This results in an equity ratio of 52.5%. Staff, the Attorney General, ABATE, and RCG seek the following:

	Common Equity Balance	Equity Ratio
Consumers Energy	$9,082,412,615	52.50%
Staff	$8,587,376,960[14]	51.11%
Attorney General	$8,648,000,000	50%
ABATE	$8,907,050,000	51.5%
RCG	Unspecified	Unspecified

Each of these parties point to the perception that the Commission requires conformity to a lock-step "rebalancing" of the Company's capital structure. See Staff's Initial Brief, page 91;

[14] Reflects actual balance as of March 31, 2020, on a financial basis rather than a regulatory basis.

Attorney General's Initial Brief, page 86; ABATE's Initial Brief, page 46; RCG's Initial Brief, page 17. As discussed in the Company's Initial Brief, the Company is balanced from a GAAP financial and rating agency basis, and the 52.50% equity ratio is appropriate for the foreseeable future. Consumers Energy's Initial Brief, page 219; see also 4 TR 672-673, 721. Further, in this case, equity ratios of the proxy groups of the Company, Staff, the Attorney General, and ABATE are as follows:

Company	53.2% (Exhibit A-140 (MRB-15))
Staff	53.9% (Exhibit A-140 (MRB-15))
Attorney General	53.0% (Exhibit A-140 (MRB-15))
ABATE	53.4% (Exhibit A-140 (MRB-15))

These equity ratios, in conjunction with Returns on Equity ("ROEs") will be discussed further below. However, notably, the Company has proposed to reduce its equity ratio from 53.46% to 52.50%

1. <u>Reply to Staff</u>

a. <u>Staff's Financial-Based Rather That Regulatory-Based Common Equity Balance is in Error</u>

In its Initial Brief, Staff defends its use of the Company's monthly financial reports to arrive at and use a common equity projection on a financial basis rather than a regulatory basis. This is in error and should not be accepted by the Commission.

According to Staff's Initial Brief, page 92, and Exhibit S-4, Schedule D-5, page 1, note 1, Staff witness Kirk D. Megginson arrives at "actual common equity figures through March 2020 from Consumers Energy's Monthly Financial Report." This is incorrect for several reasons. First, as explained in the Company's direct and rebuttal testimony, there are differences between how

components of the capital structure are classified on a ratemaking basis and how components of the capital structure are classified on a financial basis. Items such as Securitization debt and capital leases, for example, are included in long-term debt on a financial basis but are not included on a regulatory basis. In fact, on a financial basis (based on the Company's balance sheet as reported in the Company's 2018 Form 10-K), the equity ratio of the Company was 49.5% at year-end 2018. See 4 TR 674-675. Consequently, it is not appropriate to use balances on a financial basis to project regulatory capital structure balances in a general rate case (which is a regulatory proceeding). Second, in its Initial Brief, Staff implies that the fact that the Company provides these monthly financial reports to Staff and since they are on a financial basis, this equates to the Company's agreement that financial basis data can or should be used to develop projected capital structure balances in a rate case proceeding. The Company has made no such endorsement. The Company has been providing these monthly reports to Staff for several years based on instruction from Staff. A Staff directive on these reports dated May 24, 2004, stated "the Commission decided that they want the data on a financial basis, just as it is reported to the SEC for the 10-Q's and the 10-K." This was reiterated in a June 27, 2019 directive from Staff regarding these financial reports which again stated that "the data is to be provided on a financial basis, just as it is reported to the SEC for the 10-Q's and the 10-K." While the directives refer to Staff's preparation of a quarterly report for the Commission's website, there is no indication that the data would or is appropriate to be used to support a regulatory balance projection in a general rate case. Finally, it is notable that Staff does not utilize actual balances on a financial basis for any other capital structure component in this case. All other balances such as long-term debt, short-term debt, and deferred taxes are correctly developed using regulatory basis account balances.

Notably, the use of the Company's monthly financial report in this way is unique to Mr. Megginson. At least two prior Staff witnesses did not utilize this report to arrive at the Company's common equity balance.[15] Instead, these Staff witnesses appropriately utilized the Company's common equity balance on a regulatory basis to develop a proposed capital structure and appropriately used other components of the capital structure on a regulatory basis as well.

When Staff witness Megginson uses the Company's common equity balance projections on a *financial* basis to arrive at a proposed equity ratio in a regulatory proceeding, but utilizes all other components of the capital structure on a *ratemaking or regulatory* basis, he has created a proposed capital structure with internal inconsistencies that mismatch a common equity balance on a financial basis with other components that all reflect a ratemaking or regulatory basis. Contrary to Mr. Megginson's assertion, the Company did not develop the common equity balance included in its capital structure on a financial basis using the same financial statements used by Mr. Megginson, and this assertion is not supported anywhere on the record.

Staff does not dispute that there are differences in how the components of the capital structure are classified on a ratemaking basis and how components are classified on a financial basis. Staff, however, has failed to explain why it would take one singular component of its proposed capital structure, the common equity balance, use a figure for that balance on a financial basis, but include all other components of the proposed capital structure on a regulatory basis. Because of this unexplained error, Staff's proposed common equity balance projection is significantly understated and requires correction. Because Staff's common equity balance on a financial basis was $28 million lower than the balance on a regulatory basis (see 4 TR 700), Staff's

[15] The Staff witness who spoke to development of the Company's capital structure prior to Mr. Megginson was Harshleen Sandhu. Ms. Sandhu did not utilize the Company's monthly report to arrive at Common Equity Balance. See Case No. U-17087. Also refer to Staff witness Kavita Bankapur's capital structure projection in Case No. U-18322.

proposed common equity balance should not be accepted and the Company's common equity balance and proposed capital structure should be approved by the Commission.

b. <u>Staff's Use of a 25-Month Average for a Test "Year" Common Equity Average is in Error</u>

In its Initial Brief, Staff also defends its use of a 25-month average for a single component of its proposed capital structure while utilizing a 13-month average for all other components to arrive at a proposed capital structure. This too is in error and should not be accepted by the Commission.

Throughout the history of both gas and electric rate cases,[16] a 13-month average for a test year common equity average has been utilized for projected capital structure balances and is a practice that has been accepted by the Commission. 4 TR 701. As Mr. Bleckman explained in his rebuttal testimony, "[a] 13-month average of month-end equity balances must be used to accurately calculate the average equity balance during the test year." 4 TR 701. Mr. Megginson himself has correctly used a 13-month average equity projection in numerous rate cases. In the past two rate cases, however, Staff has strayed from this accepted practice and used random averages (22-month average in Case No. U-20650 and a 25-month average in this case) to project the common equity balance that significantly exceed the test "year." Notably, however, Staff utilizes other projected capital structure components, such as long-term debt, short-term debt, and deferred income taxes based on a 13-month average. 4 TR 701. If this use of a 25-month average for a single component of the capital structure is unintentional, Staff, in justifying its use of a 25-month average common equity balance, appears to misunderstand that all account balances are cumulative -- and the Company starts with actual balances and projects changes for the test year. Thus, all previous balances are taken into account, but for the test *year* average, it's just a test *year* (or 13 months)

[16] See, e.g., Case Nos. U-17087, U-17643, U-17735, U-17882, U-17990, U-18124, U-18424, and U-20134.

not a test two-year or three-year average. If Staff's use of a 25-month average for only the common equity component of the capital structure is intentional, however, it would appear that Staff is seeking to artificially reduce the average of the common equity balance by selecting random time periods to accomplish the reduced equity ratio that it is seeking. 4 TR 701. Thus, Staff's new interest in selecting the average of 25 months is not only contrary to Commission-approved past practice, it is also contrary to the concept of a projected test *year* and, again, creates internal inconsistencies in Staff's proposed capital structure as it uses a 25-month average for the common equity balance component of the capital structure, but utilizes a 13-month average for all other components. In doing so, Staff's projected common equity balance is $380 million understated. 4 TR 700. Because Staff provides no explanation for this change and no rational basis for its use of a 25-month average, Staff's use of a 25-month average for a test year common equity average should not be accepted by the Commission and the Company's 13-month average common equity balance and proposed capital structure should be adopted by the Commission.

c. <u>Staff's Failure to Acknowledge the Seriousness of the Company's Credit Outlook is in Error</u>

In its Initial Brief, Staff fails to evaluate all reasons for Moody's Investor Services' ("Moody's") change in the Company's credit outlook and fails to take the same seriously. This is in error and should not be accepted by the Commission.

First, Staff's argument related to Moody's recent change of the Company's credit outlook simply doesn't make sense. In its Initial Brief, Staff acknowledges that Moody's changed the Company's credit outlook from stable to negative in July 2020. See Staff's Initial Brief, page 93. Staff then goes on to accuse the Company of misrepresenting the change as a credit rating downgrade. This is just untrue and Staff does not (and cannot) cite to record evidence of such a representation by the Company.

Second, Staff attempts to lessen the effects of the Moody's July 2020 report by blaming the Company's spending (ignoring the pandemic, Tax Cuts and Jobs Act of 2017 ("TCJA"), and downward pressure on ROEs and equity ratios) as the sole reason for the downgrade in the Company's credit outlook. This is a gross misrepresentation of the Moody's July 2020 report. Moody's primarily cited weakened credit metrics starting in 2018 "primarily due to tax reform," and falling Funds from Operation ("FFO") to Debt ratios (in 2019). See Exhibit A-142 (MRB-17). The impacts of the COVID-19 pandemic, including changes in electricity usage, utility bill payment delinquency, and the regulatory response to counter these effects on earnings and cash flow were also cited as concerns and "could result in financial metrics that are weaker than expected." Exhibit A-142 (MRB-17). In its condemnation of the Company, which is focused on the Company's capital expenditure program, Staff makes no mention of these very important and specifically articulated elements and impacts associated with Moody's decision.

Staff's Initial Brief, on pages 94 and 95, grossly distorts and misrepresents the record regarding the Company's debt issuances and the rationale for Moody's decision to change Consumers Energy's outlook from stable to negative. Staff has been advocating for using more debt and less equity in the Company's capital structure for several cases and implying that doing so would have no impact since the Company's credit was "solid" (4 TR 432). However, the record on this point is abundantly clear as both Standard and Poor's ("S&P") and Moody's view a reduction in the equity ratio (i.e., issuing more debt relative to equity) and ROE as a negative (4 TR 421-422, 4 TR 433). In fact, Moody's report on Consumers Energy is included in its entirety on the record and despite Staff's desire to mischaracterize this report, the first paragraph under ratings rationale leaves little doubt as to the risks of lowering ROE and equity ratio: "Although we continue to view the regulatory framework in Michigan to be credit supportive, financial metrics

of both CMS and Consumers Energy have weakened considerably due to tax reform and higher leverage to support elevated capital investments at the utility," stated Jairo Chung, Moody's analyst. "The possibility of a lower authorized ROE and equity capital structure could put further pressure on the organization's already weakened credit metrics," added Chung. See A-24 MRB-17, page 1.

Staff implies that the Company intentionally sought out an excessive amount of debt obligations during the COVID-19 pandemic at the expense of the Company's credit metrics, citing "$1.534 billion in long-term debt in the first 6-months of 2020." Staff's Initial Brief, page 94. This is a misrepresentation of the Company's actions and is a clear reflection of Staff's lack of understanding of sound financial management of a large utility, particularly during a time of financial crisis. As noted by Staff, the Company planned to issue $1 billion of long-term debt in 2020 and this level of debt is commensurate with an equity ratio of 52.5% recommended by the Company. Had the Company issued less debt it would require the equity ratio to be higher which Staff is asking the Commission and ALJ to reject. The $1.534 billion referenced by Staff includes a $300 million term loan issued in January 2020 with a one-year maturity which was raised prior to the onset of the COVID-19 pandemic. This term loan was issued to avoid over-reliance on commercial paper, is part of the Company's prudent liquidity management, and will be repaid in 2020. In addition, the amount includes $250 million that was used to subsequently refinance (retire) an existing, higher cost debt (locking in interest savings). Staff was made aware of these facts in the Company's response to discovery request 20697-ST-CE-1568. Despite Staff's argument in its Initial Brief, the Company did not raise $500 million more than forecasted in 2020 ($1.534 billion - $300 million Term Loan - $250 million debt refinance = $986 million). Accelerating the Company's long-term debt issuances in March and May 2020 was a direct

reaction to concerns regarding negative impacts of the COVID-19 pandemic. The Company was facing a potential dramatic reduction of cash flows from lower revenues as well as an increase in O&M and COVID-19-related expenses. There was also substantial volatility and uncertainty in the financial markets. Taking all of these factors into account, the Company made deliberate moves to lock into its near-term financing needs. As a result, the Company was able to maintain sufficient cash on hand to ensure the continuation of operations and weather the ongoing financial market turmoil and potential market disruption. The Company was also able to achieve a historic low interest rate on its May 2020 debt issuance (2.50%), a feat which could not have been accomplished without the Company's current strong credit rating.

Furthermore, the test year in this case is the calendar year 2021 and the Company's forecasted debt issuances and equity infusions would be used to support an equity ratio of 52.5%. If in fact the Company adopted Staff's position it would need to increase its debt issuance by hundreds of millions of dollars. It is disingenuous and contradictory for Staff to, on the one hand, claim the Company is using too little debt and then turnaround and claim that its issuing too much debt. In either case, the key question at hand is not the quantum of debt being raised but the relative use of debt versus equity. The record clearly demonstrates that using less equity than currently authorized will likely result in a downgrade of the Company; thus, the Commission and ALJ should reject Staff's recommended equity ratio and instead use the equity ratio recommended by the Company of 52.5%

Staff raises the question "whether the Company was indeed aware of the pandemic's detrimental impacts on the economy." It is understandable that, lacking the experience of navigating a large utility through a period of financial market turmoil, the Company's actions would appear counterintuitive. However, as explained above, the accelerated debt issuance was

indeed a direct response to the pandemic's detrimental impacts on the Company's liquidity. Staff can rest assured that the Company will always seek to execute its capital market strategy to achieve the lowest cost of debt while maintaining a financially sound balance sheet and liquidity position.

d. Staff's Suggestion that the Company Reduce Capital Expenditures is Without Merit

Consistent with Mr. Megginson's testimony, Staff's Initial Brief criticizes the Company's "borrowing activity" since the onset of the COVID-19 pandemic. Staff's Initial Brief, pages 95-96. In his direct testimony, Mr. Megginson suggested that the Company's continuation of its capital investment program is harmful to its credit quality and states that "a reduction in capital spending lowers the need for long-term borrowing and improves credit metrics such as the FFO/debt ratio." 8 TR 3097. As discussed by Mr. Bleckman in his rebuttal testimony, this is incorrect. Mr. Bleckman explained in rebuttal testimony that "reasonable and prudently recovered investments will generate cash flow as well as debt." 4 TR 727. Thus, Mr. Bleckman pointed out that Mr. Megginson completely disregards the corresponding use of proceeds from the debt issuance. In fact, as Mr. Bleckman explained:

> As reflected in this case, the Company is making necessary and significant investments in its electric system. These investments maintain and improve utility infrastructure, enhance safety of aging infrastructure, and ensure that customers receive the best service and value. The need for this infrastructure investment is consistent with the goals set forth in the 21st Century Infrastructure Commission Report. Taken in whole, these infrastructure investments and the resulting increase in rate base and associated cash flows have a positive impact on the Company's credit quality. [4 TR 727.]

This is why Moody's did not specifically attribute the Company's credit outlook change to the Company's capital expenditure program and, instead, attributed it to weakened credit metrics resulting from TCJA, falling FFO-to-Debt ratios (resulting from downward pressure on the Company's ROE and equity ratio), and cash flow concerns related to the COVID-19 pandemic.

Thus, Staff's suggestion that the Company reduce its capital spending on necessary safety and reliability projects is without merit and should be rejected by the Commission.

e. <u>Consideration of Rating Agency Adjustments Is Appropriate</u>

In its Initial Brief, Staff claims that the Company "has been trying over the past several cases to push the envelope by including items that have traditionally been excluded from rate case consideration." Staff's Initial Brief, page 96. Specifically, Staff cited the Company's concern that Staff "did not consider rating agency adjustments for items such as power purchase agreements, securitization debt, and leases in Staff's equity balance recommendation." Staff's Initial Brief, page 96. Even Staff's own Initial Brief acknowledges that the Company has never asked Staff or the Commission to include a separate calculation for these items, but only explained that credit rating agencies include items such as securitization debt, Power Purchase Agreements ("PPAs"), leases, etc. as "additional debt" when calculating equity ratios. See 4 TR 721. Thus, the Company's point has always been that, for example, a 52.50% equity ratio calculated by the Company "gets adjusted to a lower equivalent equity ratio as viewed by the credit agencies." 4 TR 721. The point is not that specific adjustments should be made in the regulatory proceedings, but rather that these items are viewed as "additional debt" which change the equity ratio from a credit agency perspective and "diminish the Company's credit strength." 4 TR 721. Thus, when Staff artificially reduces the common equity balance to arrive at a lower equity ratio, without any discussion of how that regulatory equity ratio gets further reduced by credit rating agencies who look at securitization debt, PPAs, leases, etc. as additional debt, it does so without a real discussion of how the Company's equity ratio is, in fact, balanced from the perspective of credit agencies and may become imbalanced if a regulatory equity ratio is too low. While Staff has historically chosen to ignore these adjustments and the impacts on the Company's credit strength, ignoring the

adjustments does not mean that those adjustments just go away or that credit rating agencies will stop considering those elements as additional debt. Instead, it only means that Staff chooses to pass by a thoughtful consideration of how those adjustments by credit agencies ultimately affect the Company's "balanced capital structure" and resulting credit strength.

2. Reply to the Attorney General and ABATE

a. The Attorney General's Position Regarding the Commission's "Directive" in Case No. U-17990 is Inaccurate

In her Initial Brief, the Attorney General says that the Commission's directive in Case No. U-17990 requires the Company to move to a 50/50 "balanced" capital structure. Attorney General's Initial Brief, pages 86, 87-88. The Company discussed the error in the Attorney General's position in its Initial Brief at pages 233 through 235. For the reasons set forth therein, the Commission should reject the position of the Attorney General and adopt the Company's proposed capital structure with an equity ratio of 52.50%.

b. The Attorney General's Attempt to Revisit and Link Changes in Long-Term Debt and Equity Between the Company and CMS Energy Must Be Rejected

In her Initial Brief, the Attorney General argues that the Company's proposed equity ratio of 52.50% is unreasonable because of "the Company's practice of funding a significant part of its equity contribution with long term debt issued at the parent company level." Attorney General's Initial Brief, page 86. The Company addressed the error in the Attorney General's position in its Initial Brief at pages 236 through 237. For the reasons set forth therein, the Attorney General's attempt to revisit and link changes in long-term debt and equity between the Company and CMS Energy, which has been rejected by the Commission in past cases, should similarly be rejected in this case and the Company's proposed capital structure should be approved.

c. The Attorney General's Claim that the Company's Equity Ratio is Higher than the Equity Ratio of Peer Group Companies is Inaccurate

In her Initial Brief, the Attorney General claimed that the Company's proposed equity ratio of 52.50% is unreasonable because "common equity ratios of the peer group . . . is approximately 45%." See Attorney General's Initial Brief, page 86. The Company addresses the error in the Attorney General's position in its Initial Brief at pages 237 through 238. For the reason set forth therein, which includes the Attorney General's continued comparison of equity ratios of parent companies to that of the Company rather than a comparison of equity ratios of utility-level companies to Consumers Energy, the Attorney General's argument should fail and the Commission should approve the Company's proposed capital structure.

d. The Attorney General's and ABATE's Arguments that the Company Presented No Quantitative Evidence Demonstrating How Cash Flow and Credit Ratios Changed Post-TCJA

In her Initial Brief, the Attorney General said that "the Company has not presented any quantitative analysis about how cash flow and credit ratios will change post-TCJA to support its proposed 52.50% equity ratio." Attorney General's Initial Brief, page 89. ABATE presented a similar argument. See ABATE's Initial Brief, pages 44-45. The error in this statement was addressed in response to ABATE witness Billie S. LaConte in Mr. Bleckman's rebuttal testimony at 4 TR 755. See also 4 TR 663-668; Exhibit A-27 (MRB-11); Exhibit A-142 (MRB-17). As discussed therein, negative cash flow and credit metric impacts of the TCJA have been documented extensively by the Company in this case. See 4 TR 663-668; Exhibit A-27 (MRB-11); Exhibit A-142 (MRB-17). Further, in July 2020, Moody's changed their credit outlook for Consumers Energy from stable to negative, specifically identifying the negative impacts of the TCJA. See Exhibit A-142 (MRB-17). Finally, as discussed by Mr. Bleckman in his rebuttal testimony, it is

the Attorney General that has consistently tried to evade the consistency of the Company's position since the inception of the TCJA, and further failed to provide a meaningful quantitative analysis of the impacts of TCJA or COVID-19, leaving the Attorney General's testimony unsubstantiated and unsupported. 4 TR 733. In fact, the Attorney General has gone so far as to make the following statements:

> Even, if there was some decrease in the ratio were to occur, the Company has ample room between the pro-forma cash flow to debt coverage ratios and the minimum ratios set by S&P and Moody's *before any degrade would occur.* [Attorney General's Initial Brief, page 92 (emphasis added) (footnote citation omitted).];
>
> *There is no risk of a S&P downgrade* of the Company's debt due to the TCJA cash flow changes… [Attorney General's Initial Brief, pages 92-93 (emphasis added).]; and
>
> The Company has not demonstrated that there has been any deterioration to the fundamentals underlying its financial condition. [Attorney General's Initial Brief, page 95].

These statements (and ABATE's position) seemingly ignore the credit outlook downgrade that the Company received from Moody's in July 2020 and every reason provided by Moody's for that downgrade. See Exhibit A-142 (MRB-17). These statements and ABATE's position demonstrate that the Attorney General and ABATE are seriously out of touch with the financial realities of a utility in the wake of TCJA and the COVID-19 pandemic; therefore, the position of the Attorney General and ABATE should be disregarded in this case.

e. PPAs are a Factor Considered by Credit Agencies in Determining the Company's Credit Worthiness

In her Initial Brief, the Attorney General says that "the Commission should disregard the entire argument about PPAs being a factor to justify a higher equity ratio." The Attorney General also cites to Case No. U-20165 saying that the Commission approved a Financial Compensation Mechanism ("FCM") that allows the Company to recover the imputed cost of equity capital

forfeited in relation to new PPAs. Attorney General's Initial Brief, page 90. A similar argument was presented by ABATE witness LaConte and set forth in ABATE's Initial Brief. See ABATE's Initial Brief, pages 45-47. As Mr. Bleckman explained in his rebuttal testimony, in the last five years, S&P has adjusted the Company's metrics by increasing debt by between $570 million and $992 million each year to account for existing PPAs. 4 TR 757. He further explained that the Company's FCM does not offset any of the large existing PPAs as it is only applicable going forward on new PPAs that the Company enters into. 4 TR 757. The FCM, however, was never intended to address the full impact of PPAs on rating agency imputed debt, and in particular existing PPAs. 4 TR 757. See also Exhibit A-140 (MRB-15) wherein Mr. Bleckman highlights and quantifies the relatively large impact PPAs have on S&P imputed debt. 4 TR 757. Thus, even considering the effects of the FCM, PPAs still lower the Company's credit metrics and negatively impact the rating agencies' view of the Company's credit quality. 4 TR 757. For these reasons, the Attorney General's and ABATE's argument fails.

f. ABATE's Reliance on the Commission's Order in Case No. U-20322 in Support of a Lower Equity Ratio is Misplaced

In its Initial Brief, ABATE says that the Company's requested equity ratio "directly contradicts the Commission's prior directive on this issue," and cites to Case No. U-20322 in support of its assertion that a reduced equity ratio is appropriate. See ABATE's Initial Brief, pages 46-47. The Company addresses the error in ABATE's position in its Initial Brief at pages 238 through 239. For the reasons set forth in the Company's Initial Brief, ABATE's position should be rejected and the Company's proposed capital structure and equity ratio of 52.50% should be adopted by the Commission.

g. ABATE's Revised Estimates for the Company's Projected 2020 and 2021 Long-Term Debt Issuances Contain Errors and Should Be Rejected

In its Initial Brief, ABATE says that the Company's long-term debt costs are "excessive" and "should be rejected" by the Commission. See ABATE's Initial Brief, pages 47-48. The Company addresses the error in ABATE's position in its Initial Brief at pages 239 through 240. For the reasons set forth in the Company's Initial Brief, ABATE's position should be rejected and the Company's proposed capital structure and equity ratio of 52.50% should be adopted by the Commission.

3. Reply to RCG

In its Initial Brief, RCG, a party that sponsored no evidence in this case, says the following regarding the Company's proposed capital structure:

> RCG advocates that the Company's capital ratio request and common equity return request should be rejected. More specifically, the Company's debt to equity ratio should be reduced for ratemaking purposes. At present CECO's debt to equity ratio is overly rich and expensive. This is despite the Commission's order in U-17990 which essentially questioned the existence of such an expensive debt and equity ratio and suggested movement toward reducing the high capital structure ratio. [RCG's Initial Brief, page 17.]

RCG then goes on to allegedly quote excerpts from a June 2018 Moody's Report and advocate for the "official or judicial notice of" the same, calling it a "fairly recent public record of a major rating agency's evaluation of Consumer Energy Company." All of RCG's arguments related to the Company's proposed capital structure and equity ratio its Initial Brief are broad, conclusory statements offered with no reference to the record. Further, although RCG sponsored no evidence in the form of testimony or exhibits as provided by the schedule in this matter, it now asks the Commission to take "official or judicial notice" of a 2018 Moody's report – essentially attempting to introduce evidence at this final stage of this case. The introduction of "evidence" at

this stage of the proceeding is inappropriate, necessitating not only the denial of official or judicial notice of the June 2018 Moody's Report, but also the striking of those portions of RCG's Initial Brief that allegedly quote to the same (as found on page 18 of RCG's Initial Brief). Additionally, the most recent Moody's July 2020 report has been made part of the record and can be found at Exhibit A-142 (MRB-17). As discussed above, this report emphasizes the negative effect of pressure placed on the Company's ROE and equity ratio and wholly contradicts all arguments of RCG. For these reasons, RCG's arguments, which are void of any evidentiary basis, should be given no weight in these proceedings, RCG's request that the Commission take official or judicial notice of the June 2018 Moody's Report should be denied, and the excerpt that is allegedly quoted from the June 2018 Moody's Report (found at page 18 of RCG's Initial Brief) should be stricken from the record.

B. <u>ROE</u>

Consumers Energy's currently authorized ratemaking ROE for its electric business is 10%. Consumers Energy is requesting that the authorized ROE be set at 10.5%. Company witness Todd A. Wehner's recommended 10.5% ROE is at the midpoint of his range of 10.00% to 11.00%, despite the fact that the Company's significant infrastructure investment would justify an ROE potentially above the high end of this range. Since the close of the record in the Company's last electric rate case, the world has been impacted by the effects of the COVID-19 pandemic. This pandemic, on the heels of the effects of the TCJA, has important and material negative impacts on the utility industry and the ROE analysis in this case. The COVID-19 pandemic (alongside the enactment of TCJA) constitutes a radical change in the underlying economics impacting Consumers Energy. In fact, the Company has suffered a credit outlook change from "stable" to "negative" as a result of these factors. Failure to adopt an adequate ROE in light of these impacts

could have a significant detrimental impact on the Company's ability to maintain its current, but now uncertain, credit metrics.

