

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of the application of )	
<b>CONSUMERS ENERGY COMPANY</b> for a )	
certificate of public convenience and necessity to )	Case No. U-20618
construct and operate the 36-inch outside )	
diameter Mid-Michigan Pipeline. )	
_____ )	

At the November 19, 2020 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair  
Hon. Sally A. Talberg, Commissioner  
Hon. Tremaine L. Phillips, Commissioner

**ORDER**

**History of Proceedings**

On August 23, 2019, Consumers Energy Company (Consumers) filed an application requesting approval pursuant to Public Act 9 of 1929, MCL 483.101 *et seq.* (Act 9), to construct and operate the Mid-Michigan Pipeline (MMPL), a 36-inch outside diameter pipeline that will replace the existing Line 100A pipeline between Chelsea and Ovid, Michigan, and a determination that the MMPL, when constructed and operated, will serve the convenience and necessities of the public.

A prehearing conference was held before Administrative Law Judge Sharon L. Feldman (ALJ) on October 11, 2019. The ALJ granted petitions to intervene filed by the Association of Businesses Advocating Tariff Equity (ABATE) and Ruth and Robert Hummell. The Commission

Staff (Staff) also participated in the proceeding. Michael Wieschowski filed a late petition to intervene and the ALJ granted him intervention at a hearing held on October 30, 2019. The ALJ also granted Moon Lake Estates permissive intervention on September 1, 2020.

Mr. Wieschowski filed a map on October 15, 2019, that became an exhibit in this proceeding and, on February 12, 2020, the Hummells provided proposed evidence, including a statement signed by Ms. Hummell, which was filed in the docket. On January 17, 2020, ABATE and the Staff each filed the testimony of one witness. On February 5, 2020, the Hummells provided a proposed rebuttal statement, which was subsequently filed in the docket. On February 7, 2020, Consumers filed rebuttal testimony of three witnesses. On February 12, 2020, the Hummells filed surrebuttal in response to a portion of Consumers' rebuttal. On that same date, the Staff filed a motion to strike the Hummells' surrebuttal filing, asserting that surrebuttal was not provided for in the hearing schedule. In addition, on February 12, 2020, Consumers filed a motion to strike the Hummells' rebuttal filing as improper rebuttal and to strike some proposed exhibits.

On February 14, 2020, Mr. Wieschowski filed a document that he labeled as rebuttal statements addressing Consumers' rebuttal filing. On February 18, 2020, Consumers filed a motion for a protective order and a motion to strike portions of statements and documents submitted by Mr. Wieschowski. On that same date, the Hummells filed answers to Consumers' and the Staff's motions to strike as well as a motion to permit them to file surrebuttal testimony. On February 21, 2020, Consumers filed a response opposing the Hummells' motion to file surrebuttal testimony and, in the alternative, requested permission to file the sur-surrebuttal testimony attached to its response.

On February 24, 2020, Consumers filed the revised testimony and exhibit of one of its five witnesses. On that same date, an appearance was filed by counsel for the Hummells, who had

been previously unrepresented in this matter. At a hearing on February 25, 2020, the ALJ granted Consumers' motion for protective order, denied all motions to strike, granted Consumers' motion to present sur-surrebuttal, and offered the company and the Staff an opportunity to file additional responsive testimony. Both Consumers and the Staff declined.

An evidentiary hearing was held on February 25, 2020. The parties timely filed initial briefs and reply briefs, and the ALJ issued her Proposal for Decision (PFD) on August 13, 2020. Consumers and ABATE filed exceptions on September 3, 2020. On that same date, the Staff filed a letter stating that it would not be filing exceptions. The Hummells and Mr. Wieschowski did not file exceptions. Consumers, the Staff, ABATE, and the Hummells filed replies to exceptions on September 24, 2020. The record in this case is comprised of 381 pages of transcript and 38 exhibits admitted into evidence.

### Positions of the Parties

#### 1. Direct Testimony

The ALJ provided a detailed overview of the record and positions of the parties on pages 4 through 33 of the PFD, which is briefly summarized here.

In testimony and briefing, Consumers described the current condition of Line 100A between Chelsea and Ovid, Michigan, which was constructed in 1949. The company stated that it performed in-line inspections between 2007 and 2013, located anomalies, and remediated the most significant anomalies after the 2013 inspections; however, a number remain. 3 Tr 93-98; Consumers' initial brief, pp. 11-13. According to Consumers, if the pipeline is not replaced, the company will have to complete 150 remediation digs over the next 20 years.

The company performed additional inspections of Line 100A following a rupture in 2015. Consumers stated that:

The Pipe and Coating reports indicated an inadequate bond to the pipeline in 79% of the reports. This indicates that the coating has failed and may allow moisture behind the coating. This has the propensity to lead to accelerated corrosion of the pipe since disbonded coating can block cathodic protection from reaching the pipeline, negatively impacting the integrity of the pipeline. The degraded coating increases the likelihood of remediation digs for external corrosion and Stress Corrosion Cracking (“SCC”) as there will be larger sections of the pipeline that are more susceptible to corrosion.

3 Tr 101-102. The company also asserted that the Electromagnetic Acoustic Transducer tools indicate that 72% of the pipeline, or 43.85 miles, needs to be recoated. *Id.*, pp. 102-103; Consumers’ initial brief, p. 13. Consumers estimated that the total cost to maintain the existing Line 100A for the next 20 years would be approximately \$206 million. In addition, the company stated that “the relative risk ranking of Line 100A continues to be high compared to the rest of the pipelines in our system.” 3 Tr 109. Therefore, Consumers asserted that, rather than continuing to inspect, repair, and remediate the pipeline, it would be more beneficial for customers and for the overall long-term public safety to replace the portion of Line 100A between Chelsea and Ovid, Michigan with a 36-inch outside diameter pipeline, which the company refers to as the MMPL project.

Consumers described the proposed route, engineering, and construction specifications for the MMPL project. *See*, 3 Tr 125-131. The company proposed replacing approximately 56 miles of the pipeline. Exhibit A-3 shows the general route of the MMPL project, which traverses Clinton, Ingham, Livingston, Shiawassee, and Washtenaw counties in Michigan. Exhibit A-3 also indicates that changes in location may be necessary after construction commences.

According to Consumers, “[t]he pipeline will be constructed primarily on rural land comprised of row crop farms and wooded land. Pipeline reroutes of the current Line 100A have been designed to reroute around areas where the current pipeline runs through more densely populated areas.” 3 Tr 126. Specifically, the company asserted that it is proposing a reroute of Line 100A

around Chelsea, Michigan, to avoid heavily populated areas and other construction obstacles.

Although Consumers considered alternative routes, the company found that directing the pipeline around Chelsea was the safest and least expensive route and that construction will occur primarily in existing rights of way. Consumers contended that alternative routes:

were not viable due to factors such as the: (i) connections to existing city gates and other pipelines; (ii) ability to feasibly serve customers; (iii) increased overall footprint of the project that would be required with an alternative route; and (iv) additional easements necessary with alternative routes. These factors would add to the overall cost, schedule, and complexity of the project.

*Id.*, p. 128. In addition, the company explained that the MMPL project would run through subdivisions, mobile home parks, other residential properties, and Michigan Department of Natural Resources (MDNR) land. 3 Tr 128; Consumers’ initial brief, p. 19. Consumers asserted that to begin construction, permanent easement rights of 75 to 135 feet in width and temporary workspace easements will be required.

Consumers explained that, because the portion of Line 100A in this project is considered a bottleneck, or a segment of pipe that has significant pressure drop, it affects capacity when natural gas travels along Line 100A to reach the markets it serves and other parts of the gas system, including storage, under most summer operating scenarios. Consumers stated that the outside diameter of Line 100A should be increased from 20 inches to 36 inches to: “(i) remove the Line 100A bottleneck, therefore increasing the capacity of the Company’s natural gas transmission system; and (ii) provide a more resilient and flexible system capable of supporting continued increases in system outage days required by regulatory requirements and other operational maintenance needs.” 3 Tr 248. The company also asserted that the MMPL project will provide additional winter peak day capacity to Consumers’ gas transmission system and that, “when considering the improvements being made as part of the Saginaw Trail Pipeline . . . , [t]his project

will provide increased capacity not only for the areas adjacent to the Mid-Michigan Pipeline but for most of the Company's transmission system as well." *Id.*, pp. 271-272. Consumers asserted that the estimated cost of the MMPL project is \$550 million, which includes 16% contingency. 3 Tr 131, 145. The cost estimate is detailed in Exhibit A-5.

Consumers stated that the MMPL project will be constructed in accordance with the Michigan Gas Safety Standards, with construction planned for 2023 to 2024. The company also contended that the MMPL project is consistent with the Commission's directives set forth in the September 11, 2019 Statewide Energy Assessment report issued in Case No. U-20464. Consumers' initial brief, p. 9. Finally, pursuant to local, state, and federal regulations, Consumers prepared an environmental report for the MMPL project, set forth in Exhibits A-7 and A-7a, which states that the company does not expect a significant adverse environmental impact from the project. Consumers asserted that it has identified threatened and endangered species near the MMPL project, taken steps to mitigate impacts on the Indiana and Northern long-eared bats (NLEB), and plans to minimize the disturbance of soil during construction. 3 Tr 222-223; Consumers' initial brief, p. 24.

Consumers concluded that "[t]he Mid-Michigan Pipeline project presents a unique opportunity to simultaneously address supply resilience, additional transmission capacity, and pipeline integrity. Different alternatives could potentially address the various benefits this project offers separately, but they are inferior to this proposal because they would be more costly for the Company's customers." 3 Tr 275-276.

The Staff found Consumers' application to be reasonable and prudent so long as the company adopts the Staff's recommendations set forth in its testimony and exhibits. The Staff stated that the MMPL project would improve system integrity and public safety, that an increase in the

outside diameter of the pipeline will eliminate a bottleneck in the filling of storage fields, and that the MMPL project serves the public convenience and necessity. Staff's initial brief, pp. 18-19.

The Staff also reviewed Consumers' proposed engineering specifications for the MMPL project and determined that "the proposed specifications meet or exceed the Michigan Gas Safety Standards. In addition, Staff will continue to review the construction, maintenance, and operation of the pipeline in the future to ensure that it meets applicable safety regulations." 3 Tr 313.

However, the Staff recommended that the Commission require Consumers to construct the MMPL using product specification level (PSL) 2 pipe and to obtain global positioning system (GPS) coordinates of all girth weld locations. Furthermore, the Staff asserted that no later than three months after the in-service date of the MMPL, Consumers should be required to conduct an above-ground electrical survey for the purpose of remediation and placing external corrosion control test stations. 3 Tr 316.

Next, the Staff asserted that Consumers was aware of the bottleneck in 2015 when Line 100A ruptured and continued to invest in plant that would remain in service for less than 10 years. Therefore, the Staff stated that Consumers should not be permitted "to collect upon the remaining undepreciated plant for the abandoned facilities which are no longer in service." *Id.*, p. 314. The Staff contended that the Commission should not make a determination in this case about the recovery of the remaining undepreciated plant balance; rather, it should be decided in Consumers' natural gas rate case following the completion of the pipeline.