1. Consistent with Prior Commission Orders, an Increase in the Authorized ROE for the Company is Warranted

Importantly, less than one year ago, on September 26, 2019, the Commission issued its Order in Case No. U-20322, the Company's Gas Rate Case ("U-20322 Order"). In that case, Staff recommended an ROE of 9.65%, the Attorney General recommended a proposed ROE of 9.50%, and ABATE recommended a proposed ROE of 9.22%. At that time, the Commission determined that the Company had "a solid credit rating" and further determined that the Company had not demonstrated that "economic and market conditions and the TCJA have significantly impacted the Company's cash flow or its credit rating." See U-20322 Order, page 71. The Commission also stated that gradual ROE reductions in Michigan (for Consumers Energy and DTE Energy ("DTE")), "reflects the improved economy in Michigan and the decreased business and financial risk." See U-20322 Order. With all of those "positives," the Commission still deemed the proposed ROEs of 9.65%, 9.50%, and 9.22% to be too "low," and approved a 9.90% ROE. See U-20322 Order, page 72. In the 10.5 months since the issuance of the U-20322 Order, additional impacts of the TCJA have trickled through cash flow metrics and the COVID-19 pandemic hit. In the wake of the COVID-19 pandemic, Moody's issued its July 2020 report changing the Company's credit outlook from "stable" to "negative." See Exhibit A-142 (MRB-17). In that report, Moody's specifically cited the financial metrics of the Company as having "weakened considerably due to tax reform," and further stated that "[t]he possibility of a lower authorized ROE and equity capital structure could put further pressure on the organization's already weakened credit metrics." See Exhibit A-142 (MRB-17), page 1. The report went on to confirm that the Company's "metrics began to weaken starting in 2018 primarily due to tax reform," and said that

"[b]y 2019" the FFO to Debt for the Company had fallen to 20%, "leaving little financial flexibility at their current rating levels." Exhibit A-142 (MRB-17), page 1. The report then cites to the "rapid spread of the coronavirus outbreak" and "severe global economic shock" as the basis for "credit effects" that the credit ratings agency described as "unprecedented." See Exhibit A-142 (MRB-17), page 1. The report went on to indicate that Moody's will be "watching for changes in electricity usage, utility bill payment delinquency, and regulatory response to counter [] effects on earnings and cash flow," and indicated that a rating downgrade could be considered for Consumers Energy "if there is material deterioration in the Michigan regulatory support; if the utility's authorized ROE or equity capital structure continue to be under pressure; or if the credit profile of [the Company] . . . deteriorates such that CFO pre-WC to debt is . . . below 20% for Consumers Energy." Exhibit A-142 (MRB-17), pages 1-2. Thus, since the Commission issued its U-20322 Order, the following changes have occurred: (i) the Company's previously "solid credit rating" is now at risk; (ii) the economy in Michigan has seriously deteriorated and significantly increased business and financial risk; and (iii) Moody's has now confirmed that economic and market conditions post-TCJA and the COVID-19 pandemic have significantly impacted the Company's cash flow and/or its credit rating outlook (with a warning that negative impacts to the Company's credit rating may follow).

Every elemental change in less than one year would indicate the necessity to increase the ROE. Still, in the face of the deterioration of every element the Commission deemed positive and used as a basis for reducing the Company's ROE at that time, Staff, the Attorney General, and ABATE all continue to ignore such necessity and demonstrate a steadfast pursuit to further reduce the Company's ROE – even though in good times, the Commission still deemed anything below a 9.90% as too low of an ROE. In the wake of the combined effects of the TCJA and the COVID-

19 pandemic, any suggestion of lowering the Company's ROE, particularly in light of the warnings of the Moody's July 2020 report, is certainly perilous to the Company's credit worthiness and financial health and must be rejected by the Commission in favor of an increase in the ROE to combat these radical changes and their negative impacts on the Company. In fact, consistent with the Commission's March 29, 2018 Order in Case No. U-18322, the combination of the TCJA and the COVID-19 pandemic represent a "radical change in underlying economic conditions" that would make it "realistic" to make a "significant change in ROE" – by authorizing an increase in the same.

2. Reducing the Company's ROE Places Its FFO-To-Debt Ratio at Risk, Thereby Placing its Credit Strength at Risk

In this case, none of the parties place much if any emphasis on the Company's FFO-to-Debt ratio. This is also called the "CFO pre-WC to debt" ratio by Moody's in its July 2020 report, discussed above. The calculation of this financial metric includes, in part, both the equity ratio and the authorized ROE of the Company; thus, there needs to be a balance between the Company's equity ratio and ROE that will ensure that this key financial metric does not drop and cause significant credit deterioration. 4 TR 664; Exhibit A-142 (MRB-17). As Mr. Bleckman testified, an equity ratio of 52.5% and an ROE of 10.50% results in an FFO-to-Debt ratio that is sufficient to strike this balance. See 4 TR 664. In this case, Staff, the Attorney General, and ABATE filed testimony in which each recommends the ROE and proposed equity ratio for Consumers Energy be set as follows:

	Proposed ROE	Proposed Equity Ratio	Implied FFO to Debt
Consumers Energy	10.5%	52.5%	19.8%
Staff	9.75%	51.11%	18.2%
Attorney General	9.5%	50%	17.3%
ABATE	8.9%	51.5%	17.5%

See 4 TR 418.

As demonstrated above, and discussed in the Company's Initial Brief (see Consumers Energy's Initial Brief, page 220), the proposed ROE of Staff, the Attorney General, and ABATE, combined with each party's respective proposed equity ratio, results in an FFO-to-Debt ratio that would certainly impair the Company's credit metrics. As Moody's indicated in its July 2020 report, an FFO-to-Debt ratio below 20% is one of the bases it may use to evaluate the Company for a potential downgrade in the Company's credit rating.

The FFO-to-Debt ratio is a financial metric that compares a company's cash flow from operating activities to a company's leverage, or debt outstanding. It can also be described as a sort of payback ratio, reflecting the company's ability to repay its outstanding debt with operating cash flow. 4 TR 664. A higher FFO-to-Debt ratio, which reflects a cash flow from operating activities that is at a level viewed as favorable to offset or otherwise reduce the risk associated with the Company's ability to pay its debts, is indicative of a lower financial risk and a resulting higher credit rating. 4 TR 664. A higher credit rating, in turn, results in lower financing rates. 4 TR 664. This is comparable to a bank's credit evaluation for someone requesting a personal loan. After reviewing personal income and outstanding debt, banks generally offer lower financing rates to

individuals who are better able to service debt with their income, indicating a relatively higher credit quality. 4 TR 664.

While other parties, as discussed below, are suggesting lowering both the existing authorized equity ratio of 52.05% and the authorized ROE, Mr. Bleckman explained that such reductions would reduce the Company's overall cost of capital and rate of return. 4 TR 665. This, in turn, lowers the Company's cash flow and FFO-to-Debt ratio. 4 TR 665. In such an event, the Company would also have to increase its long-term debt to achieve an equity ratio of 52.05%, which would also weaken the Company's FFO-to-Debt ratio. See 4 TR 665. As Mr. Bleckman further explained, lowering the Company's FFO-to-Debt ratio, on top of the significant reductions already caused by the enactment of the TCJA, and now COVID-19, would lead to a "major deterioration in the credit quality of the Company as assessed by the rating agencies' key financial metric." See 4 TR 666. To avoid this deterioration, the Company's capital structure, and equity ratio of 52.50% and an ROE of 10.50% must be approved by the Commission.

3. Reply to Staff, the Attorney General, ABATE, and Walmart Regarding National ROEs and Properly Balancing the ROE and Equity Ratio

Staff, the Attorney General, ABATE, and Walmart all rely in some manner on the claim that there is a trend toward lower ROEs in recent rate cases nationally to suggest that Consumers Energy's ratemaking ROE should be reduced. See Staff's Initial Brief, page 105; Attorney General's Initial Brief, pages 121-122; ABATE's Initial Brief, pages 31-32; and Walmart's Initial Brief, pages 5-7. The error in this argument was discussed in the Company's Initial Brief at pages 266 through 268.

Additionally, each of these parties analyze equity ratio and ROE as distinct and separate elements and failed to acknowledge that there is a meaningful interplay between a company's ROE and equity ratio in the form of their impacts on FFO-to-Debt. The corresponding equity ratio of

the national ROEs was not analyzed by the other parties in this case, which is in error. By way of example, when looking at the proxy groups of these parties, there is a meaningful interplay between each company's ROE and equity ratio in the proxy groups as depicted in the mathematical equations set forth in Mr. Wehner's Exhibit A-115 (TAW-3). A utility's ROE and equity ratio go hand in hand in determining favorable credit standing for the utility. Thus, if one is lowered, in order to neutralize credit risk impacts or mitigate credit risk impacts, the other must be increased. As discussed by Mr. Wehner, the credit rating agencies have specifically identified both ROE and equity ratio as key tools for mitigating credit risk impact as noted in the following excerpts from Moody's and Fitch Ratings, Inc. ("Fitch"):

> [M]ost utilities will attempt to manage the negative financial implications of tax reform through regulatory channels…They could propose to increase equity layer in rates *or* level of the authorized return on equity. In these cases, a cooperative regulatory relationship matters most for a given utility. [Moody's, January 24, 2018. 4 TR 367 (emphasis added).]
>
> Regulatory Support Key to Mitigating Downward Migration in Ratings…many tools could be employed, including increase in authorized equity ratio and/or return on equity. [Fitch, January 24, 2018. 4 TR 367 (emphasis added).]

Thus, while much emphasis has been placed on the average ROE nationally and of individual companies in the proxy group by Staff, the Attorney General, and ABATE, it is also important to look at the average equity ratios of the companies in each proxy group as well. In this case, equity ratios of the proxy groups of the Company, Staff, the Attorney General, and ABATE are as follows:

Company	53.2% (Exhibit A-140 (MRB-15))
Staff	53.9% (Exhibit A-140 (MRB-15))
Attorney General	53.0% (Exhibit A-140 (MRB-15))
ABATE	53.4% (Exhibit A-140 (MRB-15))

While Staff, the Attorney General, and ABATE all promoted a reduced ROE, they all neglected to mention that the lower ROEs of their own proxy groups are supported with substantially higher equity ratios which is consistent with the mathematical equations demonstrated by Mr. Wehner. None of the parties appear to know how ROEs will now trend with the onset of the COVID-19 pandemic and, a suggestion that ROEs will continue to trend downward may not be accurate at all. In this case, the Company has proposed to reduce its equity ratio from just over 53% to 52.5%; thus, its ROE, on balance, should not be similarly reduced but, rather, increased to offset just the reduction in equity ratio and further, to mitigate now known credit risks discussed above.

4. Capital Asset Pricing Model, Empirical Capital Asset Pricing Model, and Risk Premium Model

The Capital Asset Pricing Model ("CAPM"), Empirical CAPM ("ECAPM"), and Risk Premium analyses performed by Mr. Wehner calculated expected ROE at some level of premium above a risk-free rate. These analyses resulted in the following average ROEs:

Model	Method	Company
ECAPM	Company's Projected Risk Premium ROE	9.38%
CAPM	*Staff's Methodology* Projected CAPM Analysis (From Case No. U-20322)	14.30%
Risk Premium	Company's Analysis With Spread and Projected Long-term Bond Rates	15.67%

See Exhibit A-14 (TAW-1), Schedule D-5, pages 2-4, 12.

A discussion of these analyses can be found at 4 TR 387-405 and in the Company's Initial Brief at pages 254 through 257.

None of the other ROE witnesses in this case performed an ECAPM analysis; thus, this analysis, along with the risk premium analysis were challenged by Staff, the Attorney General, and ABATE, who all used CAPM analyses and inputs for their respective analyses that varied from that of the Company. The Company maintains that portions of the inputs of each of the other parties in this case are flawed and the Commission should accept the ECAPM and Risk Premium model results of the Company.

a. <u>Reply to Staff</u>

In Staff's Initial Brief, Staff discusses its use of historical and projected CAPM analyses and Risk Premium Analysis at pages 100 through 101. Staff's Initial Brief continues by discussing its position regarding alleged errors in the Company's CAPM and ECAPM analyses, and the Company's Risk Premium approach at pages 102 through 105. The error and flaws in Staff's position are explained in the Company's Initial Brief at pages 259 through 262. For the reasons set forth in the Company's Initial Brief, Staff's CAPM and Risk Premium analyses result in a forecasted market premium that is understated which, in turn, leads to resulting ROE proposals that are similarly understated and should therefore, not be accepted by the Commission.

b. <u>Reply to the Attorney General and ABATE</u>

The Attorney General discusses her use of the CAPM model and Utility Risk Premium approach in her Initial Brief at pages 109 through 112. The Attorney General then goes on to criticize the Company's CAPM analysis by saying that the Company "fabricated calculations to achieve a desired result," and walks through a discussion of the purported benefits of Value Line betas, her disagreement with arguments of Mr. Wehner, and Mr. Coppola's use of long-term

historical risk premiums for both the CAPM and Utility Risk Premium analyses. See Attorney General's Initial Brief, pages 113-118. The Attorney General then says "[n]othwithstanding Mr. Wehner's arguments, there is academic disagreement with the validity of the original studies that led to the use of ECAPM." The Attorney General concludes by criticizing the Company's use of an ECAPM analysis saying that it "produces a faulty cost of equity rate with a bias toward overstating and inflating the true cost of equity capital," and calls it an "alternative approach to the traditional CAPM method." Attorney General's Initial Brief, pages 119-120.

ABATE also criticized the Company for using "an uncommon calculation for beta" in its CAPM analysis, criticized the Company for "improperly" applying alpha in its ECAPM analysis, which allegedly "produced an overstated ROE" (calling it a "double adjusted beta"), and criticized the Company's Risk Premium method because of the Company's use of "an unsuitably short-term period of eighteen years (1942-1951 & 2011-2018) to estimate the historical spread on electric utility common stock over utility bond yields." ABATE's Initial Brief, pages 36-39.

As an initial matter, it is important to understand that although Staff, the Attorney General and ABATE all performed CAPM and Risk Premium analyses, notably, Staff used a projected risk premium for its CAPM and Risk Premium analyses, and the Attorney General and ABATE did not.[17] See 4 TR 450. This failure to use a projected risk premium was in error. As Staff has noted in the past, including in Case No. U-20322, there is a concern with using these models without using a projected risk premium. 4 TR 450. As Mr. Wehner explained, "[t]his is presumably the rationale for Staff's inclusion of a projected risk premium in both their CAPM and Risk Premium Analysis in prior cases." 4 TR 450. In this case, Staff's analysis calculated a projected risk premium of 18.6% which, if it alone were applied to the Attorney General's and ABATE's

[17] Staff calculated an 18.60% projected risk and a resulting projected CAPM estimate of 13.21%. 4 TR 450. Staff witness Megginson dismissed the results as being well above a reasonable ROE to consider in this case. 4 TR 450.

respective analyses and proxy groups would be supportive of Mr. Wehner's recommended ROE range. See 4 TR 450. As Mr. Wehner further explained:

> ABATE's and the AG's analyses should be adjusted to use a projected risk premium in proper combination with their application of a projected risk-free rate. Had they done so, their analyses would have been much more supportive of my recommended ROE range of 10% - 11% in this case. My analysis included the use of the total beta CAPM, ECAPM, and Comparable Earnings analyses which further supports my range, but one need not even go so far as to include them for their results to look similar to, and supportive of, my recommended range. Simply applying Staff's projected risk premium to Mr. Coppola's and Ms. LaConte's analysis would have produced results that avoid some of the concern Staff has mentioned in the past. [4 TR 450-451.]

The error of the arguments of the Attorney General and ABATE are further addressed in the Company's Initial Brief at pages 264 through 265. Thus, for the reasons set forth above and the reasons set forth in the Company's Initial Brief, the Attorney General's and ABATE's CAPM and Risk Premium analyses should be rejected by the Commission as faulty and the Company's ECAPM and Risk Premium analyses should be accepted by the Commission as appropriate for determining the appropriate ROE in this matter.

5. <u>Discounted Cash Flow Analysis</u>

a. <u>Reply to Staff, the Attorney General, and ABATE</u>

In Staff's Initial Brief, Staff does not discuss the propriety of its Discounted Cash Flow ("DCF") analysis but, rather, only discusses its disputes with the Company. See Staff's Initial Brief, pages 110-111. As Mr. Wehner explained in his rebuttal testimony, the Company's DCF analysis was performed using dividend growth estimates from analysts versus Staff's which utilized earnings growth. 4 TR 454. Staff witness Megginson contests the use of dividend growth, citing only his preference for earnings growth and the application of the same by Staff and other witnesses in this case. See also Staff's Initial Brief, page 110. As discussed in the Company's

Initial Brief, Mr. Wehner utilizes dividend growth estimates versus earnings guidance used by Staff because use of dividend growth is consistent with the fundamental basis of the model, as validated by the original paper *Capital Equipment Analysis*, from Gordon and Shapiro. Consumers Energy's Initial Brief, page 263; see also Exhibit A-132 (TAW-20), page 3; 4 TR 411. As Exhibit A-132 (TAW-20), page 5, makes very clear, the intent of the original authors is as follows: "Translated, this means that the rate of profit at which a share of common stock is selling is equal to the current dividend, divided by the current price (the dividend yield), plus <u>the rate at which the dividend is expected to grow.</u>" 4 TR 410 (emphasis added). This is not disputed by Staff, but is, instead, conveniently ignored by Staff. In fact, the Company's Initial Brief at page 263 discusses how correcting for Staff's less appropriate input would result in materially higher ROE estimates. Notably, although Staff witness Megginson, as recently as Case No. U-18124, applied the same model as Mr. Wehner did in his direct testimony in this case, Mr. Megginson, without explanation, in this case, changed his approach to the analysis. See Consumers Energy's Initial Brief, page 263; 4 TR 456. As Staff has done with other calculations, Staff appears to be using a new approach to the analysis, without any theoretical basis, as just another way to "mechanically and artificially depress the resulting outputs of Staff's DCF analysis." 4 TR 456.

The Attorney General also used a DCF analysis. While Mr. Coppola acknowledges that dividend growth is the appropriate input in his direct testimony (see 8 TR 5036, lines 3 and 4; and the Attorney General's Initial Brief, page 108), he nevertheless applies earnings estimates instead. 8 TR 5036; Attorney General's Initial Brief, pages 108-109. Mr. Wehner's DCF analysis used dividend growth and dividend yield, where available, which is, as Staff witness Megginson confirmed in testimony, and the Attorney General confirmed in her Initial Brief, the theoretical underpinning of the DCF model. See 8 TR 5036. ABATE similarly utilized earnings estimates in

the development of its DCF model and calls Consumers Energy's reliance on growth in dividends "improper." For the same reasons that Staff and the Attorney General's DCF outputs are inaccurate, ABATE too has performed a DCF analysis which results in inaccurate and artificially reduced ROE estimates.

6. Comparable Earnings Analysis

a. Reply to the Attorney General and ABATE

In their Initial Briefs, the Attorney General and ABATE criticize the Company's use of the Comparative Earnings analysis in support of a 10.50% ROE. See Attorney General's Initial Brief, pages 120-121; ABATE's Initial Brief, page 41. As discussed in the Company's Initial Brief at page 266, the Company's Comparable Earnings method has a long history of use in estimating ROE for utility rate cases that pre-dates any of the other quantitative methodologies relied upon by the parties today, and the Commission has affirmatively recognized it as an appropriate and helpful method for estimating ROE. Thus, there is simply no basis for the Attorney General's and ABATE's criticism of this methodology.

7. Other Issues

a. Reply to RCG

In its Initial Brief, RCG, a party that sponsored no evidence in this case, says the following regarding the Company's proposed ROE:

> RCG advocates that the Company's capital ratio request and common equity return request should be rejected. More specifically, the Company's debt to equity ratio should be reduced for ratemaking purposes. At present CECO's debt to equity ratio is overly rich and expensive. This is despite the Commission's order in U-17990 which essentially questioned the existence of such an expensive debt and equity ratio and suggested movement toward reducing the high capital structure ratio. [RCG's Initial Brief, page 17.]

RCG then goes on to allegedly quote excerpts from a June 2018 Moody's report and advocate for the "official or judicial notice of" the same, calling it a "fairly recent public record of a major rating agency's evaluation of Consumer Energy Company." As discussed above, all of RCG's arguments related to the Company's proposed capital structure and equity ratio in its Initial Brief are broad, conclusory statements offered with no reference to the record. Further, although RCG sponsored no evidence in the form of testimony or exhibits as provided by the schedule in this matter, it now asks the Commission to take "official or judicial notice" of a 2018 Moody's report – essentially attempting to introduce evidence at this final stage of this case. The introduction of "evidence" at this stage of the proceeding is inappropriate, necessitating not only the denial of official or judicial notice of the June 2018 Moody's report, but also the striking of those portions of RCG's Initial Brief that allegedly quote to the same (as found on page 18 of RCG's Initial Brief). Additionally, the most recent Moody's July 2020 report has been made part of the record and can be found at Exhibit A-142 (MRB-17). As discussed above, this report emphasizes the negative effect of pressure placed on the Company's ROE and equity ratio and wholly contradicts all arguments of RCG. For these reasons, RCG's arguments, which are void of any evidentiary basis, should be given no weight in these proceedings, RCG's request that the Commission take official or judicial notice of the June 2018 Moody's report should be denied, and the excerpt that is allegedly quoted from the June 2018 Moody's report (found at page 18 of RCG's Initial Brief) should be stricken from the record.

b. <u>Reply to the MEC Coalition</u>

In its Initial Brief, the MEC Coalition recommends: (i) that the Company's overall performance across multiple metrics should inform the authorized ROE in this case; and (ii) that the Commission should adopt MEC Coalition witness Douglas B. Jester's recommendation to set the ROE at the 35th percentile. These recommendations should be rejected by the Commission.

According to the MEC Coalition's Initial Brief, its witness, Mr. Jester, recommends monitoring performance factors with respect to reliability, affordability, and environmental protection as they relate to potential PBR. See MEC Coalition's Initial Brief, pages 182-186. In fact, he recommends the Commission take explicit steps toward developing and implementing a PBR approach. Based on some basic analytics, Mr. Jester estimates Company ranges for his initial performance factors, and assigns the Company to the 35th percentile and, therefore, recommends the Commission authorize the Company's ROE at the same level of the reasonable zone of ROEs. See MEC Coalition's Initial Brief, pages 182-193.

As Mr. Wehner explained in his rebuttal testimony, this PBR represents broad, sweeping changes to traditional ratemaking, which is not appropriate in this rate case. 4 TR 494. As Mr. Wehner further explained, "[t]he Company does not believe a single utility's general rate case to be the appropriate venue for such a discussion, no matter the results of Mr. Jester's preliminary assessment." 4 TR 494. As Mr. Wehner discussed in his rebuttal testimony, the Commission regulates a number of regulated utilities, not just Consumers Energy, and any change from traditional ratemaking to potential PBR should include all stakeholders. 4 TR 494. Mr. Wehner went on to explain his disagreement with Mr. Jester's performance metrics, as Mr. Jester failed to provide any rationale in support of his performance metrics being applied to an ROE determination, and his further disagreement with Mr. Jester's assignment of the Company performance to the 35th percentile, using metrics and dated time periods chosen by Mr. Jester alone and randomly settling on a 35th percentile. See 4 TR 494-495. For these reasons, the Commission should give little or no weight to Mr. Jester's proposed recommendations.

c. <u>Reply to Walmart</u>

Walmart's Initial Brief includes a claim that Consumers Energy's proposed ROE in this case will "have an adverse customer impact," but does not explain what those impacts are or how

they are detrimental. Walmart's Initial Brief, page 3. Further, Walmart comments that "including CWIP in the rate base shifts risk onto customers rather than utility investors, who, traditionally, have been compensated for bearing the risk through the authorization of a return on investment." Walmart's Initial Brief, page 5. Walmart goes on to say,

> Although Walmart acknowledges that the Commission has a history of allowing utilities to include CWIP in the rate base, any determination that CWIP may be included in the rate base in this case should also be reflected in the authorized ROE. [Walmart's Initial Brief, page 5.]

This argument was refuted by Company witness Myers, and a discussion of the error of Walmart's argument can be found in the Company's Initial Brief at page 208. For the reasons discussed therein, the Commission should reject Walmart's arguments regarding customer impacts and CWIP and impacts on ROE.

V. ADJUSTED NET OPERATING INCOME

A. Jurisdictional Revenues and Sales Forecast

1. Sales Forecast

a. Reply to Energy Michigan

On pages 13 through 17 of its Initial Brief, Energy Michigan, Inc. ("Energy Michigan") criticizes the system losses attributed to retail open access customers, as assumed in the Company's sales forecast as presented by Company witness Eugene M. Breuring. The Company responded to Energy Michigan's arguments on pages 270 through 271 of the Company's Initial Brief and continues to rely on that response here. For the reasons discussed in the Company's Initial Brief, Energy Michigan's argument should be rejected because it is unnecessary.

B. Other O&M Expense

1. General Distribution and Energy Supply O&M Expense

a. Reply to Staff

Beginning on page 132 of Staff's Initial Brief, Staff proposes to apply a penalty reduction of $12,584,000 for Distribution O&M expense because Staff asserts that the Company's inflation adjustment to Distribution O&M expense only "briefly and vaguely described how inflation impacts their 2021 projections." In support of this position, Staff argues: (i) that the inflation adjustment cannot be traced back to the projected test year and (ii) that Staff could not allegedly audit the Company's inflation adjustment to Distribution O&M expense. See Staff's Initial Brief, page 134. The arguments should be rejected. In responding to Staff, the Company continues to rely on the arguments set forth in pages 274 through 277 and 351 through 354 of its Initial Brief.

As explained in the Company's Initial Brief, in the developing of the Company's Distribution O&M, as presented in Exhibit A-36 (RTB-9) through Exhibit A-39 (RTB-12), the Company started with a base Distribution O&M expense for years 2019, 2020, and 2021 which was based on projected costs of work by the program managers for each Distribution O&M spending program. 6 TR 1336. After building those base amounts, the Company then applied an inflation factor of 3.2% to labor costs and an inflation factor of 1.9% to non-labor costs. This process is demonstrated in the "As Filed" portion of Exhibit A-198 (HJM-79).[18]

Staff's assertion that the Company only "briefly and vaguely described how inflation impacts their 2021 projections" is not accurate. In two discovery responses that are provided as

[18] In the process of responding to Staff discovery concerning the inflation adjustment to Distribution O&M expense, the Company inadvertently indicated that it had used a 1.5% non-labor inflation rate, instead of the 1.9% rate explained above. See Staff witness Shannon Rueckert's direct testimony at 8 TR 4723-4724. The Company discovered this issue in the process of developing its rebuttal testimony and therefore, provided Exhibit A-198 (HJM-79) to show the correct Distribution O&M inflation adjustments and also revised its previously submitted discovery response concerning the development of Distribution O&M to correct the inadvertent error.

Exhibit A-148 (RTB 24), the Company explained that, projected Distribution O&M expenses are based on projected costs of work by the program managers for each Distribution O&M spending program.[19] 6 TR 1336. The Company then provided detailed information regarding why O&M expenses were increasing in certain Distribution O&M subprograms, other than in Service Restoration, with citations to Mr. Blumenstock's direct testimony. The Company also provided Exhibits A-38 (RTB-11) and A-39 (RTB-12) which extensively detailed actual and projected O&M expenses for the Company's Distribution O&M subprograms in 2018, 2019, 2020, and 2021.

Contrary to the extensive amount of information provided by the Company, Staff erroneously insists that the Company's inflation adjustment is somehow invalid because it "cannot be traced from the projected test year back to the historic test year." Staff's Initial Brief, page 134. This is not a valid basis to disallow the Company's Distribution O&M inflation adjustment. Staff does not establish why it is necessary for Distribution O&M inflation to trace back to the historic test year or why the method that the Company has used to adjust Distribution O&M expense in rate case proceedings is now invalid. Staff also did not present any analysis of the Company's projected work and projects to validate the Company's projected Distribution O&M expenses.

It is also incorrect that Staff has been unable to audit the Company's inflation adjustment Distribution O&M expense. In its direct case, Staff asserted that to "determine 'Inflation expense,' the Commission needs 1.) a rate and 2.) an amount to apply the rate." 8 TR 4724. Therefore, the Company responded by providing the requested information in Exhibit A-198 (HJM-79). 6 TR 2264-2265. Company witness Myers explained that this exhibit provides the inflation base, which represents the amount the inflation rate is applied to, and it also provides the inflation rates.

[19] Staff witness Rueckert, who supported Staff's inflation position, appeared to have not considered the Company's discovery responses explaining how Distribution O&M expense was developed.

Ms. Myers further clarified that the inflation amounts included on lines 1 through 6 of the exhibit, match the inflation amounts shown on Staff's Exhibit S-12 and that Exhibit A-198 (HJM-79) provides a detailed calculation of the inflation amounts shown on Exhibit S-12. Based on the information contained in Exhibit A-198 (HJM-79), the Company has provided an inflation rate and an amount to apply the rate, as requested by Staff. Through discovery, the Company established that Staff witness Shannon Rueckert, who supported Staff's inflation position, was able to review Exhibit A-198 (HJM-79) and confirmed that there are no computational or mathematical errors. See Exhibit A-199, pages 1-4. Since the Company provided Staff exactly what it requested, and Staff was able to verify the calculations provided in the Company's Exhibit A-198 (HJM-79), Staff's claim that it was unable to audit the Company's inflation adjustment for Distribution O&M expense is unsupported.