The Staff also expressed concern regarding Consumers' request to modify its proposed route "as may become necessary upon actual construction." Staff's initial brief, p. 22, quoting 3 Tr 125. The Staff recommended that any changes in route location be restricted to minor

deviations from the proposed route that was described in the application, direct testimony, and exhibits. In the Staff's opinion, a "minor deviation" to the proposed pipeline route would be:

any alteration in location which does not involve the impact of additional landowners. For example, Staff would consider a change in location of the proposed pipeline solely within easements already acquired as a minor deviation; alternatively, changing the location of the proposed pipeline across the road, where the Company had not secured easements, would not be considered by Staff to be a minor deviation.

3 Tr 307.

Furthermore, the Staff acknowledged the Hummells' and Mr. Wieschowski's concerns regarding the MMPL project. The Staff recommended that Consumers mitigate the impact on each landowner on a case-by-case basis and suggested implementing additional measures in these locations to limit the effect to their properties. *Id.*, p. 308. If Consumers can work with the landowners to address their concerns and to mitigate disruptions to farming activities, the Staff found the proposed route to be reasonable.

Additionally, the Staff asserted that the only method for accurately assessing the potential archeological, historical, and cultural impacts of the MMPL project is to send a representative to review the archived documents at the State Historical Preservation Office (SHPO). In direct testimony, the Staff noted that Consumers had not sent a representative to conduct this type of review. *Id.*, p. 318. The Staff expressed concern that the online resources that the company consulted are not complete or were taken offline over a decade ago. *Id.*, p. 319. Therefore, the Staff recommended that the company consult with the SHPO to review archaeological, historical, and cultural documentation to resolve any potential adverse impacts of the MMPL project.

The Staff also compared the wetland data from the Federal Wetland Inventory to Consumers' geospatial wetland data and the Staff identified eight wetland locations that the company had not



noted. The Staff stated that the company should “reassess the route as it relates to wetlands; and secure all necessary permits prior to construction.” Staff’s initial brief, p. 21.

ABATE stated that it does not object to Consumers’ request for a certificate of public convenience and necessity. 3 Tr 333. Rather, ABATE recommended that the Commission should approve a capital cost cap of \$473 million and that “the proposed contingency costs should be removed from Consumers’ proposed capital cost until the Commission may properly review the costs to construct the MPPL [sic].” *Id.*, p. 339.

The Hummells contended that Consumers has failed to meet its burden of proof that the MMPL project, as currently configured, is safe, necessary, and in the public interest. Hummells’ initial brief, p. 3. Ms. Hummell explained that she and her husband own and operate Quiet Cove Park, a manufactured home community in Laingsburg, Michigan. 3 Tr 354. According to Ms. Hummell, Consumers proposes to place the MMPL project too close to Quiet Cove Park’s existing septic system and plans to construct the pipeline through their reserve septic area, which will affect the value of their property and endanger the health and safety of Quiet Cove Park residents. She stated that, if the MMPL project crosses their designated septic replacement area, it “would ruin this area to rebuild another sewer system on it if we needed to in the near future. . . . WE are very limited to the property that we can use for another sewage system. You usually need undisturbed soil, non compacted [sic] soil, not low land, not an area that is reserved for right of way.” *Id.* (emphasis in original). In addition, Ms. Hummell asserted that, if the MMPL project is constructed across their designated reserve septic area, “[w]e wouldn’t be able to continue to sell manufactured homes because of no place to put them. It would make our existing lots obsolete because of their size. We couldn’t take out a site and make [a] bigger one and then add that site

back on the property somewhere else. [The MMPL project] would devalue our property terribly.”

*Id.*

She also claimed that, to construct the MMPL project, the company will need to remove the ground cover from the Quiet Cove Park sewer lines, which will likely cause freezing in the winter. Moreover, Ms. Hummell argued that, if the MMPL project is constructed, the Quiet Cove Park sewer lines will no longer be accessible for needed repair work. *Id.* Finally, Ms. Hummell expressed concern that their “tenant’s safety wouldn’t be guaranteed with the PIR Factor (potential impact radius) [of the MMPL project] being about 700 ft. [feet]. We are required to provide a safe and healthy environment for them. Discharges from a failed sewage system is not a healthy thing.” *Id.* As a result, the Hummells recommended that the Commission deny Consumers’ application for the MMPL project, as currently configured.

## 2. Rebuttal and Cross-examination

In rebuttal testimony, Consumers disputed the concerns set forth by the Staff. The company stated that it has:

considered the same criteria identified by [the Staff] . . . in developing the proposed Mid-Michigan Pipeline route, including the overall impact on the environment and landowners, impacts on crop production, right-of-way clearing, stream crossings, wetland crossings, proximity to existing dwellings, number of landowners impacted, amount of right-of-way required, and inconvenience and safety during construction.

3 Tr 134. Additionally, the company asserted that, after considering construction costs, its proposed route of the MMPL is the most direct route, it minimizes the length of pipe that must be installed, and causes the least overall impact to landowners, public land, wetlands, and the environment.

Consumers asserted that it cannot construct the MMPL project in the same location as Line 100A because it is necessary to keep the existing pipeline in service during construction.

Moreover, the company alleged that, if the Commission does not approve its proposed route for the MMPL project, 28 additional homes will need to be purchased to construct the MMPL in an alternative location. Consumers' reply brief, pp. 7-8. Consumers explained that, in developing its final proposed route for the MMPL project, it made significant route adjustments for the City of Chelsea and Sleepy Hollow State Park, minor route adjustments for the Waterloo Recreation Area, and a reroute onto Mr. Wieschowski's property to avoid the demolition of three houses. 3 Tr 134-135. The company stated that it:

will actively pursue steps to seek to resolve the intervening landowners' concerns with the proposed pipeline route on their property. The Company intends to meet with the landowners and work with them to establish a route which addresses their concerns. The Company will communicate with these intervening landowners throughout project development, construction, and restoration to address concerns as they arise. The Company can provide Staff with progress reports regarding these meetings if requested. It is worth noting that adjustments to the route on the properties of these intervening landowners will likely result in additional project costs that were not included in the cost estimate at Exhibit A-5.

*Id.*, p. 136.

Consumers agreed with the Staff's recommendation regarding construction materials and operations. *Id.*, pp. 138-139. However, the company objected to an above-ground electrical survey of the MMPL within three months of the in-service date, claiming that the winter frost conditions will affect the accuracy of the survey. Therefore, Consumers "proposes to perform the above-ground electrical survey within six months after the in-service date of the Mid-Michigan Pipeline to allow adequate time to complete the survey in frost free conditions." *Id.*, p. 140. The Staff did not object. Staff's reply brief, p. 6. The company stated that the cost of the survey will be approximately \$50,000 and the cost was not included in the estimate in Exhibit A-5.

Consumers also agreed with the Staff that the remaining book value of the existing Line 100A should not be addressed in this case but rather in a future natural gas rate case. 3 Tr 288-290.

However, the company disputed the Staff's concern that it had not adequately reviewed potential archeological, historical, and cultural impacts of the MMPL project. Consumers stated that it has contracted with a company, Merjent, to conduct a review of historical resources online. Consumers asserted that the relevant information was available online several years ago when research was conducted and, "[b]ecause these were State and Nationally sponsored information sites, there would be no reason to question the quality of the information contained therein." 3 Tr 232. Furthermore, Consumers contended that there is little likelihood of an unknown historical site because the corridor in which the MMPL project will be constructed has already been disturbed during construction of Line 100A in 1949. Consumers also averred that "[a] new cultural review (archaeological and historical) for the entire proposed pipeline is . . . unnecessary and is not required by state or federal rules or statutes." *Id.*, p. 235. Nevertheless, Consumers stated that it has an Unanticipated Discoveries Plan to investigate and protect any cultural resources that are discovered during the construction process. *Id.*, p. 233. The Staff responded that it:

first became aware of the existence of CECo's [Consumers'] Unanticipated Discoveries Plan through the rebuttal testimony of Ms. O'Connor and received a copy of said plan through CECo's response to Staff discovery request S-10. Upon further review of the Unanticipated Discoveries Plan, Staff is comfortable that CECo has a plan in place to properly handle archeological resources, should they be discovered during construction.

Staff's initial brief, p. 28.

The company acknowledged that certain wetlands had been inadvertently excluded from the data provided to the Staff. Consumers contended that the wetlands identified by the Staff have been reviewed by the company and included in the environmental report. 3 Tr 238-241.

In response to Ms. Hummell's concerns, Consumers contended that the proposed route across her property provides the least overall impact to landowners and the environment, while

considering the cost of construction. Consumers' reply brief, p. 13. The company disagreed that the proposed route would adversely affect the existing septic system for Quiet Cove Park.

According to Consumers, Exhibit A-14 shows the travel lane for the MMPL project and that it avoids the southwest corner of the existing septic system. However, the company acknowledged that the MMPL project would traverse the designated reserve septic area. Therefore, Consumers stated that, "to address this concern, the Company is evaluating shifting the route to the west and adjusting the I-69 bore workspace to accommodate the reserve septic field as shown on Exhibit A-15." 3 Tr 141.

Consumers also explained that it selected the location of the Warner Road Valve Site on the Hummells' property because it is the optimal location between the Laingsburg Valve Site and the Sherwood Valve Site. The company asserted that:

Each point on the pipeline must be within four miles of a valve for a Class 3 location. [HUM-4, p. 6.] If the Warner Road location is not selected, a portion of the pipe would have increased valve site spacing and would only qualify as Class 2. Consumers Energy also selected the location because of the accessibility off I-69 and placement is behind a communication building in an area cleared of trees.

Consumers' initial brief, pp. 36-37. Consumers averred that the placement of the Warner Road Valve Site is reasonable because it provides Class 3 spacing for the entire pipeline, which allows for safer operation of the MMPL.

During cross-examination, Consumers' witness, Jon M. Hagloch, reviewed Ms. Hummell's proposed alternative route of the MMPL project. Mr. Hagloch acknowledged that Ms. Hummell's proposed relocation of the MMPL project is east of the route proposed by Consumers and that she demonstrated how it could rejoin the existing alignment. *Id.*, pp. 186-187. Although Mr. Hagloch testified that there were some affected homes and landowners in the alternative route proposed by Ms. Hummell, he admitted that he had not physically inspected the proposed alternative route and

had not evaluated whether small changes to her proposed route would make it a reasonable and prudent option. *Id.*, pp. 189-191. Mr. Hagloch also acknowledged that he did not know if there was a cost difference between Ms. Hummell's proposed crossing of I-69 and the company's proposed crossing. 3 Tr 187-188.

Consumers asserted that it is open to considering other options to alleviate the Hummells' concerns. However, the company ultimately objected to Ms. Hummell's proposed alternative route because it is costly, risky, and involves demolishing additional homes and obtaining new easements. Specifically, Consumers explained that it would adversely impact five properties and a home and outbuilding south of I-69, and would require the MMPL to cross I-69 at a significant angle, which is contrary to the preferences of the Michigan Department of Transportation (MDOT). *Id.*, pp. 171-172, 188.