In addition to the fact that the Company's projected Distribution O&M expenses are based on projected costs of work, and therefore cannot be traced from the projected test year to the historic year, Staff's attempt to argue that a valid inflation adjustment must be able to be traced back to the historic year is an attempt to move the goal post on the Company. Staff did not present this position in the record and Staff's argument in its Initial Brief is not based on any record evidence. As explained above, in the record, Staff asserted that to "determine 'Inflation expense,' the Commission needs 1.) a rate and 2.) an amount to apply the rate." 8 TR 4724. Exhibit A-198 (HJM-79) does just as Staff requested. It is unreasonable to now claim in an Initial Brief, without any record support, that Exhibit A-198 (HJM-79) is flawed because in order for the Commission to determine inflation expense it needs (i) a rate, (ii) an amount to apply the rate, *and* (iii) the ability to trace the amount from the projected test year to the historic year. As set forth above, through the discovery process and the information provided in the record, the Company provided

Staff with all information necessary to validate the Company's inflation adjustment to Distribution O&M.

Moreover, the Company established the negative implications of removing $12,584,000 from Distribution O&M, as Mr. Rueckert proposes. 6 TR 1337-1338. Mr. Blumenstock explained that, since the Company's projected Distribution O&M in this case is based on projected costs to complete the Company's 2021 workplan, the Company's projected expenses include costs to hire and retain additional workforce in order to plan and execute the Company's expanded capital plan, particularly in the Reliability Program which addresses system deterioration. 6 TR 1337. If Distribution O&M spending is disallowed, as Staff proposes, the Company will not have sufficient funding for the workforce that is needed, and it will greatly impair the Company's ability to deliver the reliability improvements presented in the Company's SAIDI glidepath, as presented in the Company's direct case. 6 TR 1337-1338, 1039. The Commission should therefore approve the Company's projected 2021 Distribution O&M expenses, as presented in this case.

Staff's proposed inflation adjustment should also not be adopted because it will result in a Distribution O&M expense inflation adjustment of $0. Instead of re-adjusting the Company's Distribution O&M expense based on an approach Staff believes to be reasonable, like what Staff proposed for Corporate O&M, Staff instead removed <u>all labor and non-labor inflation</u> from Distribution O&M. Staff's position, which results in no inflation adjustment to Distribution O&M expense, is unreasonable and contrary to past Commission practice which has permitted inflation adjustments to O&M expenses in rate case proceedings.

As explained in the Company's Initial Brief, the Company continues to request approval of the Company's Distribution O&M expense inflation adjustments, as illustrated in Exhibit A-

198 (HJM-79), line 2, column (n). The Company's Distribution O&M expense, and inflation adjustments, are reasonable and were extensively supported in the record.

2. Forestry O&M Expense

a. Reply to Staff

Consumers Energy appreciates that Staff supports the Company's requested $84,000,000 for HVD and LVD Line Clearing for the 2021 test year, as expressed in Staff's Initial Brief, pages 129 through 130. Staff also proposes that the Company file an annual report. *Id*. For the reasons provided in the Company's Initial Brief, pages 282 through 283, Consumers Energy respectfully disagrees, and submits that a report is not necessary.

b. The Commission Should Reject the Attorney General's Proposed Limitations on the Company's Forestry Program

The Attorney General claims that the Company's forestry plan and request for increased spending presents the following two issues: (i) the need to "put controls in place to ensure that any increase in spending granted by the Commission does not go toward paying higher contractor rates"; and (ii) "the Company's ability to quickly scale tree clearing operations in 2021 to the proposed $84.0 million in a short time period after receiving an order in this case sometime in December 2020 is questionable". Attorney General's Initial Brief, pages 133-135. The Attorney General proposes that the Commission approve $68 million for line clearing expense in this case, but authorize the Company to spend up to an additional $16 million, to a maximum amount of $84 million, and defer any amounts spent annually between $68 million and $84 million for future recovery in its next rate case, to be amortized over a five-year period. *Id.* at 135. The Attorney General additionally proposes that for 2021, the Company would only recover an amount equal to the number of miles completed over the $68 million in rates at the rate per mile assumed for 2021

in Exhibit A-98 (CAS-1) up to $84 million, and after 2021, the Commission could allow a 2% annual escalation to the cost per mile completed. *Id.* at 135-136.

The Commission should reject the Attorney General's proposals for the reasons provided on pages 283 through 284 of Consumers Energy's Initial Brief, which it will not repeat here. The Commission should approve the full amount requested by the Company for the test year, as supported by Staff.

3. Storm Restoration O&M Expense

a. Reply to Staff and Intervenors

Staff recommends reducing the Company's projected service restoration O&M expense from $65 million to $54 million to reflect Staff's recommendation to use a three-year average rather than the Company's proposed five-year average to project the expense. Staff's Initial Brief, page 126. Staff cites to DTE's Case Nos. U-20162 and U-20561 as examples where a five-year average was used to project service restoration expense. Staff's Initial Brief, page 128, note 17. The Attorney General and the MEC Coalition make similar recommendations. See Attorney General's Initial Brief, page 130; MEC Coalition's Initial Brief, page 194.

As discussed at pages 284 through 286 of the Company's Initial Brief, the Company's projected service restoration expense of $65 million is based on a three-average of actual service restoration costs and considers the recent increase in weather events and the unpredictable nature of these costs. 6 TR 1886-1887. The Commission should approve the Company's projected $65 million expense because it reasonably incorporates recent trends indicating increases in weather events, outages, and service restoration costs. For example, as of June 30, 2020, service restoration O&M costs had already reached $41 million in 2020 and are projected to total $82 million by year end. 6 TR 1925.

If the Commission chooses to adopt the five-year average pursuant to the DTE example as proposed by the parties, the Company requests that the Commission apply an inflation adjustment similar to the calculation of the service restoration expense for DTE. Using Staff's inflation rates, an inflation adjustment would increase the five-year average from $54 million to approximately $56 million. 6 TR 1926.

4. The Company Fully Supported its Workforce Adequacy and Related Costs

a. Reply to Staff

According to Staff, the Company should only recover half of the projected spending amount for additional fleet to support the workforce because the Company did not demonstrate that it will secure the additional workforce and have it employed by the 2021 test year. Staff therefore proposes that the Commission disallow $12.247 million related to the Company's purchase of additional fleet to support the workforce in the 2021 test year, which it calculated by removing 50% of the Company's requested $24.494 million. Staff's Initial Brief, page 77.

The Commission should not adopt Staff's position. As discussed in the Company's Initial Brief, pages 288 through 291, which the Company will not repeat here, the Company's workforce adequacy was fully supported.

b. Reply to the Attorney General

The Attorney General's Initial Brief notes that Company witness Douglas E. Detterman, in Exhibit A-60 (DED-1), showed that the number of employees dedicated to LVD and HVD distribution work was 1,257 in 2019, and was forecasted to increase to 1,400 employees in 2021. She then argues that Company witness Kyle P. Jones, who testified that the additional equipment purchases will support 234 new employees in the electric distribution operations, did not match with the information presented by Company witness Detterman in Exhibit A-60 (DED-1). The

Attorney General cites the purported discrepancy for the argument that the Commission should remove $12.2 million of the $24.5 million requested for new employee transportation equipment. Attorney General's Initial Brief, page 72. For the reasons provided in the Company's Initial Brief, page 291, which the Company will not repeat here, the argument is without merit.

5. Fossil and Hydro Generation O&M Expense

a. Reply to the Attorney General

The Attorney General's Brief, page 136, proposes that the Commission reduce the Company's test year generation O&M expense by $6.4 million. Attorney General's Initial Brief, page 136. The Attorney General's position is based on Mr. Coppola's testimony, which used the Company's average cost level information for base and environmental O&M for the three years 2017 to 2019 plus inflation and plus Karn Retention O&M and Major Maintenance O&M to project test year generation O&M. *Id*.

The Commission should reject the argument as without merit. Company witness Hugo's testimony provided a full discussion of each component of O&M expense, including base O&M (6 TR 2038-2041), Karn Retention and Separation costs (6 TR 2057-2062), environmental O&M (6 TR 2041-2042), and major maintenance O&M (6 TR 2042-2057), all of which he summarized in Exhibit A-70 (SAH-5). Specifically, Mr. Hugo testified that the base O&M costs "were determined by considering staffing levels and historical spending." Mr. Hugo's methodology reflects a very reasonable average annual increase in base O&M expense of only 1.6% from 2018 through 2021. Further, Mr. Hugo's projected environmental O&M expense actually reflects an average annual decrease of 2.6% from 2018 through 2021.[20] The Commission can properly rely

[20] Environmental Operations Expense decreases from $11.940 million in 2018 to $11.002 million in 2021, representing a total decrease of 7.86% or 2.6% annually. Exhibit A-70 (SAH-5), page 1, line 3.

on the testimony of a qualified expert and that testimony constitutes competent evidence. *Attorney General v Pub Serv Comm*, 174 Mich App 161, 170; 435 NW2d 752 (1988).

Attorney General witness Coppola's proposed method to determine base and environmental O&M was arbitrary and did not consider relevant information such as staffing levels for base O&M, rather it represented a simple 3-year historical average cost for base and environmental O&M expense. Mr. Coppola also chose a historical period, 2017 through 2019, which best suited his recommended reduction in O&M expense. Had Mr. Coppola calculated an average O&M expense on his Exhibit AG-1.57 based upon a longer historical period such as 4, 5 or 6 years, he would have arrived at a different conclusion.[21]

Thus, Mr. Coppola had no basis to presume that base and environmental O&M costs can be determined using an historical cost average. The Attorney General's position is therefore unsupported, would produce an unreasonable result, and the Commission should reject it.

6. Customer Experience O&M Expense

a. Reply to Staff

Staff recommends the following reductions in Customer Experience O&M expense: (i) $44,625 for the AAH; (ii) $266,396 for the CRM; (iii) $238,000 for unauthorized payment activity; and (iv) $2,074,000 for credit card processing. Staff's Initial Brief, pages 121-122, 124-125. Staff also recommends that the Commission require the Company to provide detailed transaction costs by rate class for each manner of payment in the Company's next rate case. *Id*. at 125. For the reasons discussed in Section III.A.7 of this Initial Brief, the Commission should reject Staff's proposed O&M reductions for the AAH and CRM projects.

[21] Mr. Coppola's Exhibit AG-1,57 presents historical data from 2014 through 2019 and historical averages for a 4-year, 5-year or 6-year period yield average costs of $118.7 million, $120.6 million, and $124.2 million respectively versus Mr. Coppola's 3-year average of $114.5 million.

For the reasons stated at pages 305 through 307 of the Company's Initial Brief, the Commission should also reject Staff's proposed reductions related to unauthorized payment activity and credit card processing and Staff's proposed requirement for the Company to provide additional transaction cost detail. The unauthorized payment activity is an unavoidable expense that is an inherent part of the payment processing industry, and as such the expense is reasonable and should not result in a projected expense reduction. 3 TR 245.

The Company's credit card expense projection reasonably accounts for the recent and expected growth in credit card use and will allow the Company to continue to conveniently offer the payment channels that customers desire. See 3 TR 211, 242-243. Staff states that it "believes it was the Commission's intent to limit this cost to actual credit card fees charged." Staff's Initial Brief, page 126. Staff's proposed three-year average does not provide recovery of "actual credit card fees charged" because it does not account for the expected continued increase in customer credit card payments and the corresponding cost to the Company. See 3 TR 211, 243. As noted in Company witness McLean's testimony, use of credit cards as a percent of total transactions has increased from 15% in January 2017 to approximately 30% in 2019, and the total cost has correspondingly increased from $4.5 million in 2017 to $6.6 million in 2019. 3 TR 211.

Staff also recommends that the Commission in future cases "limit recovery to the actual fees, excluding other allocated costs within the expense." Staff's Initial Brief, page 126. To the extent Staff is recommending that the Company should not be permitted to recover general and administrative expenses allocated to the Customer Payment Program, the Commission should reject Staff's recommendation. Staff does not assert that these costs are unreasonable, and the Commission's February 28, 2017 Order in Case No. U-17990 cited by Staff does not address or limit recovery of general and administrative expenses. The Commission should not determine in

this case that general and administrative expenses cannot be recovered in the Company's next rate case, particularly where there is no evidence indicating that the expenses are not reasonable and prudent. Any such determination should be made pursuant to the review that will be conducted in the Company's next rate case proceeding.

Transaction costs by rate class are not "missing information" as Staff contends. See Staff's Initial Brief, page 126. While the Company is examining its ability to track credit card payments by customer type in the future, the Company does not currently track transaction costs by rate class and should not be required to provide this information until the Company determines whether it has the ability to provide this information. See 3 TR 243-244.

Staff also proposes a $2.166 million reduction in labor inflation costs related to Customer Experience, $96,000 of which is related to DR. See Exhibit S-12, lines 17-19. Staff recommends the total disallowance of Customer Experience labor inflation costs because of Staff's contention that the inflation is "not supported in the Company's testimony or exhibits." Staff's Initial Brief, page 131. Company witness McLean fully supported the need for the projected Customer Experience costs throughout his testimony and exhibits. See 3 TR 154-277. Mr. McLean explained that the Customer Experience organization applied a 3% labor rate to project a portion of these costs, which rate is based on planned merit increases. 3 TR 246. Reducing these planned pay increases will result in disallowing a funding that is necessary for the Company to offer competitive pay and an appropriate staffing level in order to provide effective and efficient operations and excellent service to customers. *Id*.

Consumers Energy identified and explained the projected labor inflation amount, and thus Staff's contention that the inflation is "not supported" is inconsistent with the record. If the Commission concludes that Staff's non-inflation rates should be used instead of the Company's

3% labor rate for the Customer Experience expense, which it should not, that would only result in an approximately $591,000 expense reduction rather than the total inflation reduction of $2.166 million proposed by Staff. See Exhibit A-198 (HJM-79) (calculated by starting with the as-filed Customer Experience labor inflation costs (lines 3 through 5, which is $2.166 million) and subtracting the adjusted Customer Experience labor inflation costs using Staff's inflation rates (lines 16 through 18, which is $1.575 million)). Thus, at a minimum, Staff's proposed $2.166 million Customer Experience expense reduction should be reduced to $591,000.

7. Corporate Services O&M Expense

a. Reply to Staff

Staff recommends reducing the projected Corporate Services O&M expense by $2.426 million as a result of Staff calculating projected insurance refunds based on a three-year average (2017 through 2019) rather than the Company's method of using a five-year average (2014 through 2018). Staff's Initial Brief, pages 130-131; 8 TR 4738. Staff contends that the three-year average is appropriate because the projected test years are three years apart. *Id*. at 131. For the reasons stated at pages 310 through 311 of the Company's Initial Brief, the Commission should approve the Company's use of a five-year average, which the Commission adopted in Case No. U-17735 and which provides for a less volatile projected Corporate Services expense. 6 TR 1856-1857. Basing the insurance refund average on the number of years between projected test years will only increase the volatility of the refund amount and the associated Corporate Services expense, particularly in cases where test years are only one or two years apart.

Staff also recommends reducing the projected Corporate Services expense by $1.314 million as a result of Staff's use of different inflation rates for the labor portion of the expense. Staff's Initial Brief, pages 136-137. For the reasons stated at pages 309 through 310 of the Company's Initial Brief, the Commission should reject Staff's proposed expense reduction.

The Company's labor rate is based on a projected salary increase derived from independent third-party sources and does not include a cost-of-living adjustment. 6 TR 1855. Labor rates and inflation rates can fluctuate based on different influences and it is more accurate to use the particular rate that applies to the particular type of expense. Reducing the projected Corporate Services labor rate may lead to the Company's employees being compensated below market, which could hinder the Company's ability to attract and retain a qualified workforce. *Id*.

b. <u>Reply to the Attorney General</u>

The Attorney General recommends using a three-year average from 2017 through 2019, with Consumer Price Index ("CPI") inflation applied for 2020 and 2021, to project the Corporate Services expense, which results in a $5.9 million reduction to the Company's projected expense. Attorney General's Initial Brief, page 139. While averages may be useful where costs are less consistent and another systematic or mathematical method to project costs does not exist, the Corporate Services expense is relatively consistent from year to year. 6 TR 1858. The Company's methodology for projecting the expense, which starts with a base historical actual spend and applies separate labor and non-labor rates, provides a consistent approach to incorporating expected changes in costs for salaries, products, and services in the projected test year. *Id*. The Attorney General's proposed three-year average is less accurate and unnecessary.

The Attorney General contends that the Company's use of separate labor and non-labor inflation rates results in a "blended inflation rate" which the Commission has rejected. Attorney General's Initial Brief, pages 138-139. While the Commission determined that DTE had not presented sufficient evidence in Case No. U-20162 to approve DTE's proposed blended inflation rate, DTE had used a composite labor/non-labor inflation rate in that proceeding. See MPSC Case No. U-20162, May 2, 2019 Order, page 71. The Company did not use a composite inflation rate to project the Corporate Services O&M expense in this case, and thus it is not apparent that DTE's

methodology that the Commission rejected in Case No. U-20162 has the same effect as the Company's methodology for projecting the Corporate Services expense. The Company applied a labor rate developed using third-party survey sources to project labor O&M and applied the CPI rate to project non-labor O&M, thereby applying the appropriate rate to the related expense. The Commission has previously approved Corporate Services expenses that were projected using the same methodology that the Company used in this case. 6 TR 1859.

8. IT O&M Expense

a. The Commission Should Not Adopt Staff's Proposal to Base IT Operations O&M on a Backward-Looking Five-Year Average

Staff's Initial Brief, pages 116 through 117, proposes that the Commission reduce the Company's IT O&M expense by $12,335,000, which Staff based on a five-year historical average. Staff's argument closely tracks the testimony that its witness Theresa McMillan-Sepkoski, who proposed an $11,357,000 disallowance for the Company's operations IT O&M expense, and proposed reduction of $978,000 for the investment planning portion of the Company's IT O&M expense.

For the reasons set forth in the Company's Initial Brief, pages 317-322, the Commission should not adopt Staff's position on IT Operations O&M. The Commission should also not adopt Staff's proposal to disallow the Company's investment planning O&M expenses, for the reasons set forth on pages 322-324 of the Company's Initial Brief.

Staff notes that Consumers Energy refuted Staff's claim that the Company's IT Operations O&M is a "sporadic" or "volatile" expense, but Staff claims that "the numbers speak for themselves," and emphasizes a 24% increase from 2017 to 2018. Staff's Initial Brief, page 118. Company witness Jeffery Tolonen, however, testified (6 TR 2546-2547) that IT Operations O&M only tends to increase, which works against the Company, and its customers.

Staff also proposes to disallow some Investments O&M amounts for the following IT projects: (i) Customer Operations and Commercial Theft ($313,784); (ii) Centralized DR Management ($123,000); (iii) ARP – Operational Technology Support ($7,333); and (iv) Application Currency & Enhancement projects ($1.247 million). Staff's Initial Brief, pages 119-120. Consumers Energy fully addressed these issues on pages 175 through 186 of its Initial Brief, which it will not repeat here.

As a result of the foregoing, the Commission should approve the full amount of the Investments O&M requested by the Company, except as otherwise noted in its Initial Brief. The Commission should also approve the full amount of the requested Operations O&M as requested by the Company, or adopt the alternative discussed on page 322 of the Company's Initial Brief.

Finally, Staff notes on page 139 of its Initial Brief that the Company's rebuttal case proposed a $46,000 increase to its IT O&M expenses above the $71,171,000 that it requested in its initial filing, citing 6 TR 2277. Staff's Initial Brief states that it "does not adopt the Company's rebuttal update." *Id*. The $46,000 was intended to add back in the $7,333 for O&M associated with the ARP – Operational Technology Support, to which Staff agreed (see 6 TR 2559 and 8 TR 4789). The remainder of the $46,000 is to remove $164,670 and $434,445 for the Dashboard Redesign and Website Redesign projects, respectfully, and replace them with the Customer Self-Service Mobile Application O&M of $637,560 (3 TR 264), which, as discussed on pages 187 through 190 of the Company's Initial Brief, which the Commission should approve.

b. <u>The Commission Should Reject the Attorney General's Proposed Reductions to Test Year IT O&M</u>

The Attorney General argues that the Commission should reduce test year IT O&M expense by $8.2 million. Attorney General's Initial Brief, pages 139-141. The Attorney General bases her argument on the testimony of Mr. Coppola, who observed that the Company's

cumulative IT capital expenditures for 2014 to 2021 increased by 25%, and applied that growth rate to the actual 2019 O&M expense to arrive at a projected amount of expense for 2021 of $13.7 million, which is $8.2 million lower than the Company's requested O&M expense of $21.9 million for the test year. *Id*. The argument is without merit. As fully discussed in the Company's Initial Brief, pages 324 through 327, Mr. Coppola's methodology was arbitrary and the Commission should reject it.

9. <u>Pension and Benefit O&M Expense</u>

a. <u>Reply to the Attorney General</u>

On pages 143 through 144 of its Initial Brief, the Attorney General recommended that the Commission remove $1.0 million from the Company's projected test year expense for active health care expense. In presenting her recommendation, the Attorney General relies on an inaccurate analysis performed by Mr. Coppola. The Company already addressed the Attorney General's arguments in its Initial Brief, and the Company will not fully repeat those arguments here. See Consumers Energy's Initial Brief, pages 327-332. The Commission should reject the Attorney General's unsupported and inaccurate proposal.

10. <u>Employee Incentive Compensation Plan Expense</u>

a. <u>Reply to Staff</u>

Staff's Initial Brief addresses the Company's requested Employee Incentive Compensation Plan ("EICP") expense for the test year on pages 122 through 124. Aside from a comment in Staff's Initial Brief regarding the sourcing for the information on two of Company witness Amy M. Conrad's exhibits, the Company anticipated and provided responses refuting Staff's arguments on pages 332 through 347 of its Initial Brief. For the reasons set forth in the Company's testimony and its Initial Brief, the Commission should reject Staff's proposed disallowance of a portion of

its EICP expense and include the entire amount proposed by the Company in the calculation of rates.

With respect to the issue of the source for the information contained in Exhibits A-56 (AMC-2) and A-57 (AMC-3), the source of the information is described in the testimony of Company witness Conrad. See 6 TR 1744, 1759. The Company further notes that Staff's own witness did not cite the absence of sources on those exhibits as a reason to disallow the otherwise reasonable and prudent costs for the Company's EICP expense. To the extent Staff believed those exhibits to be deficient in some respect, the correct procedural approach for addressing such a concern would have been through an objection to their admissibility into evidence. Staff offered no such objection and the exhibits were properly admitted into the record. 6 TR 1731.

b. <u>Reply to the Attorney General</u>

On pages 144 through 154 of the Attorney General's Initial Brief, the Attorney General argues that the Commission should disallow the full amount of the Company's test year costs for its EICP expense. Consumers Energy anticipated and provided arguments refuting the Attorney General's reasoning for her recommended disallowance on pages 332 through 347 of the Company's Initial Brief. The Attorney General presents no new or different arguments in its Initial Brief, therefore the Company rests on its arguments. For the reasons stated in the Company's testimony and its Initial Brief, the Commission should reject the Attorney General's proposed disallowance for EICP expense during the test year.

11. <u>Uncollectible Expense</u>

a. <u>Reply to Staff</u>

In rebuttal, the Company agreed with the Attorney General's recommendation to reduce the test year uncollectible accounts expense by $1.2 million as a result of using the three-year average, 2017 through 2019, to determine the bad debt loss ratio and calculate the expense. 6 TR

1854. Staff disagrees with this reduction because of the deferred accounting of uncollectible expenses authorized in Case No. U-20757. Staff's Initial Brief, page 138. The Company continues to agree with the Attorney General's proposed adjustment since it includes the most recent historical information in the calculation of the three-year average. See 6 TR 1854.

12. Inflation Expense

a. Reply to Staff

The ALJ and Commission should reject Staff's recommended removal of $14,750,000 attributable to Company inflation adjustments made to the following O&M programs: Distribution, DR, Billing & Payments, and Customer Experience. Staff's Initial Brief, pages 132 through 138. As a general matter, Staff's position should be rejected because it results in a penalty which unreasonably provides the Company with no inflationary adjustment to Distribution, DR, Billing & Payments, and Customer Experience O&M expense.[22] In responding to Staff's inflation position, the Company continues to rely on its arguments, as provided on pages 351 through 354 of its Initial Brief, in addition to the arguments contained herein.

Beyond the fact that the Company has extensively supported its O&M inflation adjustments in this case, which is addressed in more detail in the prior sections of this Reply Brief, Staff's position should be rejected because there is no prior Commission precedent to support such an extreme cost reduction proposal. Staff does not cite to any Commission orders which have directed the Company to provide its inflation adjustments in a different manner. Company witness Myers also confirmed that the Company has not been ordered to provide the details requested by Staff to support inflation included in a rate case filing. 6 TR 2265. The Company has also presented its inflation adjustments in this case the same way that is has in previous rate cases and,

[22] The Company has also addressed the lack of merit to Staff's proposal in the sections of this Initial Brief which address Distribution, DR, Billing & Payments, and Customer Experience O&M expense.

as of the Company's most recent electric general rate case to receive a Commission Order, Case No. U 18322, the Commission has not previously disallowed the Company's inflation adjustments to O&M. See MPSC Case No. U-18322, March 29, 2018 Order.

Instead of assessing a significant financial penalty for an issue that the Company did not have notice of prior to the filing of this rate case, as Staff proposes, the Commission should provide the Company with an opportunity to present detail in its next electric rate case addressing inflationary adjustments in a manner acceptable to the Commission. Furthermore, it should be noted that the Company has already provided additional detail in this proceeding regarding its inflationary adjustments to address Staff's concerns. Staff witness Rueckert specifically stated that to "determine 'Inflation expense,' the Commission needs 1.) a rate and 2.) an amount to apply the rate." 8 TR 4724. Therefore, the Company responded by providing that information in Exhibit A-198 (HJM-79). 6 TR 2264-2265. The Company also agrees to present inflationary impacts in a way that shows how incremental inflation is calculated in future rate cases. 6 TR 2267.

In addition to the above, the Company takes issue with Staff's position on inflation because it results in no inflation being applied to Distribution, DR, Billing & Payments, and Customer Experience O&M expense categories. This is an entirely unreasonable and unprecedented result. This result is also contrary to Staff's position on other O&M categories, like Corporate O&M, where Staff concedes that an inflationary adjustment is appropriate. See 8 TR 4725; see also Exhibit S-12.

Exhibit A-198 (HJM-79) supports various inflation adjustments for Distribution, DR, Billing & Payments, and Customer Experience. Specifically, Exhibit A-198 (HJM-79) shows these categories of O&M using: (i) the Company's inflation factors; (ii) Staff's proposed non-labor inflation rates of 1.81% for 2019, 1.61% for 2020, and 2.261% for 2021; and (iii) Staff's proposed

labor and non-labor inflation rates. 6 TR 2265-2266. Although the Company does not agree with Staff's use of the same inflation rate for labor and non-labor expense, such an approach, if applied to the aforementioned O&M expense categories would result in an inflation adjustment of $10,447,000.[23] See Exhibit A-198 (HJM-79), line 20, column (n). Furthermore, using the correct inflation rate for labor (i.e., 3.2%) with Staff's proposed inflation rate for non-labor results in an inflation adjustment of $14,799,000, which is an increase of $50,000 over the total inflation adjustment for Distribution, DR, Billing & Payments, and Customer Experience included in this case. See Exhibit A-198 (HJM-79), line 12, column (n). Instead of improperly using the same inflation rate for labor and non-labor expenses and increasing the Company's initially filed inflation adjustment with the use of the correct labor inflation rate along with Staff's non-labor inflation rates, the Company submits that the most reasonable outcome would be for the Commission to approve the Company's initially filed inflation adjustment of $14,750,000 for these expense categories.

VI. OTHER REVENUE, ACCOUNTING, AND PERFORMANCE ISSUES

A. FCM Recovery Mechanism

1. Reply to Staff

As explained on page 362 through 364 of the Company's Initial Brief, the Company and Staff are mostly in agreement on the FCM recovery mechanism. Furthermore, in the above-referenced portion of the Company's Initial Brief, the Company already addressed its primary areas of disagreement with Staff and continues to rely on the arguments presented in the Company's Initial Brief here. In addition to what has already been provided in the Company's Initial Brief, the Company disagrees with Staff's alternative proposal to consider FCM revenues

[23] This issue is discussed in more detail on pages 351 through 354 of the Company's Initial Brief.

as a "stand-alone component in the Company's annual PSCR cases." Staff's Initial Brief, page 146. The Company does not agree that this modification should be approved because it would not allow the Company to record FCM revenues in the period earned. The Company established that it is important to record the FCM revenues in the same period that the related PPA costs are incurred to present the true economics of the program in Consumers Energy's financial statements and it provides consistent financial reporting as incentives will not be allocated over various reporting periods. 6 TR 2261-2262. Consideration of FCM revenues in a PSCR proceeding would also needlessly create uncertainty and regulatory lag because there is no statutory timeline for PSCR proceedings, and such proceedings have at times taken over two years to complete.