Consumers averred that, as a result of meeting with landowners, it is evaluating three other route options for the MMPL project. 3 Tr 154-155. The company asserted that in Option 3 the proposed route of the MMPL project would be relocated west of Mr. Wieschowski's property. However, Consumers argued that the proposed MMPL route in Option 3 would cross the existing Line 100A twice, which is expensive and would require 90-degree angles that may not accommodate a smart pig. *Id.*, pp. 156-157.

In response to Ms. Hummell's concern regarding the PIR and the safety of Quiet Cove Park residents, the company explained that the PIR is "used to classify the consequence zone for doing integrity inspections." *Id.*, p. 191. Consumers also acknowledged that the PIR is the area which could be impacted if the gas line is compromised. The company agreed that if Ms. Hummell's proposed alternative route was approved, Quiet Cove Park residents would be outside the PIR; however it would impact the Quiet Cove Park driveway and the residents of Moon Lake Park,

which is a nearby mobile home park. Consumers admitted that it had not depicted the PIR in the drawings and maps submitted in this case. 3 Tr 195.

In response to ABATE, Consumers objected to a cap on the capital costs for the MMPL project and contended that the construction costs will be evaluated for reasonableness and prudence in a subsequent rate case. Additionally, the company asserted that it is not seeking recovery of contingency costs in this proceeding. *Id.*, pp. 143-145.

In rebuttal, Ms. Hummell asserted that “[t]here is absolutely no way Consumers can guarantee the proposed route [for the] 36-inch gas line location would not affect Quiet Cove’s sewage system.” 3 Tr 356. Ms. Hummell cited letters from the Shiawassee County Health Department and Larry Stephens, the engineer who designed the Quiet Cove Park’s sewage system, both of which state that, if the MMPL project is constructed as proposed by Consumers, it will compromise the existing septic system and limit the area available for the Hummells to complete construction of a future septic system on their property. *See*, Exhibit HUM-1, pp. 3, 5-6.

Ms. Hummell again expressed concern regarding the PIR and the safety of Quiet Cove Park residents. In her opinion, if there is an incident with the MMPL, it “could wipe out” Quiet Cove Park and “[i]t would cut off the only escape route of Colby Lake Roadway. This would make it almost impossible for emergency response parties to come to the rescue of residents.” 3 Tr 357.

The Hummells also objected to Consumers’ argument that a valve site must be installed on their property at the Warner Road location. They stated that Consumers is taking their property for the valve site and it “is going to make it difficult if not impossible to continue with our businesses and business plans. Consumers Energy’s proposed valve site plan ruins the 5 acres of vacant land we have left.” 3 Tr 360. Furthermore, the Hummells disputed the company’s claim

that valve sites must be placed at least every four miles, asserting that some of Consumers' other proposed valve sites are further apart. The Hummells stated that:

Clearly, based upon Consumers' own records, there is considerable flexibility in the placement of valve sites, and, therefore, the proposed Warner Road site can be appropriately relocated to vacant land in the same general area so as to avoid the significant impacts the present site would have on Quiet Cove, yet still meet the general requirements of Consumers.

Hummells' reply brief, filing #U-20618-0091, p. 6.

Finally, the Hummells disagreed with Consumers that their proposed alternative route impacts other residences. They asserted that the company "places the proposed Hummell route further east than depicted by Hummells – it crossed I-69 at a different location and uses different angles and location than the route proposed by Hummells and, therefore, those manipulations result in [a] wrongful assertion that the Hummel route impacts other residences . . . ." *Id.*, p. 8. Rather, the Hummells stated, their proposed route traverses vacant land, it parallels the current Line 100A, and is in a safer, more remote area.

In rebuttal, Mr. Wieschowski contended that Consumers failed to adequately explain its intent when the company entered his property to perform a survey. More specifically, Mr. Wieschowski asserted that Consumers did not inform him that it was planning construction of the MMPL project, which would reroute Line 100A outside of the current easement to a different location on his property. 3 Tr 372. Mr. Wieschowski opined that Consumers "has been vague and inadvertently misleading with the details of this project." 3 Tr 372. Mr. Wieschowski also alleged that Consumers does not have the right to reroute Line 100A on his property. He stated that "[t]he RIGHT of WAY document states: Consumers energy [sic] has the right to access the current gas line easement. . . . The RIGHT of WAY document does not say anything about turning EAST



across our property.” *Id.*, p. 373. Mr. Wieschowski argued that the MMPL project will endanger his family, cause significant destruction to his property, and impair the value of his property.

Mr. Wieschowski requested that the MMPL project be constructed within the same route as the existing pipeline, disputing that Line 100A must remain in service during construction. He suggested starting the MMPL project at a different location and ending at the Stockbridge Gate, which he contended will minimize any outage of the pipeline. Mr. Wieschowski also stated that, “[i]n fact, the upcoming hydro test will take the gas line out of service for a minimum of six weeks per Consumers Energy. If Consumers Energy manages the [MMPL] project differently there will be minimal down time for the current gas line service. Certainly, less than 6 weeks of down time as required by the Hydro test.” *Id.*, p. 374.

In addition, Mr. Wieschowski asserted that the MMPL project could be installed on Consumers’ property on the west side of the Stockbridge Gate, which would eliminate the issue of crossing the existing pipeline. Furthermore, he requested that the company “[u]se the HDD [horizontal directional drill] method down the westerly side of the entire length of the current easement which resides on our property. . . . Terminate the drilling on the vacant property adjacent to our property. Consumers already has an easement on this vacant property. . . . Then turn the pipeline toward the Jones property.” *Id.*, p. 376. Mr. Wieschowski disputed the company’s claim that this route is not viable because it would have to demolish additional homes and acquire easements, which Consumers asserts would significantly increase the cost of the project. He contended that Consumers’ cost estimate is not based on fact because the company has not appropriately mapped his suggested route, has not visited the sites, and has grossly overestimated the cost of acquiring and demolishing the homes. *Id.*, p. 377.