2. <u>Reply to ABATE</u>

On pages 49 through 51 of its Initial Brief, ABATE argues that the Company's FCM revenues should be recovered through base rates, as opposed to a surcharge as proposed by the Company and as agreed to by Staff. ABATE's position should be rejected because it is inconsistent with alternative revenue program treatment and also incorrectly asserts that the true economics of the FCM cannot be evaluated unless the FCM revenues are recovered through base rates. The Company previously responded to ABATE's FCM arguments on pages 364 through 366 of the Company's Initial Brief. Since ABATE did not address the Company's evidence which refutes ABATE's positions in its Initial Brief, the Company continues to rely on its arguments, as presented in the Company's Initial Brief, and will not restate them here.

3. <u>Reply to RCG</u>

Beginning at page 16 of its Initial Brief, RCG claims that the ALJ should recommend rejection of the Company's proposed method for recovering the FCM approved in the Company's 2018 IRP, Case No. U-20165. RCG appears to specifically take issue with the FCM revenues

being recovered through a surcharge. RCG's position should be rejected because it is not supported in the record and otherwise unreasonable.

As an initial matter, RCG's position on the Company's proposed FCM recovery method should be rejected because it is not supported in the record. RCG did not provide any record evidence in this matter and does not rely on the record evidence provided by any other party to support its position. RCG's position represents unsupported assertions made by counsel which do not provide the Commission with any record evidence which can be relied upon in a final order. See MCL 24.285 ("Findings of fact shall be based exclusively on the evidence and on matters officially noticed . . . A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material, and substantial evidence.")

RCG appears to take issue with the collection of FCM revenues from 2019 and 2020 and argues that "[i]t does not appear that any settlements in 2019 provided for an immediate collection or addition to rates commencing in 2019." RCG's Initial Brief, page 16. RCG is incorrect. The IRP settlement specifically provided for the FCM to apply to new PPAs entered after January 1, 2019. See MPSC Case No. U-20165, Settlement Agreement, Paragraph 8. Furthermore, the IRP settlement agreement further provided that the Company's next rate case, which is the present rate case, will determine the method of FCM cost recovery. See MPSC Case No. U-20165, Settlement Agreement, Paragraph 8. Since the Company is entitled to receive an FCM on PPAs entered after January 1, 2019 and this proceeding is to determine the method of FCM recovery, it is appropriate for the Company to seek compensation for 2019 and 2020 FCM revenues in this case.

RCG further argues that "CECO in this case has also presented the basis for adoption of either a 2018 historical test year, or a 12 month projected test year ending on December 31, 2021"

and that "[n]either of these alternatives provide for an entitlement for CECO to collect or to recognize in rates an FCM surcharge for the years 2019 or 2020."[24] RCG's Initial Brief, page 16. For the reasons discussed above, this argument should also be rejected. It is appropriate for the Company to seek compensation for 2019 and 2020 FCM revenues in this case.

RCG also asserts that it opposes a 90-day case schedule for FCM reconciliation proceedings, as proposed by the Company. RCG's Initial Brief, page 16. However, RCG presents no evidence to support this position and therefore RCG's position should be rejected. Furthermore, it should be noted that, as explained in Section VI.A.2 of the Company's Initial Brief, the Company also agrees to Staff's proposed 180-day schedule. See Consumers Energy's Initial Brief, page 364.

Finally, RCG claims that it would support an "alternative process by which the FCM surcharge issues would be considered as an issue in the ongoing Act 304 PSCR cases, which are already subject to established plan and reconciliation procedures." RCG's Initial Brief, page 16. This position should be rejected because it is completely unsupported in the record as to how this is a reasonable approach. As with RCG's other positions presented in its Initial Brief, RCG did not support this position with any record evidence. Company witness Myers further explained that considering the reconciliation of FCM revenues in the context of a PSCR case would be in conflict with accounting guidelines because it would not allow the Company the ability to recover FCM revenues in the period earned. 6 TR 2261-2262.

For the reasons discussed above, RCG's positions regarding the Company's FCM recovery method should be rejected.

[24] As explained in the section of this Reply Brief which respond to RCG's test year arguments, contrary to RCG's claim, the Company has not proposed a 2018 historical test year in this case.

B. Deferred Revenue Recovery Mechanism (Past and Future)

1. Reply to Staff

On pages 162 through 165 of its Initial Brief, Staff recommends that the ALJ and the Commission authorize the going-forward deferred revenue recovery mechanism, as proposed by the Company, "with the added Staff supported stipulations for all potential outcome scenarios in the case." As explained on pages 368 through 369 of the Company's Initial Brief, the Company agrees to Staff's proposed stipulations on the approval of the going forward deferred revenue recovery mechanism. See also 6 TR 1319.

2. Reply to the Attorney General

On pages 157 through 162 of her Initial Brief, the Attorney General addressed the Company's proposal for recovery of revenue pursuant to the deferred revenue recovery mechanism and the Company's going forward proposal for the continued use of the mechanism. However, the Attorney General did not address any of the record evidence provided by the Company which refutes the Attorney General's positions. The Company responded to the Attorney General's arguments on pages 369 through 372 of the Company's Initial Brief and continues to rely on that response here. For the reasons discussed in the Company's Initial Brief, the Attorney General's positions related to the Company's deferred revenue recovery proposals should be rejected.

3. Reply To ABATE

On pages 53 through 54 of its Initial Brief, ABATE argues that the Company's going-forward deferred accounting request for certain Distribution investment programs should be rejected because "such a mechanism would do nothing to incentivize cost control" and "would provide no benefit to customers." ABATE's position should be rejected. ABATE fails to consider that spending in the identified distribution programs is driven by entities and events outside of the Company's control, not a purported intent to spend more money. 6 TR 2258-2259. The Company

previously responded to ABATE's deferred revenue recovery mechanism arguments, and similar arguments provided by the Attorney General, on pages 369 through 373 of the Company's Initial Brief. Since ABATE did not address the Company's evidence which refutes ABATE's positions in its Initial Brief, the Company continues to rely on its arguments, as presented in the Company's Initial Brief, and will not restate them here.

C. CVR Incentive and Recovery Mechanism

1. Reply to Staff

Staff opposes the Company's request for a CVR incentive and recovery mechanism. Staff's Initial Brief, page 150. Staff's concerns with the proposed CVR incentive include contentions that the Company has not supported the effectiveness of CVR, CVR will not lead to lost revenues, replacing CVR with another resource would not be reasonable if CVR is the least-cost resource, CVR is already on a level playing field with traditional supply-side resources because it was selected in the IRP, CVR is just an improvement in technology and a basic utility service, and a CVR incentive is premature. See Staff's Initial Brief, pages 151-158. Consumers Energy supported the reasonableness of the proposed shared savings incentive for CVR and addressed many of Staff's concerns at pages 373 through 379 of the Company's Initial Brief. The Company will not repeat that entire discussion here.

The Commission should grant the Company's request for a shared savings incentive for CVR for the following reasons:

- CVR is cost effective and provides significant benefits for customers by reducing electric demand, electric usage, transmission usage, and distribution usage (5 TR 964-966);
- CVR results in lost earnings opportunities for the Company as a result of reduced annual electric usage and a reduced need for distribution and capital investments (5 TR 967);

- There is a significant earnings gap between CVR and a traditional supply-side resource. The NPV return opportunity from 2021 through 2040 of 50% owned/50% PPA solar is $41.2 million, while it is only $8.1 million for CVR (5 TR 968);

- The proposed CVR shared savings incentive places CVR on a level playing field with traditional utility resources to ensure CVR is "not disfavored when compared to utility supply-side investments," consistent with MCL 460.6a(13) (5 TR 969);

- The Company's proposed shared savings financial incentive mechanism allows the Company to share 15% of the actual, realized benefits to customers (5 TR 970); and

- The proposed CVR shared savings incentive will encourage utilities to pursue innovative ways to find savings for customers that may not occur under the traditional utility regulatory approach (5 TR 975-976).

The Company's selection of CVR as a resource in its previous IRP does not support the conclusion that a CVR incentive is not necessary. The traditional earnings model that encourages capital investments does not work to encourage future CVR investment because CVR capital investments are minimal. 5 TR 971. The shared savings incentive will encourage utilities to pursue new technologies such as CVR in future long-term resource planning processes, which will consider several factors, such as cost, risk, portfolio diversity, energy and capacity value of the resource, and return on investment. 5 TR 971, 975. The Commission has also approved a financial incentive for DR after DR was selected in the Company's IRP.

Staff contends that lost energy sales from CVR can be addressed in energy sales forecasts used to calculate electric rates. Staff's Initial Brief, page 152. But adjusting sales forecasts does address the reduced need for distribution and capital investments resulting from CVR or the reduced return opportunity that is available with CVR compared with traditional supply-side resources. Staff's skepticism of lost energy sales resulting in lost revenue would seem to equally apply to Energy Waste Reduction ("EWR"). However, experience with an EWR financial incentive has shown that using financial incentives to encourage investments in resources with

limited capital costs can deliver meaningful customer benefits and reward utilities for developing cost-reduction programs. 5 TR 976.

Staff contends that achieving any CVR benefits means that "ratepayers are finally getting benefits that were promised through years of infrastructure investment." Staff's Initial Brief, page 155. CVR is not merely a natural result of a modernized grid. CVR is designed to reduce energy and capacity use throughout the year, particularly during peak load conditions, through voltage optimization. 6 TR 1403. CVR reduces the amount of electric demand that is served on the electric system, which correspondingly results in reduced capacity costs by avoiding the need to maintain or obtain capacity resources. 5 TR 979. Importantly, the Company will only be eligible for an incentive if the Company demonstrates that the CVR Program has produced capacity and energy savings, and the large majority of savings will still be provided to customers. 5 TR 973. After accounting for program costs *and* the Company's proposed incentive, customers are still expected to realize approximately $13.8 million in savings in 2025. 5 TR 966.

The Commission's request for comments in Case No. U-20747 regarding certain incentive and shared savings requirements does not make it "premature" for the Commission to approve the Company's proposed CVR shared savings incentive in this case. In the Commission's September 10, 2020 Order closing the docket in Case No. U-20747 ("U-20747 Order"), the Commission declined to adopt certain principles or specific procedures that would apply to shared savings or incentive mechanisms, and instead found that going forward the Commission "desires to provide flexibility and allow utilities to remain free to propose new paths and innovation in the implementation of Section 6x" of Public Act 341 of 2016 ("Act 341"). U-20747 Order, page 21. The Commission also indicated that it may not authorize a shared savings mechanism "for capitalized expenditures that are receiving a rate of return through traditional ratemaking," stating

that "no incentive is necessary to encourage such investments if the utility is already authorized to recover a rate of return on the investments" and expressing concern with allowing a "double incentive." *Id*. at 26. The Company's shared savings proposal does not represent a "double incentive." The NPV return opportunity from 2021 through 2040 of the proposed 15% shared savings mechanism plus the return on the CVR capital expenditures is $32.6 million, which is still significantly less than the 50% owned/50% PPA solar return of $41.2 million. See 5 TR 973; Exhibit A-59 (MJD-2). For CVR, where capital investments are minimal, the Company's proposed shared savings mechanism is necessary to create a level playing field with comparable supply-side resources to encourage utilities to consider meeting resource adequacy with less capital-intensive resources. 5 TR 581-582. This is consistent with MCL 460.6a(13).

Staff also recommends several changes to the Company's proposed CVR incentive and recovery mechanism in the event the Commission approves a CVR incentive in this proceeding. Staff's Initial Brief, pages 158-159. As discussed at pages 379-381 of the Company's Initial Brief, the Commission should not adopt Staff's recommended changes.

2. <u>Reply to the Attorney General and ABATE</u>

The Attorney General also argues that the Commission should reject the Company's proposed CVR shared savings incentive. Attorney General's Initial Brief, page 166. ABATE made similar arguments. See ABATE's Initial Brief, pages 52-53. Consumers Energy responded to the Attorney General's and ABATE's arguments at pages 384-385 of the Company's Initial Brief, showing that (i) CVR is *not* simply "good quality power;" (ii) CVR is *not* "correct[ing] a problem;" (iii) the CVR capital investments are minimal and *not* sufficient to create a level playing field for CVR; (iv) the CVR incentive does *not* present additional risk to customers because the Company will only receive an incentive if able to demonstrate actual energy and capacity savings; and (v) CVR savings are *not* difficult to calculate.

3. Reply to the MEC Coalition

While the MEC Coalition generally supports the concept of an incentive mechanism for CVR, the MEC Coalition argues that the Company's proposal is flawed. MEC Coalition's Initial Brief, page 151. The Company addressed many of the MEC Coalition's arguments at pages 381 through 384 of the Company's Initial Brief and will not repeat the entire discussion here. The MEC Coalition's concerns do not support rejection of the Company's proposed shared savings CVR incentive.

In response to MEC Coalition witness Chris Neme's recommendation that no incentive should be earned unless at least half of the planned CVR savings growth is achieved, Company witness Michael J. Delaney noted that there is no reason to withhold an incentive until 50% of the proposed shared savings is reached because the Company will only receive an incentive if there are actual, realized customer savings. 5 TR 983. Mr. Delaney also noted that Mr. Neme's proposed threshold "could create an incentive to make minimal projections as to the potential savings in order to maximize an incentive opportunity." *Id*. The MEC Coalition concludes that the Company "is asking the Commission to not hold Consumers accountable for the performance of its CVR program, or else Consumers will find another way to guarantee a profit for its shareholders." MEC Coalition's Initial Brief, pages 153-154. This mischaracterizes the Company's position.

The 50% threshold is unnecessary because under the Company's proposed incentive, the less savings achieved, the lower the incentive. Thus, the Company's proposed incentive does in fact hold the Company "accountable for the performance of its CVR program." Also, the Company did not say that it would "find another way to guarantee a profit." The Company merely noted that Mr. Neme's proposal may create an incentive for utilities to be cautious in projected savings where a shared savings mechanism is involved. The Company explained that "forecasts

of the future inherently involve uncertainly which typically results in a range of possible outcomes," and selecting a minimum level of performance within that range "could be a reasonable approach if a utility is seeking a higher degree of confidence that it will achieve the forecasted value." See MEC-153, page 6.

The MEC Coalition contends that basing the shared savings incentive on avoided costs is not reasonable because it is linked to something the Company cannot adjust. MEC Coalition's Initial Brief, page 154. The Company's lack of full control over the avoided cost amount does not make the use of avoided costs unreasonable. Since the Company measures and projects its CVR savings using avoided costs, including avoided costs as part of the CVR incentive is reasonable. 5 TR 983. The Company then shares the benefit determined using avoided costs with customers. The Michigan Legislature recognizes the reasonableness of considering avoided costs in providing for their consideration in determining the EWR and shared savings incentives. See MCL 460.6x and MCL 460.1075.

The MEC Coalition recommends that the Commission review the Company's CVR plans every two years through a process similar to EWR and DR. MEC Coalition's Initial Brief, page 162. The Commission should not require this recommended CVR reevaluation and plan proceeding. CVR was initially approved in the Company's 2018 IRP, and any necessary adjustments to the modeled energy and peak savings for CVR or the CVR deployment plans should occur in the Company's IRP proceedings. 6 TR 1379. CVR performance can be reported in IRP-related reports, such as the one filed by the Company in Case No. U-20165 in June 2020. *Id*. The Company also explained in discovery that the Company's first 50 CVR circuits will undergo day-on, day-off testing to determine accurate assumptions for voltage and load reduction related to various circuit characteristics, with the results of that testing to inform assumptions applied to

subsequent circuits. Exhibit A-155 (RTB-31). There is no need for the additional regulatory processes that the MEC Coalition recommends.

The Company also disagrees with the MEC Coalition's recommendation that the Company revise its initial peak demand savings per circuit to 2.5% of peak loads. See MEC Coalition's Initial Brief, page 165. The MEC Coalition's recommendation is based on examples of other utilities that achieved more modest savings. The Company expects that it has several technical advantages that will enable the Company to achieve its projected 5% voltage reduction and 4% load reduction. 6 TR 1380. These technical advantages include: (i) single-phase voltage regulation at circuit source; (ii) single feeder regulation; (iii) 99% deployment of AMI; (iv) 100% deployment of remote-enabled capacitor; (v) ongoing deployment of single phase remote-enabled regulator controls; (vi) Supervisory Control and Data Acquisition ("SCADA") application supporting real-time control and monitoring of CVR power delivery; and (vii) analytic capabilities linking AMI smart meter data with SCADA data for easy, efficient monitoring. *Id*.

For the reasons discussed above, the Commission should approve the Company's proposed CVR shared savings incentive. 5 TR 989.

D. State Reliability Mechanism Calculation

1. Reply to Energy Michigan

Pages 2 through 13 of Energy Michigan's Initial Brief challenges the Company's proposed source of the "Capacity Charge Demand" component of the State Reliability Mechanism ("SRM") charge calculation and the Company's proposal to include PPA fuel costs in the "Related Fuel Cost" component of the SRM charge calculation. The Company responded to Energy Michigan's arguments on pages 392 through 400 of the Company's Initial Brief and continues to rely that response here. For the reasons discussed in the Company's Initial Brief, Energy Michigan's arguments should be rejected.

In addition to the response provided in the Company's Initial Brief, two additional points of clarification are necessary based on the arguments contained in Energy Michigan's Initial Brief. First, contrary to what Energy Michigan represented on pages 5 through 6 of its Initial Brief, there is no confusion with respect to where the "Capacity Charge Demand" is sourced from. In direct testimony, Company witness Keith G. Troyer explained this component of the SRM charge calculation is sourced from "the Company's December 2, 2019 Capacity Demonstration for Planning Years 2020 through 2023 filing in Case No. U-20590, Exhibit A-2, column (b), lines 1, 4, and 6." 6 TR 1538. As illustrated in Exhibit A-133 (JCA-9) the Company is proposing a "Capacity Charge Demand" amount of 7,516 which aligns with the Midcontinent Independent System Operator, Inc. ("MISO") Planning Year 2020-2021 and 2021-2022 amounts, as presented on line 6 of Exhibit No. 1 of the Company's December 2, 2019 filing in Case No. U-20590.[25] The Company's proposed source of the "Capacity Charge Demand" is reasonable and should be adopted.

Second, the Company disagrees with Energy Michigan that the SRM charge represents a "penalty charge." Energy Michigan's Initial Brief, page 6. The Company agrees with Staff that Energy Michigan's statement is not an accurate representation of the SRM charge. See Staff's Initial Brief, page 180. The intent of the SRM charge is to compensate a utility, like Consumers Energy, for having to obtain additional capacity for Alternative Electric Supplier ("AES") customers in the event that an AES does procure sufficient capacity to meet customer needs. In such an event, the AES customers become responsible for paying the capacity rates set forth in the SRM charge. Therefore, the charge is not a penalty, but a compensation mechanism.

[25] As noted in Energy Michigan's Initial Brief, the Company originally subtracted transmission losses from the 7,516 amount in its direct testimony but then made a correction in rebuttal to add the transmission losses back in.

E. EV Program, Request for Regulatory Asset, and Recovery of Deferred Costs

In her rebuttal testimony, Company witness Sarah R. Nielsen explained that the Company is willing to pursue a number of suggestions by Staff, the Attorney General, and intervenors as they complement the PowerMIFleet Pilot. There are a few other suggestions and recommendations that are not conducive to the PowerMIFleet Pilot which the Company does not support at this time. All are discussed in the rebuttal testimony of Ms. Nielsen and in the Company's Initial Brief. See Consumers Energy's Initial Brief, pages 413-415; 6 TR 2326-2349. The following is a discussion of highlights of those agreements and disagreements.

1. Reply to Staff

In its initial brief, Staff focuses on how the Company's PowerMIFleet Program will be a benefit to other customers. See Staff's Initial Brief, pages 201-202. Specifically, Staff states,

> The Company claims that its proposed PowerMIFleet pilot will be a benefit to other customers by helping to lower the rates of other customers through increased grid utilization. (6 TR 2289.) As noted by Company witness Sarah R. Nielsen, however, proper site selection is necessary to ensure these benefits are realized. (Id.) [Staff's Initial Brief, page 201.]

Staff continues by saying that "[t]he best way to ensure the sites selected for inclusion in the pilot benefit other customers" is to "conduct a site-specific cost-benefit analysis for potential credit recipients prior to their inclusion" in the PowerMIFleet Program. Notably, Staff's representation regarding Ms. Nielsen's testimony is incorrect. See 6 TR 2289. What Ms. Nielsen actually said in her direct testimony was as follows:

> **Q. How will Consumers Energy's customers benefit from the Company's proposed EV fleet Pilot?**
>
> A. From a regulatory perspective, increased EV adoption will put downward pressure on electric rates by spreading fixed costs over increased electric load, which will ultimately reduce electric rates for all customers due to improved grid

> utilization. To realize and maximize benefits to the grid and all system users, it is important to properly manage the incremental load resulting from EV adoption to ensure increased grid utilization and avoid increasing system peak loads.

Q. Why is the Company's Pilot important?

A. The Company is uniquely positioned to provide the basis for the realization of the "lifetime value" of grid benefits for system users through a combination of reinvesting benefits towards EV infrastructure, rebates, pilots, and reducing rates across all customers, including non-EV drivers. The financial benefit that each incremental EV adds to the system is a resource that could benefit all Consumers Energy customers. [6 TR 2289.]

Nowhere in Ms. Nielsen's testimony is a reference to "proper site selection" to "ensure these benefits are realized." There is also no indication that an evaluation of each specific site for more broadly reaching benefits was suggested or otherwise recommended by Ms. Nielsen. In spite of this inaccurate representation of Ms. Nielsen's testimony, Ms. Nielsen responded to this recommendation in her rebuttal testimony at pages 6 TR 2343-2345. In that response, Ms. Nielsen opposed Staff's recommendation for the following reasons:

(i) . . . conducting a cost/benefit analysis on each potential project to ensure that the expected benefits to the ratepayers supporting the program through rates will limit other objectives of the program and create additional administrative burden not factored into the program budget (6 TR 2344);

(ii) . . . ensuring a positive cost/benefit analysis could require a concierge analysis for each applicant before making a rebate decision (6 TR 2344);

(iii) . . . while maximizing benefits is one objective of the program, PowerMIFleet is also focused on testing and learning how to minimize future costs and optimize distribution design standards (6 TR 2344);

(iv) Before the fleet EV market matures, it is critically important that the Company determine how to ensure that fleet EVs at scale are a net benefit and not a burden to the grid . . . and there

are valuable lessons to be learned from that now before mass adoption of EV fleets (6 TR 2344); and

(v) There are technologies that may not always be economical now, but that could provide insights into future cost-effective solutions as technology prices continue to fall; thus, in order to test a variety of situations and scenarios, it may be necessary to test a specific use case that does not objectively meet an economic cost/benefit test (6 TR 2344).

Based on the foregoing, in order to avoid limiting other objectives of the program and further avoid additional administrative burden (not factored into the program budget), Staff's recommendation should not be accepted, and the Company's PowerMIFleet Pilot should be approved as filed.

2. <u>Reply to MEIBC</u>

In its initial brief, MEIBC recommends that the PowerMIFleet Pilot be approved with "targeted enhancements." MEIBC's Initial Brief, page 39. In her rebuttal testimony, Ms. Nielsen explained that the Company is willing to pursue a number of suggestions by intervenors, including MEIBC, as they complement the PowerMIFleet Pilot. There are a few other suggestions and recommendations that are not conducive to the PowerMIFleet Pilot which the Company does not support at this time. At this time, MEIBC and the Company agree regarding the following topics and the Company agrees to pursue the following recommendations: (i) deferred accounting; (ii) rebate flexibility; (iii) efforts to identify and adopt open standard protocols; (iv) adjustment of the charging rebate criteria; (v) a managed charging goal/objective; and (vi) application of the proposed concierge service to the Company's Fleet. See Consumers Energy's Initial Brief, pages 413-414; see also 6 TR 2326-2336.

The Company, however, does not support a number of suggestions of MEIBC as it relates to the Company's PowerMIFleet Pilot because they are not a good fit for the proposed PowerMIFleet Pilot at this time. A discussion of those issues can be found in the Company's

Initial Brief at pages 414 through 415 and includes: (i) required expansion of vehicle options for the Pilot (MEIBC's Initial Brief, pages 43-44); (ii) mandatory open standards protocols (MEIBC's Initial Brief, pages 44-46); (iii) required reframing of the DR part of the PowerMIFleet as "managed charging" (MEIBC's Initial Brief, pages 47-48); (iv) inclusion of electrification of the Company's fleets in the Company's next rate case (MEIBC's Initial Brief, pages 48-50); and (v) mandatory collaboration and reporting (MEIBC's Initial Brief, pages 50-52). As Ms. Nielsen explained in her rebuttal testimony:

- Required Expansion of Vehicle Options for the Pilot: Although Ms. Nielsen agreed that the goal of the PowerMIFleet Program is to include a wide variety of participants, she explained that "market participation in each sector, as suggested by MEIBC, cannot be guaranteed." 6 TR 2332. Thus, requiring expansion of the vehicle option may simply not be possible, particularly in the economic environment that exists since the onset of the COVID-19 pandemic and should not be made part of the pilot at this time.

- Mandatory Open Standards Protocols: Again, while the Company "supports requesting information related to open standard protocols as part of the Request for Qualification process for pre-approved charges, . . . the Company does not recommend that open standards be mandated by the Commission at this time" and "does not support the inclusion of defined mandatory information in the annual report." 6 TR 2334. As Ms. Nielsen explained in her rebuttal testimony, the Company would like to treat the PowerMIFleet program similarly to the successful PowerMIDrive program, which allowed the Company the "flexibility to determine, at the end of the one-year mark of the pilot program, what information is meaningful for the report." While Ms. Nielsen explained that the Company will certainly consider this suggestion, the Company does not support this as a mandatory reporting requirement. 6 TR 2334.

- Reframing the DR Part of the PowerMIFleet Program as "Managed Charging": "Managed charging is an objective of the workplace demand response program component, and a primary objective of the entire program." 6 TR 2335. However, as she further explained, "the focus of the workplace component is specific to using demand response as the tool to manage charging since employees are only at such locations for a specific portion of the day that usually overlaps the afternoon peak. Thus, the Company proposes to test EVs as a demand response asset in the workplace setting to understand the potential cost of these assets for demand response, to understand how customers respond to curtailment, and to experientially learn alongside employers offering charging to employees." 6 TR 2335. As a result, MEIBC's recommendation is not appropriate for the pilot at this time.

- Required Analysis of Electrification of the Company's Fleet in Next Rate Case: "The Company does not object: (i) [to] analyzing the Consumers Energy fleet as part of the concierge experience, as it would be valuable for both the Company's internal fleet electrification goals (announcement coming this fall) and for the experiential learning to help better serve customers in the future; or (ii) that this addition would be a good use of any expanded education budget, as some parties have proposed, or transfer of cost savings from other programmatic areas into the education budget. The Company, however, does not support the timing suggestion for inclusion in the next rate case, as that process may need more time given the size and variety of the Company's fleet." 6 TR 2333. Further, the Company does not support this recommendation because it "wants to devote most of its time and energy, especially during the initial launch, in further developing and implementing the PowerMIFleet Program so that it is done well and experiences the positive outcomes that the PowerMIDrive Program has experienced." 6 TR 2333. Thus, this recommendation should not be incorporated into a final order.

- Mandatory Collaboration and Reporting: "The Company does not support the mandatory nature of the engagement and reporting modifications requested by MEIBC, except for annual reporting." 6 TR 2331. Ms. Nielsen explained that, "as it did with the PowerMIDrive Program, the Company intends to engage in a stakeholder kickoff meeting to answer questions and solicit feedback and will actively work with Staff as issues arise during the pilot." 6 TR 2331. However, as Ms. Nielsen noted in her rebuttal testimony, "[t]o date, there has been no criticism of the Company as it relates to the Company's actions, communications, or adjustments during the first year of the PowerMIDrive Program to necessitate the mandatory nature of the actions and information requested" by MEIBC. 6 TR 2331. "As a result, the Company should not be required to make the modifications requested, except for the filing of an annual report." 6 TR 2331. As Ms. Nielsen expressed, "the Company is open to ongoing suggestions and feedback from stakeholders but making collaboration mandatory is unnecessary and may create a burden for the Company in implementing the pilot." 6 TR 2331.

Based on the foregoing, these proposed recommendations should not be incorporated into the PowerMIFleet Pilot at this time.

3. Reply to ChargePoint

In ChargePoint's Initial Brief, ChargePoint supports the Company's PowerMIFleet Pilot and proposes three clarifications, to which the Company has already responded to ChargePoint's satisfaction. See ChargePoint's Initial Brief, pages 3-8. Thus, there remain no outstanding disputes between the Company and ChargePoint relating to the Company's PowerMIFleet Pilot.