In response to Mr. Wieschowski, Consumers acknowledged that it owns a section of property adjacent to the Stockbridge Gate. Although the company asserted that this section of property is completely comprised of wetland, Consumers stated that gravel has been deposited on this property to accommodate equipment access. 3 Tr 151. The company contended that it is evaluating the property to determine the nature of the wetland and whether it may be utilized. *Id.*, p. 152.

### 3. Surrebuttal and Sur-surrebuttal

Ms. Hummell again objected to Consumers' conclusion that her proposed alternative route would run through other landowners' houses and outbuildings. In her surrebuttal, Ms. Hummell stated that "[w]e suggested the Henry and Margaret Pratt Property. This is a large parcel with no houses on it. Using Part of this property would route the gas line away from the houses that Jon M. Hagloch said would have to be taken out." 3 Tr 364. In response to the company's statement that it is costly and risky for the MMPL project to cross the existing pipeline, Ms. Hummell asserted that Consumers has proposed crossing Line 100A in other areas of its recommended route. Finally, Ms. Hummell disputed the company's contention that it adequately considered safety in the construction of the MMPL and evaluated the project's proximity to dwellings. She argued that "Quiet Cove Park and Moon Lake Park 's [sic] homeowners would clearly suffer a disproportionate hardship. . . . Consumers Energy['s] proposed route demonstrates impermissible bias against manufactured residential property owners, as a class. There is no basis in the law for imposing a hierarchy of property rights, by which manufactured homeowners' rights are subordinate to site-built homes." *Id.*, p. 366.

In sur-surrebuttal, Consumers responded to Ms. Hummell's concerns regarding the construction of the MMPL project, the PIR, and the safety of Quiet Cove Park residents. The

company explained that “[p]ursuant to 49 CFR Part 192.903, PIR ‘means the radius of a circle within which the potential failure of a pipeline could have significant impact on people or property.’” 3 Tr 113. According to Consumers, “[t]he PIR does not mean that a pipeline failure would impact people or property at that distance. A rupture’s impact distance or radius would depend on several factors at the time of the rupture, including pressure, volume, and environmental conditions. In addition, pipeline ruptures are a very rare occurrence.” 3 Tr 113. Furthermore, the company averred it complies with all federal and state pipeline safety requirements. Finally, Consumers stated that the MMPL will be constructed in a high consequence area and the Michigan Gas Safety Standards require that the MMPL be assessed for safety issues every seven years.

In response to Ms. Hummell’s claim that the MMPL project is a taking of their property and that Consumers is impairing their business plans, the company argued that issues such as takings, condemnation, and just compensation are not within the Commission’s jurisdiction. In support, Consumers cited page 5 of the May 24, 2012 order in Case No. U-16838 (May 24 order). Consumers also asserted, “[t]he Commission only possesses the authority granted to it by statute. *Union Carbide Corp v Public Service Com’n*, 431 Mich 135, 146; 428 NW2nd 322 (1988). The Commission has not been granted authority over takings and condemnation matters. Rather, those matters are considered in state circuit courts.” Consumers’ initial brief, p. 36.

In conclusion, Consumers requested that the Commission approve the type of construction proposed by the company for the MMPL project, approve the company’s proposed route, and find that, when constructed and operated, the MMPL will serve the convenience and necessities of the public.

## Proposal for Decision

In her PFD, the ALJ stated the principal issue in this case is determining whether Consumers' proposed MMPL project serves the public convenience and necessity. She noted that "[n]o party challenges Consumers Energy's analysis of the overall need to replace the current Line 100A from Ovid to Chelsea, or its plan to increase the diameter of the pipeline to 36 inches." PFD, p. 34. Rather, the ALJ found that the parties dispute the reasonableness of the MMPL route, the amount of flexibility afforded to Consumers to modify the route during construction, and whether Consumers' cost recovery for the MMPL project should be restricted.

The ALJ noted that Consumers and the Staff agreed that the company shall use PSL 2 pipe in the construction of the MMPL project, obtain GPS coordinates of all girth weld locations, and conduct an inspection within one year of the in-service dates of the pipeline. PFD, p. 60. She also stated that Consumers and the Staff agreed that the company shall perform an above-ground electrical survey to attempt to identify any defects in the pipeline coating within six months of the in-service date and that Consumers will remediate any anomalies detected within one year. Additionally, the ALJ noted that Consumers and the Staff agreed that the company would "work with landowners to 'mitigate disruptions to farming activities during construction and remediation of the pipeline,' with a good faith effort to complete restoration activities" by "the end of the year following construction." PFD, p. 62, quoting 3 Tr 309. The ALJ recommended that these criteria be adopted if the pipeline is approved.

The ALJ stated that, according to Consumers, its proposed route for the MMPL project is the most direct route, it uses the least amount of pipe, and minimizes the overall impact to landowners, public lands, wetlands, and the environment. She noted that the Staff generally agreed that the proposed MMPL route is reasonable, however the Staff recommended that the Commission

approve the route so long as the company takes steps to address the landowners' concerns. After a review of the parties' positions and the record evidence, the ALJ found that "the record does not establish that Consumers Energy considered either the full impact of its proposal on [the Quiet Cove and Moon Lake Estates] communities or alternatives to avoid or mitigate that impact." *Id.*, p. 39.