4. Reply to the MEC Coalition

In its Initial Brief, MEC Coalition requests that the Company's PowerMIFleet Pilot be approved, including deferred cost recovery, "with minor modifications to maximize pilot learnings, grid and ratepayer benefits, and stakeholder engagement." See MEC Coalition's Initial Brief, pages 175, 181. Those "minor modifications" include requests that the Commission: (i) direct the Company to commit to minimum program participation for several different fleet types; (ii) prohibit issuance of rebates that will support workplace charging of only employee-owned vehicles and not fleet vehicles; (iii) require site hosts to pass through the Company's Time-of-Use ("TOU") rate directly to EV drivers; (iv) mandate specific data points in its annual reports; (v) mandate quarterly meetings and an interim review to solicit feedback on mid-stream program changes; and (vi) direct the Company to develop and file a plan for electrification of its own vehicle fleets in its next rate case. See MEC Coalition's Initial Brief, pages 175-180.

First, like MEIBC, MEC Coalition requests the Commission require the Company to use the PowerMIFleet Pilot to support at least one project for each of the following fleet types: transit buses, school buses, pooled vehicles, delivery trucks, and municipal public-works vehicles. MEC Coalition's Initial Brief, pages 75-76. The Company does not support this proposed modification to the PowerMIFleet program because, as explained in Ms. Nielsen's rebuttal testimony, due to the emerging fleet EV market and current economic conditions, the Company cannot guarantee which customers and use cases will be interested in participating in the program. 6 TR 2339-2340. While the Company agrees that DR component participation by a diverse set of vehicle types, company or entity sizes, installation sizes, and charging profiles is in the Company's best interest and the customer's best interest, and also agrees to focus education, awareness and recruiting efforts on a wide range of customers, the Company can neither force nor guarantee interest by all

of the identified fleet types and, thus, does not support this proposed modification. 6 TR 2339-2340.

Second, the Company does not agree with a proposed prohibition on the issuance of rebates that will support workplace charging of only employee-owned vehicles and not fleet vehicles. As Ms. Nielsen explained in her rebuttal testimony, the PowerMIFleet pilot includes workplace charging specifically to learn about the DR potential and cost, and customer experience with demand response, before EVs become more widely adopted. 6 TR 2338. While the Company intends to give preference to dual fleet and employee charging installation during the application evaluation process to help maximize charging data and learnings, exclusion of workplace charging is too limiting and should not be adopted by the Commission. 6 TR 2338.

Third, while the Company agrees that TOU rates should be utilized across all categories of fleets, the Company will not require site hosts to pass through underlying time variant price signals to the end user/drivers as a default arrangement because the Company has no mechanism to monitor that action. 6 TR 2339. This is the same approach as that of PowerMIDrive wherein the Company reserves the right to send price signals to the site host but can not mandate what price signals that site host sends to end users. 6 TR 2339.

Fourth, the Company does not support requirements that mandate specific data points in its annual reports, quarterly meetings, and an interim review to solicit feedback on mid-stream program changes. See 6 TR 2343. As explained above, the Company does not support the mandatory nature of the engagement and reporting modifications requested by MEIBC or MEC Coalition, except for annual reporting. 6 TR 2331, 2343. Ms. Nielsen explained that, as it did with the PowerMIDrive Program, the Company intends to engage in a stakeholder kickoff meeting to answer questions and solicit feedback and will actively work with Staff as issues arise during

the pilot. 6 TR 2331, 2343. However, as Ms. Nielsen noted in her rebuttal testimony, to date, there has been no criticism of the Company as it relates to the Company's actions, communications, or adjustments during the first year of the PowerMIDrive Program to necessitate the mandatory nature of the actions and information requested by the MEC Coalition (or MEIBC). See 6 TR 2331. As a result, the Company should not be required to make the modifications requested, except for the filing of an annual report. As Ms. Nielsen expressed, the Company is open to ongoing suggestions and feedback from stakeholders but making collaboration mandatory is unnecessary and may create a burden for the Company in implementing the pilot. See 6 TR 2331, 2343.

Finally, like MEIBC, MEC Coalition requests the Commission direct the Company to develop and file a plan for electrification of its own vehicle fleets in its next rate case. For the same reasons the Company does not support the request of MEIBC, as set forth above, the Company also does not support the MEC Coalition's request and asks the Commission to deny the proposed modification.

5. <u>Reply to ABATE</u>

ABATE witness LaConte's direct testimony, and ABATE's Initial Brief call for the rejection of the PowerMIFleet Pilot program in whole due to an alleged failure to provide "a full cost/benefit analysis that demonstrates the benefits to customers" See 8 TR 3214-3215; ABATE's Initial Brief, pages 55-56. The Company, along with ChargePoint and MEIBC, disagree. As discussed by Ms. Nielsen in her direct and rebuttal testimony, this program has numerous benefits and should be approved. While Ms. LaConte admitted that the Company provided a Fleet EV Benefit Analysis, she insisted that a comparison of those benefits to the projected costs is necessary. The Company is, however, unable to provide a full comparison of the costs of this pilot program because the program composition will be a combination of an unknown variety of fleet

types, use cases, and configurations (e.g., number of vehicles and where they are located) which adds significant complexity to the cost/benefit analysis. As stated in Ms. Nielsen's direct testimony:

> [T]he Company will maximize benefits by:
>
> 1. Prioritizing customers who can primarily charge during off-peak hours;
>
> 2. Pursuing fleet applications that benefit the public such as school buses, transit buses, and city vehicles; and
>
> 3. Exploring how EV fleets could operate as a storage resource for grid services such as demand response and emergency backup for buildings given that the batteries in EVs have the potential to become integrated as battery storage assets." [6 TR 2303.]

While maximizing benefits is one objective of the program, PowerMIFleet is also focused on grid management and testing and learning how to minimize future costs. The PowerMIFleet Program is necessary because, before the fleet EV market matures, it is critically important that the Company determine how to ensure that fleet EVs at scale are a benefit and not a burden to the grid.

The MEC Coalition's Initial Brief discussed the Company's cost/benefit analysis and agreed that the Company had fulfilled the Commission's requirements in U-18368. See MEC Coalition's Initial Brief, pages 173-175. Similarly, ChargePoint agreed that the cost/benefit analysis conducted by the Company justified approval of the PowerMIFleet Pilot. See ChargePoint's Initial Brief, pages 6-7. As such, the Commission should reject ABATE's proposal and approve the Company's PowerMIFleet Pilot as filed.

F. Reply to Staff Regarding Advance Metering Infrastructure Business Case Update

On pages 86 through 91 of Staff's Initial Brief, Staff argues that the Commission should continue the requirement that Consumers Energy include an update business case in its next electric rate case concerning the Company's investment in its AMI. Staff also proposed a modification to the way AMI business cases have been performed by the Company and approved by the Commission for nearly a decade. Consumers Energy anticipated and responded to Staff's arguments in the Company's Initial Brief. See Consumers Energy's Initial Brief, pages 415-420. The Company will not repeat those arguments in this Reply Brief. Staff's Initial Brief attempts to respond to the Company's rebuttal in two respects, however, that require further discussion here.

First, Staff claims in its Initial Brief (page 87) that the Company's updated AMI business case is "representative of more than just AMI deployment." Staff claims that the AMI business case "can serve as a useful tool when evaluating future investments of a similar nature, that have up-front costs and future benefits." Staff's Initial Brief, page 87. In particular, Staff points to two other projects included in this case: (i) the Company's Advanced Analytics Hub; and (ii) its Customer Relationship Management project. Staff provides no support or reasoning for the claim that the Company's AMI business cases provide any useful information for evaluating completely different projects that are based on different costs and different benefits at a different point in time.

The only similarity between these projects is that they involve some form of IT technology, but that is too general and remote of a similarity to provide any meaningful comparison. That would be like insisting on the Company providing continuous updates of its original cost-benefit analysis for building the Campbell plant based on the claim that it would be a useful tool for evaluating the costs and benefits of building a new wind plant today because they're both electric generating technology. It is an absurd claim, and Staff makes no effort to justify or explain its

veracity. Consumers Energy's witness Lincoln D. Warriner noted in his rebuttal testimony that Ms. Fromm's revisions to the Company's AMI business case analysis appear to have been created principally for the purpose of "support[ing] her claims that the Commission cannot be confident in the Company's benefit projections associated with technology investments." 6 TR 2597.

Staff itself acknowledges in its Initial Brief that "there is no recourse available to the Commission regarding this past investment . . . ." Staff's Initial Brief, page 88; see also page 90. Consumers Energy agrees. There is no value in requiring further updates to the business case for an investment that is fully deployed and implemented, which seemed to be the threshold for finally terminating the AMI business case requirement in the Commission's Order in Case No. U-18322. Contrary to Staff's claim, continuing AMI business cases indefinitely into the future provides no useful information for evaluating any other investments, which should be evident from the fact that the requirement to update the business case beyond the end of the investment it relates to is unprecedented in any other area of the Company's long- or short-lived investments. The Commission should reject Staff's proposal to continue the requirement to update the Company's AMI business case in future rate cases.

Second, Staff takes issue with Mr. Warriner's rebuttal testimony explaining why Staff's adjustment to the base year in the AMI net present value ("NPV") calculation was incorrect. Staff continues to defend its modification, which is inconsistent with all past AMI business case NPVs accepted by the Commission, to discount all values back to 2009. While Mr. Warriner explained that the effect of making Staff's change is to include only a portion of the Company's previously incurred costs and benefits in the analysis (which was also discussed in the Company's Initial Brief), Staff's Initial Brief claims that such a false representation of previously incurred costs and benefits is necessary to represent the time-value of money, which Staff claims is "exactly what the

NPV is meant to demonstrate." Staff's Initial Brief, page 90. Contrary to Staff's claim, however, an NPV calculation is only meant to demonstrate the present value of a *future* cost or benefit. An NPV analysis is not needed or appropriate to reflect the time-value of money for a *past* cost or benefit, which is what Staff appears to be trying to do. Staff's modification violates the conceptual purpose for performing an NPV.

Furthermore, even if Staff's proposal were a proper tool for evaluating the time-value impact of past investments, Consumers Energy notes that Staff was inconsistent with its own claims in other parts of this case in terms of its application. When performing an NPV analysis, one of the most important decisions the analyst must make before performing that calculation is deciding what discount rate should be used to estimate the future time-value of present money. The results of an NPV can be very sensitive to the discount rate chosen. The Company used a discount rate of 7.63% for its NPV analysis. See Exhibit A-89 (HJM-70), pages 5 and 6. This discount rate was based on the Company's proposed pre-tax weighted average cost of capital proposed in this case. Exhibit A-14, Schedule D-1, column (i), line 19. This makes sense because, if approved by the Commission, this is the capital cost that customers would incur as part of their rates in the future for any additional costs or benefits associated with the Company's AMI investment going forward. Obviously, it does not represent the capital costs applicable in past rates.

But, it is also important to note that, in this case, Staff <u>opposed</u> the Company's cost of capital request and proposed an alternative cost of capital that results in a pre-tax weighted average cost of capital significantly lower than the one proposed by the Company: 7.01%. Exhibit S-4, Schedule D-1, column (h), line 12. That means that, if the Commission approves Staff's proposed cost of capital, that new cost rate would represent the cost that customers would incur in rates for

any future costs and benefits associated with the AMI investment going forward. Yet, Staff continued to use the Company's 7.63% pre-tax weighted average cost of capital to perform its NPV calculation. See Exhibit S-18.0, pages 5 and 6. If Staff had simply changed its discount rate in its NPV calculation to be consistent with the rest of Staff's own case, the result would have reflected that the Company's AMI investment constitutes a net benefit to customers of $16.8 million – even using Staff's flawed logic of performing an NPV for *past* costs and benefits. Furthermore, it should be noted that Consumers Energy adopted some of the cost of capital changes proposed by Staff in this case, so even Consumers Energy now supports a pre-tax weighted average cost of capital below the 7.63% that Staff continued to improperly use for the NPV analysis. See Exhibit A-138 (MRB-13), Schedule D-1, column (h), line 12 (where the Company now supports a pre-tax weighted average cost of capital in this case of 7.57 %).

One further point bears consideration here. Even if Staff's novel NPV calculation proposal were conceptually sound (which it is not), Staff's choice of 2009 as the base year would be incorrect. Company witness Warriner noted in his rebuttal testimony that, although the Company may have incurred some costs to scope out the potential for an AMI project starting in 2009, the Company did not actually initiate its deployment of smart meters until 2012. 6 TR 2596. That means that 2012 (or possibly some time in 2011) would have been the decision point for whether the anticipated costs of the program would be expected to be justified by the anticipated benefits. In the Commission's November 4, 2010 Order in Case No. U-16191 (pages 14-20), the Commission clearly indicated that the Company was still in the pilot phase of the AMI program and that it was not at that time approving any costs for the Company to move into its full implementation of AMI. Part of the pilot's purpose was to acquire the information necessary to perform a full cost-benefit analysis to determine whether to move forward with AMI program

implementation. *Id*. at 18-19. In that case, the Commission adopted Staff's proposed guidelines for cost recovery of the AMI program (*Id*. at 19), which, among other things, provided that "[d]irect pilot expenditures are deemed recoverable expenses irrespective of whether or not the pilot indicates a go-forward decision," and that a "cost/benefit analysis is not required as a precondition for cost recovery of direct pilot expenses." *Id*. at 16. Staff's guidelines, adopted by the Commission in Case No. U-16191, further specified that "Commission approval of Smart Grid cost recovery of full deployment must be pre-conditioned upon . . . demonstration that a full business case, (i.e. detailed lifecycle cost/benefit analysis) supports full deployment . . . ." *Id*. at 17. Therefore, Staff's proposal in this case to discount the cost of the AMI program back to the costs incurred in 2009 directly conflicts with the Commission's own determination about the portion of the AMI program expenditures that were to be subject to the AMI business case analysis in the first place.

Again, it does not make any sense according to the theory behind performing an NPV, to evaluate the past value of money by discounting those past costs using a cost of capital that is only going to be applicable in the future depending on the outcome of a contested issue in this case. Instead, the Commission should continue to support – as it has in every AMI business case in prior rate cases – a construct that recognizes the full and actual value of the costs and benefits previously incurred, while discounting the future costs and benefits to the current year in order to evaluate the relative cost-benefits of the program. This is the only approach that makes conceptual sense or sense in practice. Staff's novel approach to NPV calculation, only proposed for the first time three years *after* the investment has been *fully implemented*, and that utilizes the wrong starting point in any case, should be rejected.

G. DR Surcharge

1. Reply to Staff

Staff recommends that the Commission reject the Company's proposed DR surcharge or, if a surcharge is approved, that the surcharge include all costs and revenues associated with DR. Staff's Initial Brief, pages 160-161. The Company addressed Staff's arguments at pages 422 through 424 of the Company's Initial Brief. As discussed in the Company's Initial Brief, approval of the Company's proposed DR surcharge in this case will allow for the timely and accurate refund of current over-collections and the timely and accurate collection of future performance incentives. The Company agrees with Staff that the best approach would be to remove all DR costs from base rates and recover them through a surcharge. 3 TR 252. However, the Commission should approve the Company's proposed surcharge in this case as an incremental improvement and address a more comprehensive approach to include all DR program costs in a future general rate case filing. 3 TR 252.

2. Reply to ABATE

ABATE argues that a DR surcharge is unnecessary and that the Company did not demonstrate that "DR program costs are sufficiently unique from other supply-side resource costs to justify recovery outside of the standard ratemaking construct." ABATE's Initial Brief, pages 51-52. For the reasons discussed at pages 420 through 424 of the Company's Initial Brief, the Commission should reject ABATE's argument. ABATE's argument fails to recognize the unique three-phase regulatory framework that applies to DR reconciliation cases. See MPSC Case No. U-18369, September 15, 2017 Order. The proposed DR surcharge offers an improved process by which DR over-recoveries can be refunded, DR under-recoveries can be collected, and DR financial incentives can be collected. 3 TR 218.

H. Performance-Based Regulation Generally

1. Reply to the MEC Coalition

On pages 22 through 35 of its Initial Brief, the MEC Coalition argues that the Commission should require the Company to present a concrete Distribution spending PBR proposal in its 2021 rate case and distribution plan. In making this request, the MEC Coalition concedes that PBR efforts are currently underway, such as in the MI Power Grid initiative, and that concrete PBR mechanisms may be developed during those efforts. MEC Coalition's Initial Brief, page 31. However, the MEC Coalition speculates that "those proposals appear on distant horizons" and are "unlikely to result in guidance or additional information ahead of Consumers' deadline to file its 2021 5-year distribution plan." MEC Coalition's recommendation should be rejected as it is premature.

While the Company generally supports PBR, there are numerous PBR collaboratives which must be allowed to take place before the Company is required to propose, and ultimately utilize, a PBR method. 3 TR 109-110. In its May 8, 2020 Order in Case No. U-20561, the Commission directed DTE in its next distribution investment and maintenance plan, to be filed by June 30, 2021, to include proposed PBR elements with reasonable metrics tied to utility financial performance, improvement targets, and timelines for achievement. DTE Electric has included Consumers Energy in its collaborative with Staff and other stakeholders. In addition, the Rocky Mountain Institute ("RMI"), an independent, nonprofit organization dedicated to advancing clean energy has been engaged to conduct an e-Lab Accelerator workshop to address PBR and utility business model issues with participants including the Company, DTE Energy, Staff, and stakeholders. 3 TR 110. Furthermore, the Commission has indicated its future plans to conduct a Financial Incentives/Disincentives workgroup as part of the MI Power Grid initiative. Given the extensive PBR-focused workgroups discussed above, it is premature to require the Company to

present a PBR proposal in its next rate case. The aforementioned collaboratives must be given an opportunity to develop reasonable and usable PBR mechanisms. Pushing the Company to present a PBR proposal prior to the outcome of the collaboratives would undermine these established processes to consider PBR and would also needlessly add yet another forum where PBR would be considered.

The MEC Coalition's proposal is also in conflict with what has been ordered for DTE with respect to PBR. As explained above, in its May 8, 2020 Order in Case No. U-20561, the Commission directed DTE to present a PBR proposal <u>in its next distribution investment and maintenance plan, to be filed by June 30, 2021</u>. In other words, the Commission provided DTE 13 months to address the Commission's PBR-related directions. The MEC Coalition's proposal would unreasonably force Consumers Energy to present a PBR proposal as soon as two months after the conclusion of this case, assuming the Company's next electric rate case is filed 12-months after the filing of this proceeding. Since the implementation of PBR will significantly change utility regulation in Michigan, Consumers Energy should be provided with sufficient time, and equal to the time provided to DTE, to present a PBR proposal.

The MEC Coalition's claimed urgency for a PBR proposal in the Company's next electric rate case is unjustified. The Company is not underspending on its Distribution system and has also not operated its Distribution system in a way that has led to a degradation in reliability. The Company has been transparent in this case that additional capital investments and O&M expenses are needed in this case to address assets on the Company's Distribution system which are aging beyond their expected operating lives. 6 TR 1029. The Company has also provided substantial evidence which shows that its Distribution system is experiencing increased deterioration, resulting in increased vulnerability to wind and storms. See, e.g., 6 TR 1044-1048. Both of these

factors, the aging of the assets and increased vulnerability to wind and storms, impact customers by degrading or reducing reliability. The Company is also not abandoning its 2018 EDIIP, as it still serves as a foundational component of the Company's Distribution plan. 6 TR 1028. However, since 2018, the Company has developed a more comprehensive and accurate gauge of overall system conditions regarding deterioration, which impacts the SAID projections made in the 2018 EDIIP filing. 6 TR 1048-1049. It is reasonable for the Company to continue to evaluate its Distribution plan for potential improvements.

There is no immediate urgency to adopting a PBR mechanism. The Company is committed to providing safe, reliable, and affordable electric service. 3 TR 83. Furthermore, the Commission already maintains the ability to incentivize the Company to spend appropriately on its Distribution system through the approval, or disapproval, of proposed Distribution investment and expenses. Given that there is no immediate urgency for the adoption of a PBR mechanism, stakeholders should be given the appropriate opportunity to develop the right PBR mechanism, not just *a* PBR mechanism.

For the reasons discussed above, the Commission should reject the MEC Coalition's recommendation that the Company present a PBR proposal in its next rate case or distribution plan. The MEC Coalition's recommendation is premature and would also disrupt numerous ongoing PBR related collaboratives.

I. Requested Accounting Approvals

1. Reply to Staff and Intervenors

Deferred Revenue Recovery Mechanism Accounting

Staff proposes reductions in the Company's projected Distribution capital expenditures based on Staff's contention that certain projections represent "placeholder" spending. See Staff's Initial Brief, page 13. As discussed in Section III.A.1 of this Reply Brief, the Commission should

not disallow spending due to Staff's "placeholder" argument. However, if the Commission adopts the recommended cost reductions, the Commission should also approve deferred accounting treatment in the associated sub-programs similar to, and subject to Staff's same proposed stipulations in, the Company's proposed deferred capital spending recovery mechanism. 6 TR 1322.

Staff argues that the Commission should reject this deferral request because three of the sub-programs would already receive deferred accounting treatment. This argument does not support denying the deferral request for the remaining associated sub-programs. Staff also argues that granting the deferral request "would be inconsistent with the cost recovery policy being applied to the rest of the sub-programs within the Reliability and Electric Other programs and all of the sub-programs within the Capacity program." Staff's Initial Brief, page 167. The Company's deferral request addresses Staff's concern that the spending is only "placeholder" and that "Staff would recommend recovery of incurred expenditures in future rate cases if the incurred expenditures are found to be reasonable and prudent." See Staff's Initial Brief, page 20. If the Commission adopts these disallowances on the basis that they are placeholders, and the Company does in fact spend the money on projects in the respective subprograms, then deferred accounting treatment would allow the Company to recover that spending after the fact. 6 TR 1322.

Service Restoration Deferred Accounting

Staff also opposes the Company's request for deferred accounting treatment for service restoration costs that exceed $75 million in a year, arguing that DTE does not carry storm insurance and is not authorized to use deferred accounting for the service restoration expense. Staff's Initial Brief, page 168. ABATE and the Attorney General make similar recommendations, arguing that the deferral is not necessary. ABATE's Initial Brief, page 57; Attorney General's Initial Brief,

page 163. MEC Coalition witness Ozar recommends using a three-year amortization at the short-term borrowing rate rather than the Company's proposed 10-year amortization for the deferral. MEC Coalition's Initial Brief, page 195.

As discussed at pages 286 through 288 of the Company's Initial Brief, the Company's proposed deferral mechanism for any service restoration costs in excess of $10 million over the amount set in rates in a year should be approved because it: (i) eliminates the ongoing storm insurance premium, which would have been $8.3 million in 2020; (ii) does not operate until service restoration costs are more than $10 million above the amount set in rates; and (iii) allows customers to only pay actual service restoration costs above this threshold. 6 TR 1836-1837. In addition, utilities in states such as Alabama, Arkansas, Kentucky, Illinois, Florida, Ohio, Oklahoma, and Pennsylvania use recovery mechanisms such as riders, reserve accounts, or securitization in their recovery of service restoration costs. 6 TR 1908-1909. The Company is open to a two-way tracker that allows for recovery of service restoration O&M costs that are more than $10 million above the amount set in rates, but would return amounts to customers that are lower than the O&M amount set in rates. 6 TR 1926.

The Commission should reject the MEC Coalition's amortization recommendation and should approve the Company's original proposal to: (i) record service restoration O&M expense that is more than $10 million above approved amounts in a regulatory asset; (ii) amortize the deferred balance over ten years beginning with the year after recording of the regulatory asset; (iii) include the resulting amortization expense in rates; and (iv) subject to review in rate cases, include the deferred amortized balance in rate base at the authorized rate of return. 6 TR 1871. The Company's ten-year amortization approach minimizes customer rate impacts compared with a three-year approach. 6 TR 1882.

Karn Units 1 and 2 Retention and Separation Plan Deferral

The Attorney General recommends rejecting the Company's proposed deferral and amortization of the Karn Units 1 and 2 retention and separation plan because of the Attorney General's concern that 57% of the projected costs, or those for 2019 and 2020, will have been expensed prior to the test year. Attorney General's Initial Brief, pages 164-165. As discussed at page 436 of the Company's Initial Brief, the Company has agreed to exclude 2019 and 2020 costs from the proposed deferral. See 6 TR 1881-1882. Thus, the Attorney General's recommendation should be rejected.

ABATE argues that the Company's deferral and amortization proposal should not be approved because of ABATE's contention that it is inconsistent with the settlement agreement in Case No. U-20165. ABATE's Initial Brief, page 54. ABATE contends that the costs should instead be securitized. *Id*. at 55. The Commission should reject ABATE's recommendation. Company witness Myers testified that the Settlement Agreement in Case No. U-20165 states as follows:

> The parties agree that Karn Units 1 and 2 will be retired in 2023. The Company agrees to seek recovery of the Karn Units 1 and 2 unrecovered book balance by no later than May 31, 2023, filing an application under the applicable provisions of Customer Choice and Electric Reliability Act, MCL 460.10 *et seq*,. seeking a financing order from the Commission authorizing Consumers Energy to recover[ ] the unrecovered book balance of Karn Units 1 and 2. [6 TR 2275-2276; see also Case No. U-20165, June 7, 2019 Order Approving Settlement Agreement ("June 7 Order"), Exhibit A, Paragraph 3.]

Thus, the Settlement Agreement in Case No. U-20165 provides that the Company will seek recovery of the unrecovered book value of Karn Units 1 and 2 through securitization. The retention and separation costs are not in the unrecovered book value of Karn Units 1 and 2, and as such, the

Settlement Agreement does not prevent the Company's proposal in this case to defer and amortize these costs.

ABATE's position appears to be based on language inadvertently used in the Commission's June 7 Order approving the Settlement Agreement. On page 78 of the Commission's June 7 Order, the Commission indicated that "[a]n agreement that provides potential customer savings by Consumers agreeing to seek recovery of the unrecovered book value and decommissioning costs of Karn Units 1 and 2 through low-cost debt financing in a separate proceeding, rather than continued recovery through traditional ratemaking which includes a return on these assets." In this portion of the Commission's June 7 Order, the Commission inadvertently used the words "decommissioning costs" when paraphrasing what is in the Settlement Agreement. However, the Commission was not specifically stating the terms of the Settlement Agreement or seeking to modify the terms of the Settlement Agreement. The Settlement Agreement is clear that the Company only agreed to seek a financing order (i.e. securitize) the unrecovered book balance of Karn Units 1 and 2, and not the decommissioning costs. Even if Commission had sought to modify the Settlement Agreement in its June 7 Order, which it did not, it could not have modified the Settlement Agreement because the terms of the Settlement Agreement specifically prohibit modification. See June 7 Order, Exhibit A, Paragraph 16. The exact terms of the Settlement Agreement represent the agreement of the parties and is controlling in this instance.

The MEC Coalition recommends that the Karn Units 1 and 2 retention and separation plan deferral and amortization use a three-year amortization rather than the Company's proposed 19-year amortization, or in the alternative, the costs should be securitized. MEC Coalition's Initial Brief, page 166. The Commission should reject the MEC Coalition's recommendation. The Company continues to support its proposed 19-year amortization because it is through the average

remaining life of the Company's remaining coal plants, which is the typical approach to amortize unrecovered costs upon a plant's retirement, and spreads the recovery over a longer time than the three-year approach, thus minimizing the rate impact. 6 TR 1881. And as discussed above, the retention and separation costs are not in the unrecovered book value of Karn Units 1 and 2 and are not required to be securitized.

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

A. COSS

1. Production Capacity Allocator Update

The Company's proposed Test Year Electric COSS – Version 2 ("COSS Version 2") updates the production capacity allocator from the current Commission-approved 4 CP 75/0/25 methodology to a 4 CP 89/0/11 methodology. 5 TR 814-820; Consumers Energy's Initial Brief, pages 437-441. As provided in the Company's Initial Brief, the 4 CP 75/0/25 methodology no longer accurately reflects how the Company's production capacity costs should be allocated based upon the Company's current generation plant. *Id.* To better ensure that the Company's rates are equal to its cost of service, the Company proposed to maintain the Discretionary Energy Weighting ("DEW") method currently in effect today while also updating the analysis previously relied upon by the Commission for determining the proper allocation of production capacity costs. Both the DEW method and production capacity cost analysis in effect today were adopted by the Commission in Case No. U-17688. As part of its update to the production capacity cost analysis, the Company also: (i) updated the calculation with the most recent historic data available; (ii) applied the appropriate allowance when calculating the minimum load produced by coal units; and (iii) excluded hydro plants from the calculation of the base load. 5 TR 815-816; Consumers Energy's Initial Brief, pages 439-441; Exhibit A-18 (JCA-4). After applying these updates and

modifications, the Company's calculation resulted in an 11% production energy allocation, which leaves 89% for the production capacity allocator. *Id.*

Several parties took positions either opposing or supporting the adoption of the Company's proposed 4 CP 89/0/11 methodology. The Company's discussion in its Initial Brief addressed many of the parties' arguments in their briefs (Consumers Energy's Initial Brief, pages 441-446), and the Company will not fully repeat those arguments here. Below the Company will respond to additional arguments raised in the parties' briefs.

a. <u>Reply to Kroger, ABATE, & Walmart</u>

Kroger and ABATE addressed the Company's proposed production capacity allocation methodology in their initial briefs. Kroger's Initial Brief, pages 2-4; ABATE's Initial Brief, pages 5-10. The Company already responded to Kroger's and ABATE's arguments in its Initial Brief. See Consumers Energy's Initial Brief, pages 441-442. The Company will not repeat the arguments provided in its Initial Brief here. Therefore, for the reasons provided in Consumers Energy's Initial Brief, the Commission should adopt the Company's proposed 4 CP 89/0/11 production capacity allocation methodology.