The ALJ noted that the Hummells argue that the MMPL's PIR affects Quiet Cove Park and, as a result, the proposed pipeline project may threaten the safety of its residents. The ALJ stated that the PIR is defined in 49 CFR 192.903, which states in relevant part, "[p]otential impact radius (PIR) means the radius of a circle within which the potential failure of a pipeline could have significant impact on people or property." *Id.*, p. 40 (emphasis in original). The ALJ averred that, although she accepts Consumers' assurances that it plans to construct and operate the MMPL to meet or exceed all safety standards, the PIR is approximately 770 feet and the Hummells have a reasonable concern that a significant number of Quiet Cove Park and Moon Lake Estates residences fall within the PIR. The ALJ found that:

Next to Chelsea, where Consumers Energy considered the safety of residents in deciding to modify the proposed route, Quiet Cove and Moon Lake Estates constitute the only other significantly-residential, densely-populated area along the current and proposed route. Consumers Energy acknowledged that this constituted a Class 3 area, and a "high consequence area" or HCA under the federal rules, and that other than Chelsea, there are no other such populous areas along the pipeline route. While the remainder of the pipeline route is rural farmland and forestland, the only other cluster of residences along the proposed route is where it bisects Quiet Cove and Moon Lake Estates communities.

PFD, p. 40 (footnotes omitted). Moreover, the ALJ cited cross-examination of Mr. Hagloch wherein he was asked if Consumers had discussed the route through Quiet Cove Park, the number of residents, and the fact that it is a Class 3 area; she noted that he stated, "I can't remember any discussion." *Id.*, p. 42, quoting 3 Tr 180.

The ALJ also found that the Hummells expressed concern about other safety issues. The ALJ noted that, in the event of a pipeline rupture, Ms. Hummell argued that Quiet Cove Park residents may not be able to safely evacuate. The ALJ stated that:

A review of Sheets 42 and 43 of Exhibit A-3 shows that Consumers Energy is correct that Colby [Lake] Road runs north from these communities to connect other roads and south to Warner Road, so any resident impacted by a pipeline incident who was able to get to Colby [Lake] Road would have an avenue of egress. A more complete evaluation of the opportunity for egress, however, given a pipeline incident, should be made in consideration of the potential impact radius of the pipeline, which has not been delineated on any maps filed in this case.

*Id.*, p. 44 (footnote omitted). Therefore, the ALJ found that the record demonstrates that the company did not fully consider the impact of the PIR and the MMPL project on the residents of Quiet Cove Park and Moon Lake Estates.

Regarding the Hummells' assertion that the MMPL project will impair their existing septic system and that it will make their reserve septic area unusable for future development, the ALJ stated that the Hummells provided two significant documents in support of their concern: letters from the Shiawassee County Health Department and Mr. Stephens, the engineer who designed the current sewage system for Quiet Cove Park, both of whom stated that the MMPL project poses a credible threat to the Hummells' current septic system and reserve septic system. *See*, HUM-1, pp. 3 and 5. In addition, the ALJ noted that Ms. Hummell stated that it would be difficult and risky to perform maintenance and repair work on Quiet Cove Park sewage lines, wells, and other infrastructure that would need to be conducted with heavy machinery over and around the 36-inch gas main. The ALJ stated that "Consumers Energy did not directly address the Hummells' concern that the proposed pipeline route will interfere with safe maintenance of community utility services." PFD, p. 43. And, although Consumers claimed that it will take measures to protect the Hummells' current septic system, the ALJ found that the company did not fully mitigate the

Hummells' concerns and failed to demonstrate that it has evaluated or identified "adequate protections to ensure the existing system will be fully protected during both construction and operation of the pipeline." PFD, p. 47. Furthermore, she determined that, based upon the record, the MMPL project will traverse the Hummells' reserve septic area and destroy the potential for future development. *Id.*, pp. 48-49, 54.

The ALJ noted that the Hummells also expressed concern that the MMPL project, including the proposed Warner Road Valve site, would destroy the remaining vacant land in Quiet Cove Park and impair their ability to expand their housing development. She stated that "Consumers Energy does not dispute the validity of [the Hummells'] assertions, and does not address them or compare the impact on Quiet Cove and the Hummells to the impact of alternative proposals." PFD, p. 49. Additionally, the ALJ noted that Consumers argued that the Hummells' claim is a takings issue and outside the scope of this case. However, she found that the company is taking the May 24 order out of context; the ALJ explained that, the issue in that case related to the constitutionality and lawfulness of a utility relying on eminent domain to acquire property rights. She stated that, in this case, "the Hummells are merely identifying issues related to the cost of the pipeline project and the relative impact of the proposed route on their property and the residents of Quiet Cove . . . ." PFD, p. 50.

The ALJ noted that Consumers identified an alternative route through Quiet Cove Park that would avoid the existing sewage system and the reserve sewage area, which was set forth in Exhibit A-15. She found that the company had not "adequately evaluated this alternative, the company has not adequately considered less harmful alternatives than its proposed route, and it is premature to approve the route it is [sic] has proposed." PFD, p. 51.

The ALJ also found that Consumers has not demonstrated that it is necessary to place the valve at the proposed Warner Road Valve Site. She stated that Consumers argued that its proposed Warner Road Valve Site is “optimal” so that it can provide Class 3 spacing for the entire pipeline. PFD, p. 52, quoting Consumers’ initial brief, p. 36. However, the ALJ noted that Consumers seems to be relying on 49 CFR 192.179, which only appears to require eight-mile valve spacing. And she found that, pursuant to pages 1 and 2 of Exhibit A-3, the company has other valve sites that are more than four miles apart. Moreover, the ALJ noted that Consumers claimed that it selected the proposed Warner Road Valve Site because of its accessibility from I-69 and because there is already a cleared area behind a communications building; however she stated that the company has “not justified the need for the valve site at that location in light of the interference with Quiet Cove operations.” *Id.*, p. 53. Finally, the ALJ determined that, although Consumers has proposed a potential alternative route for the MMPL in Exhibit A-15, the company did not provide an alternative location for the valve site.