Similar to Kroger's proposal, Walmart recommends that the Commission approve the Average and Excess allocation methodology. Walmart's Initial Brief, pages 9-10. Alternatively, Walmart recommends that "if the Commission decides the Company should continue to employ the DEW production cost allocation method, it should direct that the Staff analysis previously used to determine the appropriate energy weighting percentage be updated with more recent data that more accurately reflects the Company's current generation fleet and operating characteristics." Walmart's Initial Brief, page 10.

For the same reasons provided in response to Kroger and ABATE, the Company agrees with Walmart that the A&E methodology is superior to the DEW methodology. Consumers

Energy's Initial Brief, pages 441-442. Nevertheless, the Company proposes to use an updated DEW methodology (4 CP 89/0/11) given the Commission's prior decision in Case No. U-17688 to rely on the calculation developed by Staff to arrive at a demand/energy weighting, as well as the DEW methodology's presence in PA 341. *Id.* Therefore, the Company recommends that the Commission continue to approve the DEW methodology while also reflecting the Company's current generation fleet and operating characteristics.

b. <u>Reply to Staff</u>

Staff addressed the Company's proposed production capacity allocation methodology in its initial brief. Staff's Initial Brief, pages 174-179. The Company already addressed many of Staff's arguments in its brief, and the Company will not fully repeat those arguments here. See Consumers Energy's Initial Brief, pages 442-443. Below, the Company responds to additional arguments raised in Staff's brief.

Staff argued that the Company's analysis included a flawed assumption, which was that only the minimum load that each coal unit or other base load plant produced should be considered base load and that these traditional base plants do not necessarily meet 100% of the Company's system base load. Staff's Initial Brief, page 177. Staff claimed that failing to substitute other resources to meet the Company's system baseload costs in the calculation in Company Exhibit A-18, after only accounting for a portion of its coal plant costs, would result in an artificially low energy allocation. Staff further suggested that Company witness Josnelly C. Aponte admitted, during cross examination, that the Company attributed an insufficient amount of costs to baseload, which ultimately represented an artificially low energy weighting. The Company disagrees with Staff's claims and rejects Staff's suggestion that Ms. Aponte admitted to attributing an insufficient amount of costs to baseload, as further explained below.

The argument presented by Staff actually reinforces the Company's position that "[c]oal plants do not necessarily meet 100% of the system base load." 5 TR 816. This is also true with regard to the Company's argument for hydro generation. In the hypothetical case that MISO dispatches 100% of the Company's coal units first, the Company does not own enough coal capacity to meet the 2018 minimum hourly demand of 2,748 MW. 6 TR 1936. As shown in Table 1 of Company witness Hugo's revised direct testimony, page 6, the total capacity of coal plants is 1,886 MW (sum of all coal fired units in Table 1). *Id*. Furthermore, even if the Company were to add the capacity of the Zeeland, Jackson, and Hydroelectric plants to the total capacity of coal plants, resulting in a total of 2,626 MW, the Company would still not ultimately meet the 2018 minimum hourly demand total of 2,748 MW.

This analysis does not suggest, as attempted by Staff, that the Company attributed an insufficient amount of costs to baseload and is therefore incomplete. In actuality, the analysis correctly reflects the new reality of the Company's generation plant, which is that "[t]he Company's investment in generation has evolved in the last few years; the Company has reduced its dependence on coal and increased its reliance on renewable energy resources and demand response ("DR") programs." 5 TR 816. The adjustments proposed by the Company in this proceeding ultimately account for these changes in the Company's generation plant and correctly apply the appropriate energy weighting to the production allocator based on the Company's current generation plant and its increase in the reliance of renewable energy resources and DR programs. Furthermore, the Company's modifications ensure that its rates are now equal to the cost of service. The Commission should reject Staff's position and proposal to preserve the 4 CP 75/0/25 methodology and adopt the Company's proposed 4 CP 89/0/11 methodology.

c. **Reply to the MEC Coalition**

The MEC Coalition addressed the Company's proposed production capacity allocation methodology in its initial brief. MEC Coalition's Initial Brief, pages 196-211. The Company already addressed many of the MEC Coalition's arguments in its brief, and the Company will not fully repeat those arguments here. See Consumers Energy's Initial Brief, pages 443-445. Below, the Company responds to additional arguments raised in MEC Coalition's brief.

MEC Coalition argued in its initial brief that cross examination of Ms. Aponte showed that the minimum load adjustment related to the production allocation removed a large amount of cost from the baseload calculation and ultimately did not allocate a meaningful amount of cost to baseload. MEC Coalition's Initial Brief, pages 207-210. The MEC Coalition further addressed the topic of whether the primary objective of the IRP was to determine the least-cost additions to a generating portfolio, claiming that Ms. Aponte conceded that she was not aware of any embedded costs of the Company's generating capacity that had been acquired under the IRP process to date. *Id.*

The MEC Coalition's argument that suggests an insufficient allocation to baseload is a similar argument to that presented by Staff. The Company addressed this argument directly, above, in reply to Staff and relies on those same arguments in response to the MEC Coalition. Furthermore, in response to the MEC Coalition's assumption that Ms. Aponte conceded to not being aware of any embedded costs of the Company's generating capacity acquired under the IRP process to date, attempting to make the assumption that none have been acquired through the IRP to date, the Company disagrees and finds that the MEC Coalition's assumption is inappropriate and an unfair twist of Ms. Aponte's response during cross examination. The fact that while on the stand, Ms. Aponte could not identify which generation assets were ultimately acquired through the Company's IRP process does not ultimately reach the far-fetched conclusion that no such assets

have been acquired through the IRP process to date. This is an inappropriate conclusion on behalf of the MEC Coalition and should be rejected by the Commission.

The Commission should reject the MEC Coalition's position and proposal for a 4 CP 70/0/30 methodology and adopt the Company's proposed 4 CP 89/0/11 methodology.

d. <u>Reply to the Attorney General</u>

The Attorney General addressed the Company's proposed production capacity allocation methodology in her initial brief. Attorney General's Initial Brief, pages 179-194. The Company already addressed many of the Attorney General's arguments in her brief, and the Company will not fully repeat those arguments here. See Consumers Energy's Initial Brief on pages 445-446. Below, the Company responds to additional arguments raised in the Attorney General's brief.

The Attorney General provided that the Company's analysis in determining its proposal for a 4 CP 89/0/11 production capacity allocation methodology contained: (i) inappropriate assumptions that lead to inconsistencies with the Staff's 2013 analysis; and (ii) irrelevant assumptions as to the Company's current operations. Attorney General's Initial Brief, page 188. The Company disagrees with the Attorney General's position.

As provided in its Initial Brief on pages 439 through 441, the Company applied the same analysis relied upon by the Commission in Case No. U-17688 to allocate production capacity costs while also making certain modifications to the analysis to reflect more recent data from the Company's generating plant. In doing so, the Company's modifications better reflect how its current generating plants operate for a more accurate cost of service. These modifications, as described on page 440 of the Company's Initial Brief, are important as the Company's investment in generation has evolved in the last few years, and coal and hydro plants no longer necessarily meet 100% of the system base load; therefore, only the minimum load that these coal units produce should be considered base load for purposes of the production capacity allocation. Furthermore,

such modifications presented by the Company will ensure that its rates are equal to the cost of service.

The Commission should reject the Attorney General's position and proposal of a 4 CP 50/0/50 methodology and adopt the Company's proposed 4 CP 89/0/11 methodology.

2. Customer-Related Cost Adjustments and Proposed System Access Charge

The Company initially proposed to update the customer-related costs within its COSS in this proceeding. The update to the customer related costs involved including three cost items that had been previously omitted, as well as removing an incorrect formula reference within the related calculation performed in the COSS. 5 TR 823-825; Consumers Energy's Initial Brief, page 451. Based on these updates, the Company proposed through rate design a gradual increase to the residential system access fee from $7.50 per month to $8.50 per month to better align the monthly charge with the $10.00 per month amount supported in the Company's COSS. 4 TR 571; Consumers Energy's Initial Brief, page 471.

Several parties took positions to the Company's proposals to update the customer-related costs in the Company's COSS and ultimately increase the residential system access charge via rate design. The Company's discussion in its Initial Brief addressed many of the parties' arguments in their briefs (Consumers Energy's Initial Brief, pages 452-453, 466, and 471), and the Company will not fully repeat those arguments here. Below the Company will respond to additional arguments raised in the parties' briefs.

a. Reply to Staff

Staff addressed the Company's proposed customer charge methodology and proposed a monthly residential system access fee of $8.00 in its initial brief. See Staff's Initial Brief, pages 169-172. The Company accepted Staff's proposed methodology in its Initial Brief on page 452,

and further accepts Staff's proposal for an $8.00 monthly residential system access fee. The Commission should accept Staff's proposed monthly residential system access fee.

Staff further recommended in its Initial Brief that the Commission should require the Company in future rate cases to account for and allocate clearly attributable customer-related costs to the classes responsible. Staff's Initial Brief, pages 172-174. Specifically, Staff proposed that costs associated with the Company's Customer Contact Center should only be allocated to residential and small commercial classes, as well as that costs associated with the Company's Business Customer Care should be allocated to only commercial and industrial customers. *Id.* The Company already responded to Staff's arguments in its Initial Brief and will not repeat those arguments here. See Consumers Energy's Initial Brief, page 452. The Commission reject Staff's proposal.

b. <u>Reply to the MEC Coalition</u>

The MEC Coalition addressed the Company's customer access charge in its Initial Brief on pages 226 through 230. Specifically, the MEC Coalition argued that the Company's AMI business case showed that the benefits that smart meters have provided suggest that meter costs are incurred for reasons other than billing; therefore, the MEC Coalition recommended that a portion of the AMI costs should be excluded from the system access charge calculation. Ultimately, based on that adjustment, the MEC Coalition recommended that the Company's residential system access charge be decreased to $6.50.

The Company already responded to the MEC Coalition's proposal in its Initial Brief and will not repeat those arguments here. See Consumers Energy's Initial Brief, page 452-453. The Commission should reject the MEC Coalition's recommendation.

c. Reply to the Attorney General and RCG

The Attorney General and RCG recommended that the Commission direct the Company to maintain customer charges at their current levels in this proceeding. Attorney General's Initial Brief, pages 207-209; RCG's Initial Brief, page 20. In making their recommendation, the Attorney General and RCG argued that the customer charges should remain at their current level because any increase would discourage energy efficiency. The Company disagrees.

As provided by Company witness Hubert W. Miller in his revised direct testimony, the Company's proposed increases to monthly system access charges are gradual and provide a balanced approach for moving toward rates that send better price signals by reflecting cost causation and maintain a stable rate design structure. 4 TR 571. Furthermore, a gradual increase to the system access charge does not materially interfere with a customer's incentive to conserve energy and reduce their bill, as incorrectly suggested by the Attorney General and RCG, because the vast majority of the bill is still represented by volumetric charges. Therefore, the Commission should reject the recommendations made by the Attorney General and RCG.

3. Streetlighting

a. Reply to MAUI

MAUI addressed the Company's streetlighting program and associated rates in its Initial Brief. Among other arguments, MAUI attempted to argue that: (i) the Company is allocating excessive O&M costs to LED; (ii) the Company is incorrectly allocating distribution plant in service for GUL and GU-XL rates; (iii) the Company's proposed rates are not accurate because Plant In Service is overstated; and (iv) the Commission should require the Company to track O&M by technology and asset type for future cost allocation and technology evaluation purposes. MAUI's Initial Brief, pages 17-21.

MAUI further addressed the Company's policy of converting failed High Intensity Discharge ("HID") lights to LED and recommended that the Commission ensure equity among streetlighting customers by requiring the Company to implement a unified tariff for customers who do not own their unmetered fixtures regardless of whether an HID or LED fixture is in place. MAUI's Initial Brief, pages 15-17. The Company disagrees, in part, as further explained below.

The Company already responded to these specific MAUI arguments in its Initial Brief and will not repeat those arguments here. See Consumers Energy's Initial Brief, pages 462-463 and 473-475; 5 TR 856-857; 4 TR 599-601. Below, the Company will respond to additional arguments raised in MAUI's brief.

MAUI attempted to argue that Company witness Aponte offered no basis for her $1.7 million adjustment in the Company's COS model to offset the O&M assigned to Rate GU-XL by the allocator used for Distribution Operation Expense and Distribution Maintenance Expense. MAUI's Initial Brief, page 19. The Company disagrees. Company witness Aponte fully supported her adjustment in rebuttal testimony. 5 TR 857. The Commission should reject MAUI's argument.

MAUI attempted to argue that the Company incorrectly adjusted O&M costs allocated to the Company's GU-LED rate and proposed that some O&M costs should be allocated to the LED rate and less costs should be allocated to the GUL rate. MAUI's Initial Brief, page 20. As a result, MAUI suggested that the Company correct its assumptions by tracking O&M technology and asset type for future cost allocation and technology evaluation purposes. *Id.* The Company disagrees and requests that the Commission reject MAUI's recommendation as inaccurate and unreasonable.

In recommending that the Company implement a unified tariff to merge the GUL and GU-LED rates, MAUI further recommended that the Company either implement a unified tariff in this proceeding or present a unified tariff in the Company's next electric rate case proceeding. MAUI's

Initial Brief, page 17. As already provided in the Consumers Energy's Initial Brief on pages 473 through 475, the Company emphasized the importance of a six-month transitional rate until the new LED tiered rate structure can be fully implemented. Therefore, the Company recommends that the Commission approve the Company's proposed transition rate when considering the appropriate timing of implementation.

4. Use of Actual Load Data to Build Consumers Energy's Load Profiles

a. Reply to Staff

Staff recommended in its initial brief that the Commission should require the Company to use actual load data, and no sample data, in preparing its next rate case. Staff's Initial Brief, pages 180-181. Specifically, Staff argued that the Company should not be using any sampling data to build its load profiles because nearly all customers are using communicating AMI meters and, therefore, the Company has access to the actual load data of those customers. *Id.* The Company already responded to Staff's recommendation in its Initial Brief and will not repeat those arguments here. See Consumers Energy's Initial Brief on pages 463-465. The Commission should reject Staff's recommendation for the reasons presented in the Company's Initial Brief.

5. General Service Self-Generation Rate GSG-2 Distribution Allocation

The Company proposed in this proceeding to modify the distribution allocation for Rate GSG-2, after considering the standby analysis conducted by the Brattle Group. The Company ultimately proposed to utilize the demand of GSG-2 customers, adjusted by a coincidence factor of 45%, in place of the average historic class peak that was previously used in the calculation in order to better reflect the cost to serve the GSG-2 customers. Consumers Energy's Initial Brief, pages 447-448 and 455-460; 5 TR 820-821; 5 TR 829-833.

a. <u>Reply to MEIBC</u>

MEIBC addressed the Company's proposal in its Initial Brief on pages 30 through 39. Specifically, MEIBC recommended that: (i) the production cost allocation to GSG-2 standby customers should be based on the same cost of service calculation as provided for a Long-Term Industrial Load Retention Rate ("LTILRR") customer, but with a 4 CP demand allocator; and (ii) the Company's proposal to allocate distribution costs to standby customers based on contracted demand should be rejected and, instead, should be based on the coincidence factor of actual customer demands with Consumers Energy's system peak, as measured at the time of 4 CP. MEIBC's Initial Brief, pages 30-39.

The Company already addressed MEIBC's arguments in its Initial Brief and will not repeat those arguments here. See Consumers Energy's Initial Brief, pages 447-448. Below, the Company will respond to additional arguments made in MEIBC's initial brief.

MEIBC argued in its initial brief that Ms. Aponte did not explain why GSG-2 customers should be allocated far greater production demand-based costs than the more favorable market-based costs it assigns to the LTILRR customer. In addition, MEIBC argued that Ms. Aponte did not respond to Mr. Jester's recommendation that any cost of service study for GSG-2 customers use 4 CP demand to allocate capacity costs, rather than the customer's peak load.

In response, Mr. Jester's recommendation should be rejected because changing the production allocation has no impact on the amount GSG-2 customers pay for production. The GSG-2 tariff in the Company's Electric Rate Book establishes that customers should pay Locational Marginal Price ("LMP") for energy and the highest contracted capacity purchased by the Company in the designated month. Furthermore, the cost of service applies the same allocation methodologies to GSG-2 than to other customers, and the rate design adjustment is necessary to account for the difference between the costs allocated and the tariff charges. If the cost allocation

were to be changed, the rate adjustment would simply be partially embedded in the cost of service. And, as previously stated, it makes no difference in the actual customer payment. Therefore, the Commission should give no weight to Mr. Jester's arguments and recommendation.

Further, MEIBC argued in its Initial Brief that the Company's proposed change in the distribution costs to standby customers should be rejected because the underlying Brattle Study was not responsive to the Settlement Agreement in Case No. U-20134. As a result, MEIBC recommended that Commission require the Company to complete the standby study required in the Settlement Agreement because the previous study did not fully comply. MEIBC's Initial Brief, pages 34-39. The Company disagrees.

The Company fully complied with the Settlement Agreement in Case No. U-20134 by submitting the Brattle Study in this proceeding which analyzed the issue of the cost to serve customers who take standby service. Exhibit A-21 (JCA-7). In compliance with the Settlement Agreement, Brattle's Study focused on customers with behind-the-meter generation capacity that exceeds 550 kw and reviewed both the actual demands that standby customers place on the system, as well as the cost of the investments that are in place to provide standby service. 5 TR 829-830. Ms. Aponte provided the results of the study in her direct testimony and in Exhibit A-21 (JCA-7). *Id.* Based on Ms. Aponte's testimony, the Brattle Study was in full compliance with the Company's Settlement Agreement in Case No. U-20134. The Company should not be required to fulfill another study simply because Mr. Jester disagrees with the outcome. Therefore, the Commission should dismiss and reject Mr. Jester's argument and recommendation that a subsequent study should be performed. The Commission should further adopt the Company's GSG-2 allocation proposals provided in this proceeding.

6. Distribution Cost Allocation

In compliance with the Settlement Agreement in MPSC Case No. U-20134, the Company performed a review of its distribution allocation methodologies in 2019 and prepared a distribution cost allocation study ("DCAS") which was circulated among all parties of the settlement. The study aligned with the requirements of the Settlement Agreement and was included in this proceeding in Exhibit A-134 (JCA-10). In addition, the Company submitted its prepared presentations of the DCAS results in this proceeding in Exhibit A-135 (JCA-11). Consumers Energy's Initial Brief, pages 456-460.

The MEC Coalition and ABATE addressed the Company's proposed DCAS in their initial briefs. MEC Coalition's Initial Brief, pages 212-219; ABATE's Initial Brief, pages 4-5 and 17-20. The Company already responded to MEC Coalition's and ABATE's arguments in its Initial Brief and will not repeat those arguments here. See Consumers Energy's Initial Brief, pages 456-460. Below, the Company will address additional arguments presented in the parties' initial briefs.

a. Reply to the MEC Coalition

The MEC Coalition argued in its initial brief that Company witness Aponte showed in cross examination that the literature relied upon in the DCAS and relied upon in her rebuttal testimony did not uniformly support the use of non-coincident peak ("NCP") to allocate distribution system costs. MEC Coalition's Initial Brief, pages 217-218. In its argument, MEC Coalition references both the NARUC manual and the Bonbright analysis which was relied upon by the Company. *Id.* The MEC Coalition's analysis ultimately attempts to further their position that the NCP allocation is inappropriate. Consumers Energy disagrees.

In response to the MEC Coalition's incorrect analysis of Ms. Aponte's cross examination, the Company did not identify the use of a 12 CP method as a reasonable approach to allocating distribution substations during its thorough review of distribution cost allocation studies.

According to Company witness Blumenstock, MEC Coalition witness Jester is entirely incorrect when concluding that the single peak hour of the year on any system component is not the actual driver of distribution costs. 6 TR 1376. Specifically, Mr. Blumenstock stated the following:

> No, Mr. Jester is entirely incorrect on this point. I discussed the Company's planning efforts relative to capacity planning and peak load when discussing the various Capacity sub-programs on pages 198 through 219 of my direct testimony. Investments in the Capacity sub-programs ensure that the system can meet projected distribution loads. Planning activities in the Capacity sub-programs are indeed based on projected peak load conditions. For additional discussion of how peak load is used in the Capacity sub-programs, refer to my direct testimony at page 200, lines 19 through 20; page 205, lines 16 through 19; and page 212, lines 2 through 4. [6 TR 1376.]

Therefore, the Company's use of NCP for all components of the distribution system is not inappropriate, as MEC attempts to portrait.

Furthermore, in response to the MEC Coalition's attempt to suggest that the Bonbright analysis and the NARUC Manual discredit Ms. Aponte's testimony, the MEC Coalition falls short of a full interpretation of these analyses. In regard to the Bonbright analysis, Bonbright recognizes the use of NCP. While he criticizes its use, Bonbright does not ultimately reject the use of NCP and, further, does not offer any alternatives. The Company is still of the position that NCP is a reasonable and accurate approach to allocating distribution costs. The Commission should reject the MEC Coalition's position.

In addition, in regard to the NARUC Manual, the Company disagrees with the MEC Coalition's ultimate conclusion drawn from the manual. The MEC Coalition failed to recognize that the NARUC Manual suggests that the cost analyst considering the proper allocation to be used should ultimately have the flexibility to determine which methodology is most appropriate. See page 66 of the NARUC Manual, MEC Coalition's Exhibit 128. After a thorough review of the appropriate distribution allocation methodologies to be used, the Company found the NCP

approach to be the most reasonable and appropriate approach. As supported throughout this proceeding (Consumers Energy's Initial Brief, pages 456-460; Exhibit A-135 (JCA-11)), Consumers Energy recommends that the Commission adopt the Company's NCP proposal for purposes of distribution cost allocations. As an additional note to the MEC Coalition's suggestion for an additional analysis, the Company should not be placed in a position to perform subsequent analyses simply because the MEC Coalition disagrees with the ultimate results. It is also unfair to conclude that the Company failed to adhere to the Settlement Agreement of MPSC Case No. U-20134 simply because the results of a certain study do not align with the interests of MEC Coalition. As further mentioned below, the analyses and studies requested in this proceeding involve extensive efforts and costs. The Company adhered to all of the terms of the Settlement Agreement and applied a thorough analysis in order to ultimately determine the best approach for its customers. The Company fully complied with the Settlement Agreement of MPSC Case No. U-20134, finds that its study was reasonable and equitable, and leaves the MEC Coalition to its own burden of proof if their interests lie in an alternative allocation.

b. <u>Reply to ABATE</u>

In its Initial Brief, ABATE recommended that: (i) class peak demands at the meter should be restated to the generation level using the cumulative 4 CP demand loss factors from the Company's 2018 Electric System Loss Study Report; and (ii) the class peak method should be applied to aggregate the maximum diversified demands by rate class rather than for 40 separate rate classes and subclasses. ABATE's Initial Brief, pages 4-5 and 17-20.

The Company already responded to these arguments in its Initial Brief and will not repeat those arguments here. See Consumers Energy's Initial Brief on pages 459-460. The Commission should adopt the Company's approach of calculating class peaks at the class voltage level. In

addition, the Commission should adopt ABATE's proposal regarding the use of demand loss factors for the allocation of distribution costs.

7. Request for Additional Studies

Staff and several intervenors recommended in their Initial Briefs that the Company conduct certain studies in preparation for the Company's next electric rate case, including the Equivalent Peaker Method, Probability of Dispatch, Distribution Allocation Study, GSG-2 Standby Study, and the Distributed Generation Study. The Company already responded, in general, to these arguments in its Initial Brief. See Consumers Energy's Initial Brief, pages 463-465. The Company will not repeat those arguments here and relies on its Initial Brief as a response to the numerous requests for the performance of additional studies. Unless specifically agreed to by the Company, the Commission should reject any request for additional studies or reports.

8. Allocation of Surcharges

a. Reply to the MEC Coalition and ABATE

The MEC Coalition and ABATE addressed the Company's proposed allocation and rate design of the FCM, CVR, DR, and Electric Rate Case Deferral surcharges in their Initial Briefs. MEC Coalition's Initial Brief, pages 219-226 and 168-169; ABATE's Initial Brief, pages 48-58. The Company already responded to the cost of service and rate design portions of these surcharge arguments in its Initial Brief. See Consumers Energy's Initial Brief on pages 453-455 and 476-477. The Company will not repeat those arguments here and relies on its recommendations in its Initial Brief.

B. Rate Design and Rate Tariff Issues

1. Rate GSTU Should Not Receive a Peak Demand Charge

a. Reply to Staff

Staff recommended that the Commission reject the Company's proposal to add a peak demand charge to its Rate GSTU. Staff's Initial Brief, page 193. Staff claimed that demand charges for small customers can be problematic and can result in customers being charged for costs they are not contributing to. 8 TR 4699. The Company disagrees.

As addressed in Mr. Miller's revised direct testimony, it is important to send accurate price signals regarding the cost of delivering power to customers, which are mostly fixed or demand-based costs, and that having a consistent delivery rate design structure across the individual rates within a class is appropriate. 4 TR 573. The Company's proposal to add a peak demand charge to Rate GSTU, thereby making consistent the delivery rate designs for Rates GSTU and GSD, is reasonable and would reflect an equitable cost of service. Therefore, the Commission should adopt the Company's proposal.

2. Peak Time Rewards Demand Response Option

a. Reply to Staff

Staff recommends rejection of the Company's Peak Time Rewards ("PTR") DR option. For the reasons provided at pages 197-198 of the Company's Initial Brief, the Commission should reject Staff's recommendation. The PTR option is a critical component of the Company's overall cost-effective DR portfolio and supports the Company reaching its aggressive DR goals from the Company's most recent IRP. 3 TR 254-255. The Commission should not remove this important DR option that the Company makes available to its residential customers.

3. Large General Service Primary Demand Rate GPD

a. Reply Kroger

Kroger recommended in its Initial Brief that the Commission adopt the Company's proposed rate design for the GPD rate class, which utilizes energy and demand line loss factors to differentiate rates between the different GPD voltage sub-classes. Kroger's Initial Brief, pages 4-8. Kroger also provided that, to the extent the Commission has concerns with any misalignment between rate design revenues and the cost-of-service study results by sub-class, the Commission should order the Company to calculate the production charges independently for each GPD voltage sub-class in order to recover the final approved cost-of-service production costs. *Id.*

In response, the Company disagrees with Kroger's concerns and recommends that the Commission adopt the Company's proposed rate design for the GPD rate class, as filed.

4. CVR Rate Design

a. Reply to Walmart

The Company proposed a CVR program in this proceeding, which Walmart addressed in its Initial Brief on pages 7 and 8. Specifically, Walmart recommended that the Commission reject the Company's CVR rate design because it would improperly allow the Company to recover program costs in a manner different from the way those costs would be incurred and allocated to customers (i.e. allocating charges for demand-metered customer classes through $/kWh energy charges). *Id.* Alternatively, Walmart recommended that, if the Commission adopts the Company's proposed CVR rate design, the Commission should require it to charge demand-metered customers on a demand charge. *Id.* The Company disagrees.

The Company proposed to collect a financial incentive for the CVR Program through a surcharge. 4 TR 583-584. The collection of the CVR financial incentive is different from the collection of the demand related costs of CVR. Therefore, the argument of cost causation is less

applicable when determining the manner in which the financial incentive is recovered. Furthermore, the Company considers multiple factors when designing rates. 4 TR 563-566. As proposed in this proceeding, the Company designed the CVR financial incentive surcharge consistent with the FCM surcharge – both incentives were based on a per kWh surcharge design. 4 TR 583-584. While the incentives could ultimately be designed to be based on demand as opposed to energy charges, the results would not change in the amount paid by each rate schedule. Therefore, the Company recommends that the Commission reject Walmart's proposal and, instead, adopt the Company CVR incentive surcharge as filed.

5. Revenue Distribution

a. Reply to the Attorney General

The Attorney General argued in her initial brief that the Company's rate increases have had a disproportionate negative impact on residential ratepayers. Attorney General's Initial Brief, pages 197-200. As a result of her argument, the Attorney General recommended that the Commission adopt an alternative revenue distribution that ultimately reduces the percentage increase of rates for the residential class and, effectively, increase the rates for the secondary and primary customer classes. *Id.*

The Company already responded to the Attorney General's arguments in its Initial Brief. See Consumers Energy's Initial Brief on pages 468-470. The Company will not repeat those arguments here. The Commission should reject the Attorney General's interpretation of PA 341, Section 11(1), and her resulting revenue distribution recommendation, and approve the Company's rate design, which is based on achieving the class cost of service, as proposed in this proceeding.

C. Other Tariff Issues

1. Request for Approval of DG Program and Tariff

In compliance with MCL 460.6(a)14, and the Commission's Order in Case No. U-18383, the Company proposed a DG Program Tariff in this proceeding, which is set forth in Exhibit A-16 (RLB-2), Sheet Nos. C-64.10 through C64-80. 6 TR 1620. The Company's proposed DG Program Tariff reflects the Inflow/Outflow billing mechanism ("Inflow/Outflow method") that was approved by Commission order on April 18, 2019 in Case No. U-18383 (see Attachment A of the April 18, 2019 Order). Furthermore, the Company's proposed DG Program Tariff includes a DG outflow compensation credit that compensates DG customers for generation placed back on the Company's electric system at power supply less transmission, which is identical to the DG outflow compensation credit approved by Commission Order in DTE's Electric Rate Case No. U-20162 (the first DTE electric rate case filed following June 1, 2018). See MPSC Case No. U-20162, May 2, 2019 Order. Furthermore, in DTE's subsequent electric rate case proceeding, Case No. U-20561, the Commission issued an Order on May 8, 2020 that maintained and preserved the DG tariff and outflow compensation credit previously approved by the Commission in Case No. U-20162. See MPSC Case No. U-20561, May 8, 2020 Order. As similarly filed, Consumers Energy requests that the Commission approve its proposed DG Program Tariff.

Several parties in this proceeding presented briefs that addressed the Company's proposed DG Program, including JCEO, MEIBC, the City of Grand Rapids, and Staff. See JCEO's Initial Brief, pages 3-61; MEIBC's Initial Brief, pages 1-30; City of Grand Rapids' Initial Brief, pages 1-11; and Staff's Initial Brief, pages 204-212.

The Company already responded to the parties' arguments in its Initial Brief and will not repeat those arguments here. See Consumers Energy's Initial Brief, pages 477-501. Below, the Company will address additional arguments presented by the parties in their initial briefs.

a. <u>The Company's Proposed DG Tariff Should be Approved</u>

(i.) <u>The Proposed DG Tariff is Just and Reasonable and Equitable Cost of Service</u>

(a.) <u>Reply to the City of Grand Rapids, MEIBC, and JCEO</u>

The City of Grand Rapids, MEIBC, and JCEO each presented similar arguments in recommending that the Company's proposed DG Program Tariff be rejected. In particular, the parties attempted to argue that the Company's proposed DG Program Tariff is not just and reasonable and is not fair and equitable. The parties further attempted to argue that the Company failed to provide any analysis or data that supports its proposed DG Program Tariff. In addition, the parties attempted to argue that the Company's proposed DG Program Tariff does not comply with widely accepted utility ratemaking principles. See City of Grand Rapid's Initial Brief, pages 3-5 and 8-9; MEIBC's Initial Brief, pages 2-3 and 7-11; and JCEO's Initial Brief, pages 5-8, 11-15, and 22-23.

To support their argument that the proposed DG Program Tariff is not just and reasonable, not fair and equitable, and not supported by analysis or data, the parties pointed to a variety of statutes, including MCL 460.6g(2), MCL 460.6a(14), MCL 460.11(1), and MCL 460.6a(1). See City of Grand Rapids' Initial Brief, pages 3-5; MEIBC's Initial Brief, pages 2-3; and JCEO's Initial Brief, pages 5-6 and 11-15. The parties argued that the Company failed to satisfy these requirements when proposing its DG Program Tariff in this proceeding. The Company disagrees.

As presented in the Company's Initial Brief on pages 477 through 484, the Company's proposed DG Program Tariff was designed in accordance with the Commission's direction in MPSC Case No. U-18383 and further aligns with Commission orders that recently adopted a DG

tariff substantially similar to the Company's proposal in this proceeding, within which the Commission found that the tariff was just and reasonable and reflected an equitable cost of service.

In particular, the Company's proposed DG Program Tariff includes the Inflow/Outflow method that was proposed by Staff in MPSC Case No. U-18383 as the framework to replace both the true net metering and modified net metering approaches authorized under Public Act 295 of 2008. Consumers Energy's Initial Brief, pages 478-479. Staff ultimately presented the Inflow/Outflow method to the Commission as the most reasonable and equitable framework to be used by Michigan utilities, after conducting a DG Workgroup with interested parties in accordance with Section 6a(14) of Public Act 341 of 2016 ("Act 341"). See February 21, 2018 Report in MPSC Case No. U-18383. In an April 18, 2018 Order in Case No. U-18383, the Commission found that Staff's proposed Inflow/Outflow method comported with the requirements of Act 341 and adopted Staff's proposed method as reasonable and equitable. Consistent with the requirements of MCL 460.6a(14), the Commission further ordered in its April 18, 2018 Order that, in any rate case filed after June 1, 2018, rate-regulated utilities must file the Inflow/Outflow tariff and may also file an alternative DG tariff. MPSC Case No. U-18383, April 18, 2018 Order, page 18. In compliance with MCL 460.6a(14), and the Commission's Order in Case No. U-18383, the Company proposed a DG Program Tariff in this proceeding that reflects the tariff found in Attachment A of the Commission's April 18, 2018 Order in Case No. U-18383. See Exhibit A-16 (RLB-2), Sheet Nos. C-64.10 through C64-80. As explained by Company witness Miller, the Inflow/Outflow method is superior to its existing net metering program in that it more accurately captures the benefits and costs attributed to DG in a way not possible under traditional net metering. 4 TR 576. This method is also better aligned with the notion of cost causation, as compared to the existing net metering approach, in that it appropriately and accurately reflects how

a customer uses the electric system. *Id.* The Commission should accept the proposed Inflow/Outflow method proposed in this proceeding as reasonable and equitable.

Furthermore, as part of its proposed DG Program Tariff in this proceeding, the Company proposed to set the compensation credit for all excess generated power put back on the grid (outflow) at power supply less transmission, as set forth in subpart (b) of MCL 460.1177(4). Consumers Energy's Initial Brief, page 480-482. MCL 460.1177(4) provides two methods to apply when crediting DG customers for the excess power generated and delivered to the utility's distribution system during a billing period. In accordance with MCL 460.1177(4), the Company proposed to set the compensation credit for DG customers at power supply less transmission in this proceeding, as set forth in subpart (b) of MCL 460.1177(4). The Company found that the approach provided in subpart (b) of MCL 460.1177(4) is a reasonable and equitable approach to compensating the DG customers for excess power placed on the Company's distribution system and, at the same time, removes subsidies previously in place that inappropriately compensated DG customers for transmission in the outflow credit, which is a service the DG customer does not provide. Consumers Energy's Initial Brief, page 481-482.

As support for the Company's proposal to set compensation credits for DG customers at power supply less transmission, in accordance with subpart (b) of MCL 460.1177(4), the Commission recently approved this approach in DTE's electric rate case No. U-20162. See MPSC Case No. U-20162, May 2, 2019 Order. In that proceeding (Case No. U-20162), the Commission approved a DG tariff that, among other things, established: (i) that Staff's recommendation to calculate the outflow credit based on power supply less transmission be adopted; (ii) that the application of outflow credits be limited to the power supply component of a customer's bill; and (iii) that netting of inflows and outflows be rejected and that all outflows be credited at power

supply less transmission. MPSC Case No. U-20162, May 2, 2019 Order, pages 180-190. The Commission further emphasized their position by preserving and maintaining this approach in DTE's subsequent electric rate case proceeding in case No. U-20561. See MPSC Case No. U-20561, May 8, 2020 Order. This Order was issued just early this year and re-confirms that power supply less transmission remains a just and reasonable approach to crediting DG customers for outflow and, furthermore, reflects an equitable cost of service. The Company proposed the same in this proceeding and finds that crediting DG customers for outflow at power supply less transmission, in accordance with subpart (b) of MCL 460.1177(4), continues to be a reasonable and equitable approach for DG customers. The Commission should approve the Company's proposed DG outflow compensation credit.

As further addressed below, the City of Grand Rapids, MEIBC, and JCEO recommend that the DG outflow compensation credit include transmission and even distribution costs. In doing so, the DG outflow compensation credit would drastically rise above the outflow credit proposed by the Company. As explained by Company witness Miller, including transmission and distribution costs in the outflow credit would essentially compensate the DG customer for services they are not providing, thereby creating a subsidy and ultimately increasing the bill of non-DG customers. 4 TR 578-579. This approach is an unreasonable computation of the outflow credit and would not reflect an equitable cost of service. Therefore, the Commission should reject the City of Grand Rapids', MEIBC's, and JCEO's proposed DG outflow compensation credit.

Lastly, to support their argument that the proposed DG Program Tariff does not comply with widely accepted utility ratemaking principles, JCEO and the City of Grand Rapids pointed to JCEO witness Rabago's analysis of James Bonbright's principles of public utility rate making. JCEO's Initial Brief, pages 7-8 and 22-23; City of Grand Rapid's Initial Brief, pages 8-9; MEIBC's

Initial Brief, pages 7-11. MEIBC also supported this argument by presenting an analysis conducted by their witness Dr. Sherman. MEIBC's Initial Brief, pages 9-10. The parties further concluded that Company witness Miller's reliance on a study performed by Fischer *et al.* is discredited by JCEO witness Rabago and MEIBC witness Sherman. JCEO's Initial Brief, pages 7-8; MEIBC's Initial Brief, pages 8-11. The Company disagrees with the City of Grand Rapids, JCEO, and MEIBC on this matter.

For the same reasons as provided above, the Company's proposed DG Program Tariff is aligned with widely accepted utility ratemaking principles. The proposed DG Program Tariff complies with MPSC Case No. U-18383's Inflow/Outflow method, and, further, the proposal is aligned with the DG outflow compensation credit that has been continuously approved in DTE's electric rate cases (Case No. U-20162 and U-20561). As already explained above, the Commission approved the same method and compensation credit, as proposed in this proceeding, just earlier this year in DTE's electric rate case No. U-20561 in May of 2020. The Commission found the methods and credits to be just and reasonable and reflective of equitable costs of service. No critical issues were found to suggest that the method and compensation credit did not align with widely accepted utility ratemaking principles. This remains the same for this proceeding. Further, Company witness Miller's testimony points to the Fisher *et al.* analysis as further support for the Company's proposal, suggesting that it is not appropriate to include transmission as part of the outflow credit at this time. 4 TR 577-579.

In conclusion, the Commission should find that the Company's proposed DG Program Tariff is just and reasonable, a fair and equitable use of the grid, and supported through Commission direction and recent approvals. The Commission should approve the Company's proposal.

(ii.) JCEO's Section 1705(1) Michigan Environmental Protection Act Argument Should be Rejected

JCEO pointed to Section 1705 of the Michigan Environmental Protection Act and claimed that the Commission is required to conduct a determination of environmental impairment in this proceeding. MCL 324.1705. JCEO's Initial Brief, pages 8 and 38-39. JCEO argued that the Company's proposed DG Program Tariff is not cost-based, does not fully value all aspects of DG, will result in suboptimal development of DG projects, and will have a negative impact on the environment. *Id.* As a result of these allegations, JCEO ultimately recommended that the Commission should reject the Company's proposed DG Program Tariff until a Value of Solar ("VOS") analysis can be performed. *Id.* Consumers Energy disagrees.

JCEO's request for a determination of environmental impairment is inappropriate for this proceeding. First, JCEO's allegation that the Company's proposed DG Program Tariff will lead to environmental impairment is entirely speculative. In its initial brief, JCEO failed to show that Consumers Energy's proposal will ultimately lead to pollution and an impairment of natural resources. Furthermore, the Company's proposed DG Program Tariff is designed to reflect the Commission's approved Inflow/Outflow method from MPSC Case No. U-18383, as well as the DG outflow compensation credit approved in DTE's electric rate case proceedings in MPSC Case Nos. U-20162 and U-20561. Therefore, the Company's proposed DG Program Tariff is already in use and was, again, recently confirmed by Commission order in May of 2020 as a just and reasonable approach that reflects and equitable cost of service.

Second, JCEO attempted to support their recommendation by pointing to DTE's IRP Case No. U-20471. DTE Electric Co., MPSC Case No. U-20471, February 20, 2020 Order. JCEO claimed that the Commission should consider a similar analysis of environmental impairments in

this proceeding as was performed in Case No. U-20471. The Company disagrees and recommends that the Commission reject JCEO's request.

Case No. U-20471 is an IRP proceeding that specifically determined what is the most reasonable and prudent means of meeting the electric utility's energy and capacity needs. This instant proceeding, involving Consumers Energy's application to adjust its rates and charges, is entirely different from an IRP proceeding. The two proceedings are not synonymous. Further, JCEO failed to provide any specific examples of general rate case proceedings within which the Commission has been required to perform an environmental impairment determination.

As a result, the Commission should reject JCEO's request for an environmental impairment determination and find that the Company's proposed DG Program Tariff is consistent, reasonable, and equitable and aligns with DTE's DG tariff that was recently approved by the Commission in May 2020.

b. <u>Setting Alternative Outflow Credit & Applying Outflow Credit to Entire Bill</u>

JCEO, the City of Grand Rapids, and MEIBC each recommended that the Commission reject the Company's proposed DG outflow compensation credit and, instead, adopt an alternative outflow credit. In particular, JCEO recommended using the Company's embedded cost-of-service study to develop an unreasonable and excessive residential outflow credit amount to account for benefits that they allege DG customers provide to the Company's electric system (JCEO's Initial Brief, pages 35-37); JCEO also recommended that the Company be required to establish DG outflow compensation credits based on a comprehensive VOS framework (JCEO's Initial Brief, pages 39-55); the City of Grand Rapids supported JCEO's proposal for a VOS framework (City of Grand Rapids' Initial Brief, pages 5-7); and MEIBC recommended that the value of DG outflow compensation credits should not be limited to either LMP or the power supply component of the

full retail rates excluding transmission and, instead, should also include transmission and distribution costs (MEIBC's Initial Brief, pages 7-11).

In addition, JCEO, the City of Grand Rapids, and MEIBC also recommended that their proposed DG outflow compensation credits should be applied to the entire bill of DG customers. In particular, JCEO recommended that, until a VOS study can be completed by Staff and interested parties, the Commission should direct the Company to credit DG outflow compensation credits at the full retail rate (JCEO's Initial Brief, pages 55-58); the City of Grand supported JCEO's proposal (City of Grand Rapids' Initial Brief, pages 5-7); and MEIBC recommended that the DG outflow compensation credit include transmission and distribution costs, thereby supporting the other parties' recommendation to retain credits at the full retain rate (MEIBC's Initial Brief, pages 7-11).

The Company already responded to JCEO's, the City of Grand Rapids', and MEIBC's arguments in its Initial Brief and will not repeat those arguments here. See Consumers Energy's Initial Brief on pages 487 through 495. Below, the Company will address additional arguments presented in the parties' initial briefs.

(i.) <u>Section 177(4) Public Act 342 of 2016 – Reply to MEIBC and JCEO</u>

JCEO and MEIBC argued in their initial briefs that the Company is misplaced in relying on Section 177(4) of Public Act 342 of 2016 as support for its proposed DG Program Tariff which sets the outflow compensation credit at the power supply component of the full retail rate, excluding transmission. JCEO's Initial Brief, pages 13-14; MEIBC's Initial Brief, pages 5-7. JCEO and MEIBC further argued that the Commission clarified in MPSC Case Nos. U-18383 and U-20162 that Section 177 of 2016 PA 342 applies only to modified net metering and not to

Inflow/Outflow tariffs, and, therefore, the Commission should reject the Company's proposed DG Program Tariff. The Company disagrees.

"Modified net metering" is subject to the provisions of MCL 460.1177(4) and (5) as the definition expressly references these requirements. See MCL 460.1007(i). Similarly, the definition of "true net metering" states that it is subject to the provisions of MCL 460.1177(4) and (5). See MCL 460.1013(c). However, nothing in MCL 460.1177 provides express language limiting its requirements to true or modified net metering. Absent from the plain language of MCL 460.1177 is use of the term "modified net metering." "The primary goal of statutory interpretation is to determine and give effect to the intent of the Legislature." *Old Kent Bank v Kal Kustom, Enter*, 255 Mich App 524, 531–32; 660 NW2d 384 (2003). (Citation omitted.) In doing so, courts first look to the "plain language of the statute." *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 159; 615 NW2d 702 (2000).

Section 177(4) of Act 342 explicitly provides the manner in which excess generation is compensated under the DG Program. This statutory provision requires two methods for compensation: (i) the use of the Locational Marginal Price at the utility's load node, or (ii) the power supply portion of the customer's rate excluding transmission. The statue also requires that credits for excess generation cannot reduce distribution or transmission charges. Section 177(4) explicitly provides that "[n]otwithstanding any law or regulation, distributed generation customers shall not receive credits for electric utility transmission or distribution charges." While Section 177 contains similar language to the definition of modified net metering under MCL 460.1007(i), absent the statute expressly limiting this provision to modified net metering, this provision is applicable to the DG Program. MCL 460.1177 should not be interpreted in such a way to allow

the limiting language in the provision to be made nugatory and to give no effect to the express statutory requirements.

As further addressed above, even if Section 177 applies only to modified net metering, the Commission approved DTE's proposed DG tariff in Case No. U-20162, which is substantially similar to the DG Program Tariff proposed in this proceeding. In that proceeding, the Commission agreed with the ALJ's recommendation to adopt the Staff's proposal to calculate the DG outflow compensation credit based on power supply less transmission. Specifically, the Commission agreed with Staff that:

> [t]his approach is simple, understandable to customers, creates a close connection between the new compensation rates under the Inflow/Outflow billing method and existing compensation under NEM, and yet avoids the primary subsidy related to NEM which is the inclusion of the distribution charge (of the underlying sales rate schedule) in the outflow compensation formula. Vis-à-vis DTE's requested deminimis compensation, use of the power supply component of the retail rate, excluding transmission, results in a more measured pace of adjustment from the existing effective level of compensation under NEM. [MPSC Case No. U-20162, May 2, 2019 Order, page 180.]

Furthermore, in MPSC Case No. U-20561, DTE proposed to continue utilizing the same outflow credit methodology approved in MPSC Case No. U-20162, which was set at power supply less transmission. The Commission found that proposal to be reasonable and preserved the DG outflow compensation credit. MPSC Case No. U-20561, May 8, 2020, page 229-230. As addressed above, the Commission's order in MPSC Case No. U-20561 was issued just earlier this year on May 8, 2020.

The Company's proposed DG Program Tariff in this proceeding is substantially similar to the DG tariff approved by the Commission in MPSC Case Nos. U-20162 and U-20561. Therefore,

the Commission should approve the Company's proposed DG Program Tariff and reject JCEO's and MEIBC's arguments to dismiss the Company's proposal.

(ii.) <u>Upper Peninsula Power Company and Indiana Michigan Power Company Settlement Agreements – Reply to MEIBC and JCEO</u>

JCEO and MEIBC argued in their initial briefs that the Commission previously approved DG outflow compensation credits equal to the full power supply component of the DG customer's rate schedule (thereby including transmission in the DG outflow compensation credit). JCEO's Initial Brief, pages 20-22; MEIBC's Initial Brief, pages 10-11. Specifically, JCEO and MEIBC pointed to a Settlement Agreement in Indiana Michigan Power Company's ("I&M") electric rate case in MPSC Case No. U-20359 (approved by Commission order on January 23, 2020), as well as a settlement agreement in Upper Peninsula Power Company's ("UPPCo") electric rate case in MPSC Case No. U-20276 (approved by Commission order on May 23, 2019), as examples of scenarios in which the Commission approved a DG outflow compensation credit that included transmission costs. *Id.* The Company rejects JCEO's and MEIBC's reference to I&M's and UPPCo's Settlement Agreements and recommends that the Commission dismiss those cases from their consideration in this proceeding.

By their very nature, settlement agreements involve concessions and compromises by the parties involved in order to reach an ultimate agreement in that proceeding. While the parties may have agreed to an isolated issue in an effort to reach an overall agreement in that particular proceeding, the parties' concession does not mean that they are bound to that isolated concession in the future. Settlement agreements do not present a precedence for future proceedings. As included in the Settlement Agreements of MPSC Case Nos. U-20359 and U-20276, the parties agreed that the settlement agreement, and the order approving the settlement agreement, shall not be used as precedent in future proceedings except for enforcement of the order. See paragraph 17

of the Settlement Agreement approved by Commission order on January 23, 2020 in MPSC Case No. U-20359; see paragraph 11 of the Settlement Agreement approved by Commission Order on May 23, 2019 in MPSC Case No. U-20276. Further, those settlement agreements were based on facts and circumstances of that case. Therefore, it is inappropriate for JCEO and MEIBC to point to an isolated issue in a settlement agreement and attempt to argue that the isolated issue should have some sort of precedence for this instant proceeding.

Alternatively, JCEO argued that the Commission is not bound by its decisions in DTE's electric rate case Nos. U-20162 and U-20561, in which the Commission approved a DG outflow compensation credit that excluded transmission costs. JCEO's Initial Brief, pages 20-21. JCEO argued that much has changed since those Commission orders, such as an increased deployment of AMI and more-developed DG market, and that, as a result, the Commission should conduct a thorough analysis of costs and benefits associated with DG customers. Consumers Energy disagrees.

Unlike the I&M and UPPCo settlement agreements, DTE's electric rate case Nos. U-20162 and U-20561 were not settled and were determined by a final Commission order based on the merits of those proceedings. As further addressed above, within Case Nos. U-20162 and U-20561, the Commission found DTE's proposed DG tariff to be just and reasonable and reflective of an equitable cost of service. The approved DG tariff in those proceedings is substantially similar to the DG Program Tariff proposed by the Company in this proceeding and, therefore, should be approved. In addition, the Commission just recently maintained DTE's DG tariff in May 2020 in its final order in Case No. U-20561. Therefore, it is inappropriate for JCEO to make the argument that much has changed in the utility arena since May of this year. As a result, the Commission should find that the Company's proposed DG Program Tariff is reasonable.

c. Voluntarily Expanding the DG Program

The City of Grand Rapids, MEIBC, JCEO, and Staff addressed the DG Program cap requirements, as found in MCL 460.1173(3), and recommended that the Company voluntarily agree to accept applications beyond the 1% cap from customers who chose to install private renewable generation on their premises and want to sell their excess power to the utility under its DG Program. See City of Grand Rapids' Initial Brief, page 9; MEIBC's Initial Brief, pages 12-18; JCEO's Initial Brief, pages 58-60; and Staff's Initial Brief, pages 211-212. The Company already responded to the parties' arguments in its Initial Brief and will not repeat those arguments here. See Consumers Energy's Initial Brief, pages 482-487. The Commission should reject the parties' recommendations, as MCL 460.1173(3) provides utilities with discretion to determine the size of their DG Program and does not require utilities to offer a program greater than 1% of its average in-state peak load for the preceding 5 calendar years.

d. Other Reply Brief Positions

In the following sections of this Reply Brief, the Company responds to other DG-related arguments as presented by various intervenors. The Company already anticipated and refuted numerous intervenor DG-related arguments on pages 484 through 501 of the Company's Initial Brief. Since, in many instances, the intervenors did not present new or different arguments in their respective initial briefs, the Company continues to rely on its arguments, as presented in the Company's Initial Brief, in addition to the arguments provided below.

(i.) Reply to MEIBC

Beginning on page 21 of its Initial Brief, MEIBC proposes that the DG program limits should be based on the average system output coincident with the Company's peak load. This proposal should be rejected.

MEIBC's proposal improperly combines certain elements of wholesale market fundamentals with a state statute that makes no reference to market fundamentals associated with the program size. 6 TR 1588. MCL 460.1173(3) states that utilities are not required to allow for a program "that is greater than 1% of its average in-state peak load for the preceding 5 calendar years." MEIBC's proposal would be inconsistent with that provision of the law because it would result in a cap based on the five-year average in-state peak for gross bundled load, which, is different than the forecast peak load coincident to MISO (used as an input to Planning Reserve Margin Requirement ("PRMR")). 6 TR 1588. Mr. Troyer also explained that MEIBC's proposal improperly seeks to use MISO's calculation for solar Zonal Resource Credits ("ZRCs") as follows:

> Mr. Jester is also proposing to use MISO's calculation for solar ZRCs to determine system size, which is not supported in the statute. It is not correct to compare the size of the DG systems on the ZRC market fundamentals to a non-market-based program size from statute. It should also be noted that the statute refers to in-state peak load which peaks at a different time than MISO's peak, and MISO's peak is the basis for both PRMR and capacity credit (ZRC calculations). [6 TR 1588-1589.]

In its Initial Brief, MEIBC attempts to respond to the Company's above-referenced evidence and states that its proposal is ok because "the Company utilizes MISO's capacity credit method." MEIBC's Initial Brief, page 22. This misunderstands the Company's position. The Company's point is that the applicable law makes no reference to the MISO market fundamentals that MEIBC is attempting to interject. 6 TR 1588-1589. The law refers to in-state peak load which peaks at a different time than MISO's peak. MEIBC's proposal should be rejected because it is not supported by the statute and attempts to compare a program size to a system size which are calculated on entirely different bases. 6 TR 1589.

On pages 25 through 29 of its Initial Brief, MEIBC claimed that the Company's Rule C11.1 Self-Generation provision should be rejected because it "is the only method by which a PURPA

qualified facility can sell energy 'as available' to" the Company and it does not comply with the Public Utility Regulatory Policies Act of 1978 ("PURPA"). As explained on page 496 of the Company's Initial Brief, MEIBC's position should be rejected because it completely ignores the payment options available to Qualifying Facilities ("QFs") under the PURPA Standard Offer Tariff. The Standard Offer Tariff includes an "as available" payment option (i.e. MISO LMP for energy plus Planning Resource Auction for capacity)). 6 TR 1583. Furthermore, it should be noted that the energy-only contract, pursuant to the Self-Generation provision, is a short-term contract of one year and then month to month. This provision provides an option to QFs that do not wish to enter a long-term contract and allows generators to sell excess generation to the Company.

The Company disagrees with MEIBC that some form of a contract, either a short-term contract or a long-term contract, is not necessary for transactions involving QFs. The PURPA regulations do not explicitly remove the obligation of a QF to contract with the utility. In an attempt to support its point on contracting, MEIBC only points to testimony from MEIBC witness Jester and JCEO witness William D. Kenworthy, not the regulations or the law. The Company's Standard Offer Tariff provides the rates required by PURPA and is therefore compliant with PURPA. The Company also disagrees with Mr. Kenworthy that the Standard Offer PPA is "intended to be applicable to the interactions between the Company and developers of large facilities." 8 TR 4178. The Company's Standard Offer Tariff, as approved by the Commission, clearly references QFs 2 MW to 150 kW and QFs 150 kW and below and indicates that the Standard Offer PPA would apply to those facilities. See the Company's Electric Rate Book, Rule C18, Original Sheet No. C-74.00. Since the Standard Offer Tariff references smaller facilities, it

cannot be definitively said that the Standard Offer PPA is only intended for large facilities, as Mr. Kenworthy claims.

The Company has historically filed its PPAs (including PURPA Standard Offer PPAs) for Commission approval. 6 TR 1583. At this time, the Company does not support an approach that would not require QFs to enter contracts with the Company because several issues need to be resolved first including: (i) the Company's retail billing system would need to be updated to handle the transactions on retail bills; (ii) the issue of early termination security associated with the term of the program participation and potential MISO penalties would need to be resolved; and (iii) the frequency and method by which the fixed or variable rates to be applied to the program are to be updated would need to be determined. 6 TR 1584.

The Company proposes to resolve the numerous issues addressed above, relating to both the difficulties small generators encounter when entering contracts and the difficulties encountered when small generators are compensated without contracts, through Company-led stakeholder sessions with Staff and representatives from other interested organizations. 6 TR 1584. These stakeholder sessions could also focus on the method in which counterparties are compensated to ensure that negative impacts are minimized to the extent possible.

(ii.) <u>Reply to the City of Grand Rapids</u>

The City of Grand Rapids recommended in its initial brief that the Commission require the Company to (i) provide accurate and transparent descriptions of credits under net metering, including using terms in bills that match terms used in a DG program; and (ii) report information on how many solar projects were installed, what size, where, on what type of facility, and how many kWh are expected to be generated, who the developer was, total costs paid to Consumers for the installation and other relevant details about the projects. City of Grand Rapids' Initial Brief,

page 11. The Company already addressed these recommendations in its Initial Brief on page 493 and will not repeat those arguments here. The City of Grand Rapids' recommendations are inappropriate and unreasonable, and the Commission should reject their recommendations.

(iii.) <u>Reply to JCEO</u>

JCEO argued in its Initial Brief that DG customers cost less to serve than non-DG customers. JCEO's Initial Brief, pages 23-33. Specifically, JCEO claimed that the Company's Brattle Report (Exhibit A-21 (JCA-7)) was flawed and that the Commission should disregard its conclusions. *Id.* JCEO also suggested that JCEO witness Kevin Lucas demonstrated that the Company's DG customers cost less to serve than its non-DG customers. *Id.* Furthermore, JCEO claimed that the Company's COSS ignored outflow from DG customers and, as a result, over-allocates costs to the residential class. *Id.* The Company disagrees.

The Company already responded to these arguments in its Initial Brief and will not repeat those arguments here. See Consumers Energy's Initial Brief, pages 460-462. JCEO's interpretation of the Brattle Study is inaccurate and shows a lack of understanding of the Company's COSS. The Commission should reject JCEO's recommendation and analysis.

In addition, JCEO recommended that an adder to the outflow credit is appropriate to return DG customers a portion of the savings from the reduction in cost to serve them. JCEO's Initial Brief, pages 37-38. JCEO witness Lucas attempts to justify this proposal by again suggesting that the Company's own COSS overcharges DG customers relative to their usage patterns. The Company disagrees with this recommendation for the same reasons provided in response to JCEO's inaccurate argument that the Company's COSS ignored outflow from DG customers. See Consumers Energy's Initial Brief, pages 460-462. JCEO's recommendation again emphasizes their lack of understanding for the Company's COSS and inaccurate interpretation of the Brattle Study. The Commission should reject JCEO's recommendation.

2. Low Income Tariff

a. Reply to Staff

Staff does not oppose the Company's proposed Low Income Assistance Credit ("LIAC") provision, but recommends that if the Commission approves the LIAC for electric service, the Company should "be required to provide data in its next case showing whether the program is having the intended results." Staff's Initial Brief, page 186. While the Company is open to providing certain LIAC-related data, there may not be sufficient time to collect meaningful data between the time of implementing any electric LIAC approved in this case and the filing of the Company's next electric rate case. Instead of attempting to present limited data in the next electric rate case, Consumers Energy proposes to meet with Staff to share LIAC data.

b. Reply to the Attorney General

The Attorney General made recommendations regarding the Company's low-income programs consistent with Attorney General and MEC Coalition witness Roger Colton's testimony in this case. Specifically, the Attorney General recommends that: (i) the Company transition to a Percentage of Income Payment Plan ("PIPP") over an 18-month period involving a multi-stakeholder working group; (ii) the Company should implement an arrearage management plan ("AMP"); (iii) food stamp recipients should be automatically enrolled in LIAC; (iv) the proposed LIAC should be expanded from $30 per month to $60 per month; (v) the proposed LIAC should include a $20 adder for customers receiving state or federal income assistance; and (vi) the current Residential Income Assistance ("RIA") credit should be discontinued with funding repurposed to the Attorney General's other recommendations. Attorney General's Initial Brief, pages 173-175.

For the reasons discussed at pages 503 through 507 of the Company's Initial Brief, the Commission should reject the Attorney General's recommendations. The Attorney General's proposals are duplicative of other assistance programs, would require additional costs not projected

in this case, and are based on incomplete data. 3 TR 270. The funding to develop and implement a PIPP has not been determined and has not been requested in this case. The current Consumers Affordable Resource for Energy ("CARE") and RIA programs, and the proposed LIAC, already provide valuable payment, budgeting, and self-sufficiency assistance to the Company's customers. The funding for the proven RIA and LIAC programs should not be redirected to the PIPP or AMP proposed by Mr. Colton, particularly when the current CARE Program already provides similar benefits. The Company expects that Mr. Colton's low-income proposals will require significant additional cost to fund the credits and for the Company to develop, implement, and administer the programs. 3 TR 276. These additional costs are not necessary and should not be adopted at this time.

The Attorney General also recommends that the Commission adopt the COVID-19 emergency relief measures that Mr. Colton recommended. Attorney General's Initial Brief, page 175. The Commission should reject the Attorney General's recommendation. COVID-19 concerns and recommendations should be addressed in Case No. U-20757, which is the docket the Commission opened to address these types of COVID-19 concerns. 3 TR 276.

c. <u>Reply to the MEC Coalition</u>

Similar to the Attorney General, the MEC Coalition also argues that the Commission should adopt Mr. Colton's recommendations related to the Company's low-income programs. See MEC Coalition's Initial Brief, page 276. As discussed in response to the Attorney General above and at pages 503 through 507 of the Company's Initial Brief, the Commission should reject the MEC Coalition's recommendations. The Company will not repeat all of its arguments from the Initial Brief here but will address certain aspects of the MEC Coalition's arguments.

The MEC Coalition primarily argues that the Company's current RIA credit and proposed LIAC amounts are too low and proposes to get rid of the RIA credit, increase the LIAC, add an

AMP, and transition to a PIPP within 18 months. See MEC Coalition's Initial Brief, pages 240, 246-250. The MEC Coalition's proposed PIPP and AMP are duplicative of benefits already provided by the Company's other assistance programs, will require significant additional costs that the Company has not developed or included in this case, and are based on incomplete data. 3 TR 270.

The RIA credit, CARE, and proposed LIAC provide meaningful payment, budgeting, and self-sufficiency assistance to the Company's customers. The RIA credit provides qualifying low-income customers a monthly credit in the amount of the monthly residential customer charge. 3 TR 204. Customers who receive the State Emergency Relief ("SER") or Home Heating Credit ("HHC") state programs are automatically enrolled in RIA. Enrollment in these state programs validates the customer's income and need. 3 TR 272. The RIA credit provides additional long-term assistance for customers in one of these state assistance programs. *Id*.

The LIAC proposed in this case provides more substantial assistance in the amount of a $30 per month credit for approximately 4,200 of the Company's most vulnerable customers. 3 TR 205. The LIAC provides predictable aid to assist customers in making necessary payments, stabilizing their household budget, and supporting self-sufficiency goals. *Id*. The LIAC will be implemented in conjunction with the other utility assistance programs, agency assistance programs, and government assistance programs. 3 TR 206. Providing the LIAC to this smaller group of customers will support good payment habits and reduced consumption for those customers who wish to engage in solutions and begin a journey to self-sufficient account management. 3 TR 207.

The CARE program is funded by the Michigan Energy Assistance Program ("MEAP") and provides customers with monthly bill credits based on income tiers, with customers between

20-50% Federal Poverty Level ("FPL") receiving a 50% monthly credit, 51-110% FPL receiving a 40% credit, and 111-150% FPL receiving a 30% credit. 3 TR 273. CARE also gradually pays down customer arrears throughout the two-year program. *Id*. In 2019, the CARE Program encouraged more than 20,000 participants to reduce their arrears, adopt the habit of making regular payments, and pursue self-sufficiency. 3 TR 207-208.

Consumers Energy expressed concerns with Mr. Colton's analysis because it was not able to match a significant portion of zip codes to Census data "communities" and concluded that 17.8% of the Company's customers were under 100% FPL as opposed to the Company's estimated 12%. 3 TR 270-271. The MEC Coalition contends that these concerns are insignificant because zip codes can have very few, or even zero, residents. MEC Coalition's Initial Brief, page 254. While it is correct that zip codes can have zero residents, the MEC Coalition did not identify the zip codes that Mr. Colton was unable to match, did not allege that any of the 699 zip codes referenced by Mr. Colton contained zero residents, and did not provide the number of residents in each of those unmatched zip codes. Mr. Colton used his analysis to identify the number of the Company's customer base who are living with an annual income below certain FPL tiers and to then evaluate the effectiveness of the Company's RIA and LIAC programs. See, for example, 8 TR 3691-3692, 3717, and 3725. The concerns with Mr. Colton's analysis places in doubt the conclusions he reached relying on that analysis.

Mr. Colton's contention that LIAC overpays customers between 150-200% FPL is also incorrect because those customers are not eligible for the LIAC. 3 TR 271-272. The MEC Coalition attempts to justify this error by identifying Company discovery responses that provided low-income information based on income up to 200% FPL. See MEC Coalition's Initial Brief, pages 257-258. Those referenced discovery responses clearly indicate that "[s]ome program

eligibility limits are set at 150% FPL to match state assistance eligibility" and that "some programs have an income eligibility set to 150% FPL to match the state's energy assistance program eligibility levels." *Id*. As such, these discovery responses do not lead to Mr. Colton's incorrect understanding of LIAC eligibility.

The MEC Coalition seeks to minimize the Company's concern that the MEC Coalition's proposals will substantially increase low-income program costs, stating that "the costs are manageable." MEC Coalition's Initial Brief, page 261. To "manage" the increased costs, the MEC Coalition recommends funding its proposed increase of the LIAC to $60 by repurposing RIA funding currently targeted for approximately 45,000 low-income customers and by increasing rates by $12.467 million. MEC Coalition's Initial Brief, pages 250-251. But this does not provide any funding to develop, administer, or provide credits for the proposed AMP and PIPP, both of which duplicate the current CARE Program. Thus, additional yet-to-be determined funding would be necessary if the Commission requires the Company to implement the proposed AMP and PIPP programs. 3 TR 276. Absent this additional funding, the increased and expanded credits would dramatically reduce the number of customers that the Company could assist. 3 TR 274. Given that the costs for these proposed programs have not been developed and were not included in this case, the evidence does not support the MEC Coalition's claim that the costs are "manageable."

Consumers Energy also explained that the Company does not currently have the capability to automatically enroll food stamp recipients in bill payment assistance and would need to work with the State of Michigan to determine if the State would agree to share this information and to construct the necessary data exchange architecture and use policies. 3 TR 274-275. The MEC Coalition argues that the lack of this current capability does not mean that the capability cannot be developed. MEC Coalition's Initial Brief, page 262. While the Company could consult with the

State as to this capability, uncertainties still exist as to the administrative cost of such an arrangement or how many additional customers may receive a credit as a result of any automatic enrollment. 3 TR 275. Given these uncertainties, the Commission should not require the recommended automatic enrollment.

As to the MEC Coalition's proposal that the Company provide an additional $20 LIAC credit adder for customers under 50% FPL, the Company is not an income validator and does not receive FPL data when assistance is applied to a customer account. 3 TR 275. Customers qualify for RIA and LIAC credits if they receive an HHC or SER. *Id*. Thus, the Company does not currently have the capability to verify which customers would qualify for the proposed $20 credit adder. The MEC Coalition contends that the Company could use a customer's enrollment in Supplemental Security Income ("SSI") as the eligibility criteria. MEC Coalition's Initial Brief, page 263. While the Company permits enrollment in the Company's Shutoff Protection Plan and Winter Protection Plan if customers indicate that they receive SSI, those plans do not involve customer credits. See Consumers Energy Electric Rate Book, Section C5.4. Even where a customer may inform the Company that they receive SSI, the Company is not able to independently validate the percentage FPL for those customers. As with the MEC Coalition's other proposals, this additional $20 adder would either require additional funding or reduce the number of customers who could be assisted. 3 TR 275.

The MEC Coalition argues that the Company's position that the MEC Coalition's proposed AMP is duplicative of the CARE Program "mis-characterizes the CARE program." MEC Coalition's Initial Brief, page 264. Consumers Energy correctly explained and characterized the CARE program. It is correct that CARE participants work directly with a MEAP grantee which enrolls the customers in CARE and uses MEAP funding to pay the Company for the bill credits

and arrearages. See MPSC Case No. U-17493, March 5, 2020 Order, page 4. And this program is available to the Company's customers and operates almost identically to the MEC Coalition's proposed AMP. The Commission explained that the under the CARE program, customers receive a fixed percentage discount on their energy charge determined by the customer's income in proportion to the FPL, and have their arrearage frozen, set aside, and paid off in monthly increments over the two-year program period. *Id*. at 3-4. This is consistent with the Company's description of the program in this case. See 3 TR 273.[26]

The Company agrees that there could be value in developing a PIPP pilot, but that any such pilot should not supplant the established support provided to customers through the RIA credit and LIAC. 3 TR 272. In fact, the Company agreed to develop a percentage-of-income pilot as part of the Settlement Agreement in the Company's current gas rate case (Case No. U-20650) that will provide for a means of financing the pilot and the quantity of enrolled customers. See MPSC Case No. U-20650, Settlement Agreement filed on August 8, 2020, paragraph 19. The MEC Coalition indicates that it "may support a short pilot program," but continues to recommend that the Commission "adopt Mr. Colton's proposed framework and timeline." MEC Coalition's Initial Brief, page 275. The Commission should not require Mr. Colton's framework and rushed timeline. Developing and implementing a PIPP would require significant time and resources to write, test, and implement new billing processes for a PIPP. Company personnel would need to be trained on how to manage the program, run reports, and manage customer questions and concerns related to the PIPP, and the Company has not included the administrative funding in this proceeding

[26] The MEC Coalition opines that enrollment in CARE after September 2021 may be limited if there is a funding gap due to sunsetting. MEC Coalition's Initial Brief, page 265. There is no evidence indicating plans to limit CARE enrollment after September 2021 or that CARE has previously experienced these types of funding concerns. As Company witness McLean noted, CARE funding could be renewed before the September 2023 sunset. 3 TR 316.

necessary to develop and implement the PIPP. 3 TR 272-273. Mr. Colton's 18-month timeframe to develop and implement a full PIPP program is not realistic and should not be adopted.

3. Contribution in Aide of Construction ("CIAC")

a. Reply to the MEC Coalition

MEC Coalition witness Ozar presented in his revised direct testimony a series of calculations in reaching his proposal that the Commission reform the Company's Contribution in Aid of Construction ("CIAC") policy by establishing a maximum contribution equal to 4.4 times the estimated annual distribution revenue from the customer. 8 TR 3640, 3669-3675; MEC Coalition's Initial Brief, pages 105-114.

In her rebuttal testimony, and as presented in the Company's Initial Brief, Company witness Rachel L. Barnes explained why the Company disagreed with Mr. Ozar's proposal to modify the CIAC policy in this proceeding. 6 TR 1628-1629; Consumers Energy's Initial Brief, pages 507-509. In response, the Company recommended that the Commission delay modifying the CIAC policy to a future rate case, or a separate proceeding dedicated to a CIAC review, until a thorough examination of current CIAC processes and associated costs can be performed. 6 TR 1629; Consumers Energy's Initial Brief, page 508. As further provided in the Company's Initial Brief, the CIAC policy is complex and delaying any policy changes in order to ensure proper time for review is in the best interest of customers and further avoids any unintended consequences of changing the current CIAC policy based on Mr. Ozar's proposals in this proceeding. 6 TR 1629.

The MEC Coalition agreed with the Company's recommendation in its Initial Brief and finds that a further study of the issue outside the current proceeding is reasonable. MEC Coalition's Initial Brief, page 106. However, the MEC Coalition further recommended that a concise collaborative process be convened prior to a final order in this proceeding so that the Company, and other interested parties, would have time to further evaluate MEC Coalition's

proposal in this case, collaborate with participating parties, and ultimately present a proposal for inclusion in the Company's subsequent electric rate case. MEC Coalition's Initial Brief, page 113. To support his recommendation for this timeline, MEC Coalition witness Ozar suggested that the CIAC policy is not particularly complicated, that he has already performed a comprehensive analysis, and that the Company is requesting more time than is available for this rate case. *Id.* The Company disagrees with the MEC Coalition's timeline recommendations and support.

While the Company appreciates the MEC Coalition's agreement to address their CIAC policy recommendations in a workgroup outside of this current rate case proceeding, the Company disagrees with the MEC Coalition's proposed timeline and their reasoning for the proposed timeline. Mr. Ozar's suggestion that the CIAC policy is not complex and can therefore be addressed on an expedited, rushed timeline is inappropriate and may not provide for a thorough review of the policy to ensure the best application for customers. Further, the fact that Mr. Ozar has already conducted a personal analysis of the Company's CIAC policy should not in any way suggest that an expedited timeline should be enforced, as Mr. Ozar's analysis could be entirely wrong. It is more important for all parties to have sufficient time to review the current policy in place in order to determine the best policy going forward for customers. This does not mean, as inappropriately suggested by Mr. Ozar, that the Company is intentionally attempting to drag out the time by which a new CIAC policy is implemented. Instead, the Company suggested that the CIAC policy be addressed outside of the current rate case proceeding so that all parties could have sufficient time to review and discuss the best proposal.

Furthermore, while the Company agrees that a CIAC workgroup can be convened prior to a final order in this proceeding, the Company disagrees with any definitive timeline for an ultimate CIAC proposal, as suggested by the MEC Coalition. If an improved policy can be proposed for

the Company's next rate case proceeding, after being fully evaluated in a workgroup, the Company will make such a recommendation; but, if the workgroup needs additional time beyond the filing of the Company's subsequent electric rate case to properly review the CIAC policy before making an ultimate recommendation, the Commission should be supportive of such thoroughness.

Therefore, the Company recommends that the Commission reject Mr. Ozar's proposal that requires a CIAC policy be presented in the Company's next rate case proceeding. Instead, the Commission should simply adopt the parties' intention to address the CIAC policy in a workgroup outside of the current rate case proceeding.

4. <u>Reply to RCG Regarding AMI Opt-Out Charge</u>

Although RCG did not submit any testimony on the topic in this case, RCG argues in its Initial Brief that Consumers Energy's up-front and monthly charges related to its AMI opt-out program (otherwise referred to in the Company's tariffs as the non-transmitting meter provisions) should be eliminated or, at least, the monthly charge should not exceed $3 per month. RCG's Initial Brief, pages 19-20. To be clear, Consumers Energy has proposed no changes to its non-transmitting meter provision as part of this case. The up-front and monthly charges that were established in the Company's last electric rate case, Case No. U-20134, will continue without amendment as a result of this case. There is quite literally no evidence in this case on the subject of the non-transmitting meter provision at all and, hence, no basis for any Commission order related to a change in the non-transmitting meter provision.

Nevertheless, RCG argues that there is no "cost evidence" for the existing charges and that opt-out customers are somehow being required to pay AMI-related charges twice through their rates. RCG also claims that the charges must be regarded as punitive, rather than cost-based. RCG has repeatedly made these same claims in numerous previous rate cases, which have repeatedly been rejected by the Commission, the Court of Appeals (including in a published opinion), and the

Supreme Court. In the Commission's July 12, 2017 Order in MPSC Case No. U-17087, the Commission concluded (page 11 of the Order) that the Company's opt-out charges are cost-based and that "[c]osts associated with meter reading and AMI capital investment are built into base rates, so opt-out customers are provided with monthly credits in order to remove those costs from their rates." In other words, there is no double charging of AMI costs to opt-out customers as RCG contends. The Commission further elaborated:

> Opt-out fees represent incremental costs that are incurred solely in order to be able to offer the opt-out program; opt-out customers are protected by the credits from the costs of AMI, and customers who use standard equipment are protected from subsidizing customers who choose non-standard equipment. The amounts collected from opt-out customers are credited to base rate calculations to ensure that there is no double recovery. [*Id*. at 12. (Internal record citations omitted).]

Therefore, the Commission has determined that Consumers Energy's opt-out charges are not in the nature of a penalty.

In a published Court of Appeals decision resulting from Consumers Energy's next electric rate case, Case No. U-17735, the Court reviewed these same issues, writing:

> In the instant case, RCG and Rison are requesting that this Court examine the opt-out fees in a manner similar to that undertaken by the PSC in Case No. U–17087. We decline to do so and defer to the decision on remand issued by the PSC in Case No. U–17087. That decision is based on previous decisions of the PSC and this Court. Appellants seek to reargue the matter yet again but have put forth nothing that would require this Court to conclude that the previous decision as reflected most recently in the order in Case No. U–17087 is unreasonable and should not be followed. [*In re Consumers Energy Co*, 322 Mich App 480, 496; 913 NW2d 406 (2017).]

RCG took the appeal of Case No. U-17735 to the Michigan Supreme Court, which declined to reconsider the Commission's and Court of Appeals' decisions. See 503 Mich 1035; 927 NW2d 220 (2019) (denying appeal) and 504 Mich 960; 932 NW2d 600 (2019) (denying rehearing of its denial of appeal). RCG raised the same issues again in the Company's next two electric rate cases,

Case Nos. U-17990 and U-18322, which were again rejected by the Commission. RCG once again took both of those decisions to appeal and lost.[27]

The Commission has decided these issues against RCG in at least five orders over the last four fully contested Consumers Energy electric rate cases (more if you count all of the inevitable rehearing petitions filed by RCG on this same issue). Consumers Energy has not proposed any changes in this case to its opt-out charges. There was no evidence introduced in this case by any party regarding Consumers Energy's opt-out charges. Under the *Pennwalt* doctrine, discussed *supra*., the burden of proof is on RCG to establish by new evidence or by evidence of a change in circumstances that the opt-out costs are unreasonable. It has not done that. The Commission must, therefore, reject RCG's unsupported proposal to eliminate Consumers Energy's opt-out charges.

5. <u>Rate Implementation Effective Date</u>

a. <u>Reply to Staff</u>

Staff proposed two different options to determine when the Company's rates should go into effect following the Commission's final order in this proceeding. 8 TR 4706-4707; Staff's Initial Brief, pages 212-216. The first proposal recommended that the final approved rates become effective seven days following a final order by the Commission. The second, alternative proposal recommended that "draft" final rates and tariffs approved by the Commission include a 21-day review period to confirm accuracy of calculations and tariff sheets; if no errors are found within the review period, rates would immediately go into effect, but, if errors are found, then the Commission would issue a final tariff order within 30 days of the final decision. 8 TR 4707.

In response, Consumers Energy addressed Staff's proposals in the rebuttal testimony of Company witness Barnes, as well as in its Initial Brief, with support as to why Staff's proposals

[27] With respect to Case No. U-18322, RCG filed a petition for leave to appeal the Court of Appeals latest decision rejecting RCG's arguments to the Supreme Court on September 1, 2020.

were not needed, were problematic, and should ultimately be rejected. 6 TR 1630-1632; Consumers Energy's Initial Brief, pages 509-511.

In support of Staff's proposal, Staff claimed that their recommendations are the result of "past inaccuracies that were not able to be fixed before rates went into effect." Staff's Initial Brief, page 214. Staff provided no evidence of past inaccuracies in its Initial Brief to support their claim, nor did Staff witness Mark J. Pung provide any examples in his direct testimony. 8 TR 4706-4707. Further, no evidence has been provided by Staff to show that inaccuracies in the rates and tariffs approved by the Commission in its final orders are a regular and recurring theme that would warrant the need to delay the effectiveness of the Company's rates in this proceeding or any future electric rate case proceedings. As provided in Consumers Energy's Initial Brief on pages 509 and 511, the Company is not experiencing issues with implementing new rates immediately and accurately following the issuance of a Commission order, and, absent any extenuating circumstances or significant or unanticipated structural changes in rate design, the Company's robust bill testing program allows it to accomplish such effective and immediate implementations. In the event the Company does request a complex change to its existing rate structure (i.e. the proposed tiered rate structure to the Unmetering Lighting Rate GU-XL in this proceeding), the Company will include the amount of time needed to implement the specific request within the rate proposal. 6 TR 1630.

In response to the Company's argument that the Commission can address errors in an errata order within a few short days, which has been done in the past, Staff claimed that customers "may still be subject to inaccurate rates based on timing." Staff's Initial Brief, page 214. Further, in response to the Company's suggestion that the Commission direct Staff to perform problem solving to determine the root cause of any error, Staff claimed that "fixing any given error does

not prevent other errors from occurring, particularly as the Company's models change from case to case." Staff's Initial Brief, page 216. Staff, again, provided no evidence or explanation to support their claims that inaccuracies have consistently occurred in the past, that such inaccuracies will occur in this instant proceeding, and that such inaccuracies are bound to occur in future electric rate case proceedings. Further, Staff provided no explanation as to why an errata, which has been used in the past by the Commission, should not be the appropriate mechanism to correct inaccurate rates or tariffs previously approved by the Commission in the unlikely event that such inaccuracies occur. For the same reasons provided above, and in the Company's Initial Brief, Staff's recommendations should be dismissed as it presents no regular or recurring theme of rate and tariff inaccuracies that would warrant a delay in the effectiveness of rates.

Staff also argued that the Commission has previously delayed the effectiveness of rates in Indiana Michigan Power Company's 2018 case, which was upheld in 2019 by the Michigan Court of Appeals, and, as a result, the Commission should approve a delay to the effectiveness of rates in this proceeding to ensure accuracy of approved rates and tariffs. Staff's Initial Brief, pages 214-216. Despite Staff's reference to the 2019 Michigan Court of Appeals case, Staff, again, never provided any evidence or examples of a regular and recurring issue of inaccurate rates and tariffs that would warrant the Commission's decision to permanently delay the effectiveness of rates in this proceeding or any future electric rate case proceeding. Without further support by Staff to show such regular and recurring issues with the accuracy of Commission-approved rates and tariffs, Staff's proposal is simply a solution in search of a problem that does not exist. Consumers Energy's Initial Brief, page 511. Staff's unnecessary proposals will ultimately transform this proceeding, and future rate case proceedings, beyond a 10-month proceeding and could cause the Company to suffer financial harm by not receiving rate relief at the start of the projected test year.

It is simply not necessary. As provided above, the Company is not experiencing any issues at this time with implementing new rates immediately and accurately following the issuance of a Commission order. Therefore, despite Staff's reference to the 2019 Michigan Court of Appeals case, there is no need to require a delay to the effectiveness of rates.

Until Staff can present sufficient evidence to show a regular and recurring trend of rate and tariff inaccuracies that occur within the Company's electric rate case proceedings that would warrant the need to delay the effectiveness of rates, the Commission should dismiss Staff's proposals and find that new base rates should become effective for this proceeding for service rendered on January 1, 2021. An effective date of January 1, 2021 also aligns with the signed contract between the Company and Hemlock Semiconductor Corporation, regarding the proposed LTILRR in this proceeding. 6 TR 2176; Consumers Energy's Initial Brief, pages 510 and 511.

IX. CONCLUSION

WHEREFORE, for the reasons set forth in this Reply Brief and Consumers Energy Company's Initial Brief, testimony, and exhibits, Consumers Energy Company requests that the Michigan Public Service Commission:

A. Authorize Consumers Energy to adjust its retail electric rates so as to provide additional revenue of $229.7 million annually above levels established in Case No. U-20134 based on a projected 12-month test year ending December 31, 2021 and at the time of implementation of such rates, terminate the Calculation C electric credit, consistent with the Commission's September 26, 2019 Order in MPSC Case No. U-20309 et al;

B. Authorize Consumers Energy to adjust its existing retail electric rates so as to produce a rate of return on common equity of not less than 10.50%;

C. Approve the proposed Demand Response, Financial Compensation Mechanism, and Conservation Voltage Control incentive surcharges, and the deferred revenue requirement of certain distribution capital spending;

D. Approve modifications to the rates, rules, and regulations as described in this Reply Brief, the Initial Brief and the testimony and exhibits of Consumers Energy Company; and

E. Approve Consumers Energy Company's accounting requests and regulatory asset treatment, as appropriate, related to: (i) the deferred distribution capital spending recovery mechanism; (ii) deferral of the D.E. Karn Units 1 and 2 retention and separation costs; (iii) the PowerMIFleet Pilot Program deferred accounting proposal; (iv) the proposal to recover an incentive for Conservation Voltage Reduction; (v) the deferred Service Restoration cost proposal; (vi) the Financial Compensation Mechanism revenue recovery proposal; and (vii) Cloud Computing.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: September 16, 2020

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S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **CONSUMERS ENERGY COMPANY** for authority to increase its rates for the generation and distribution of electricity and for other relief.	))))))	Case No. U-20697

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

Crystal L. Chacon, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on September 16, 2020, she served an electronic copy of the **Reply Brief of Consumers Energy Company** upon the persons listed in Attachment 1 as noted hereto, at the e-mail addresses listed therein.

Crystal L. Chacon

Crystal L. Chacon

Subscribed and sworn to before me this 16th day of September, 2020.

Jennifer Joy Yocum

Jennifer Joy Yocum, Notary Public
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My Commission Expires: 12/17/24
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