Next, the ALJ found that Consumers had not adequately evaluated the Hummells’ proposed alternative route. According to the ALJ, “using his translation of the Hummells’ proposed route in [Exhibit] A-16, [Mr. Hagloch] depicted a line through several homes, crossing I-69 [at] an angle clearly not perpendicular to the roadway.” PFD, p. 55. She noted that, in rebuttal, Ms. Hummell objected to Mr. Hagloch’s interpretation of her proposed alternative route and disputed that her proposed route runs through other property owners’ homes and outbuildings. The ALJ agreed with the Hummells and found that “[t]here are key differences between the route Ms. Hummell presented in two drawings in Exhibit HUM-3, pages 4 and 6, and the route that Mr. Hagloch presented in Exhibit A-16.” *Id.*, p. 56. She found that, based on the record, Mr. Hagloch did not fully or accurately evaluate Ms. Hummell’s proposed alternative route.



Regarding Mr. Wieschowski's concerns, the ALJ noted that Consumers is considering three other proposals relating to this portion of the pipeline. She stated that:

Consistent with the discussion [about the Hummells' property] above, this PFD recommends that the Commission require Consumers Energy to prepare and file an evaluation of alternative routes for the section of the pipeline depicted on Sheet 12 of Exhibit A-3, currently running through Mr. Wieschowski's property, with specific testimony explaining which route or routes have the least impact on landowners and the environment, which route Consumers Energy believes best serves the public convenience and necessity, and what the corresponding costs are of each route. The company should also provide a more detailed evaluation of the option of constructing a portion of the new line within the footprint of the current line, given [the Staff's] testimony and Staff's contention that this option should also be considered.

PFD, pp. 59-60.

In response to the Staff's recommendation that Consumers limit changes to the pipeline route to minor deviations, the ALJ stated that the company objected and contended that "greater flexibility is needed to address 'unknown issues.'" PFD, p. 64, quoting 3 Tr 137. She found that the degree of discretion requested by Consumers is inconsistent with the statutory requirements of MCL 483.109, which states that the company must submit "a map or plat of such proposed line or lines which it desires to construct, showing the dimensions and character of such proposed pipe line or lines, its compression stations, control valves, and connections . . . ." In addition, the ALJ stated that Consumers "did not cite any prior decisions where such broad authority was granted to deviate from an approved route." PFD, p. 65. As a result, she found that the Staff's recommendation regarding minor deviations is reasonable. *Id.*, pp. 64-65. The ALJ also noted that the flexibility requested by Consumers would deprive the Staff of a meaningful opportunity to evaluate environmental and other impacts if the company was permitted to modify the route beyond what the Staff defined as a minor deviation.

The ALJ recommended that, in light of the testimony relating to the impact on landowners, Consumers should be required to “provide an analysis of the feasibility of shutting down line 100A for a period of time to facilitate a limited use of the techniques identified by the Staff, rather than dismissing them out of hand.” PFD, p. 68.

Finally, the ALJ noted that the parties agreed that a Commission decision regarding cost recovery for the MMPL project and the undepreciated plant balance is not appropriate in this case. Regarding ABATE’s proposed cost cap, the ALJ agreed with Consumers that it is not appropriate to impose a cost cap in this proceeding because “[a]ll of the utility’s expenditures for the proposed pipeline are subject to prudence review if and when the utility seeks to recover those costs.” PFD, p. 70.

#### Exceptions and Replies to Exceptions

In its exceptions, Consumers notes that the ALJ found that no party challenged the need to replace Line 100A or the plan to increase the pipeline diameter to 36 inches. However, the company states that the ALJ recommended that the Commission reject Consumers’ application because the company did not fully evaluate alternatives to the proposed route through the Hummells’ and Mr. Wieschowski’s properties. Consumers contends that “[t]he PFD’s recommendation that the Commission reject the Company’s proposed Mid-Michigan Pipeline fails to adequately consider the need and importance of replacing the current Line 100A.” Consumers’ exceptions, p. 2. The company asserts that the MMPL project is necessary to provide transmission pipeline integrity benefits and to improve system capacity. *Id.*, pp. 3-9.

In response to the ALJ’s conclusions regarding the Hummells’ concerns, Consumers reiterates the arguments set forth in testimony and briefing and asserts that its proposed route through the Hummells’ property is reasonable and should be approved by the Commission. *Id.*, pp. 16-19.

The company avers that it will work with the Hummells to attempt to resolve their concerns, but objects to the ALJ's recommendation that the company evaluate alternative routes. Consumers states that "Act 9 does not require the Company to anticipate landowner objections to the route of a pipeline on their property, to engineer and develop cost estimates in anticipation of those objections, and to present evidence of all such alternatives in an Act 9 proceeding." *Id.*, p. 19.

Consumers disagrees with the ALJ's determination that the company failed to consider the impact of the MMPL on Quiet Cove Park and Moon Lake Estates residents. The company reiterates that it considered the overall impact to landowners and the environment, the number of landowners impacted, existing easements, required rights of way, and the cost of construction. *Id.*, p. 18. In addition, Consumers asserts that it addressed the issue of safe egress from Quiet Cove Park in the event of an emergency. *Id.*, pp. 20-21.

Consumers states that "[t]he PFD also noted a letter from Larry Stephens of Stephens Consulting Services, which indicated Mr. Stephens' opinion that the proposed pipeline route 'may very well compromise the wastewater system serving the park.' See PFD, page 45; Exhibit HUM-1, page 5." *Id.*, p. 22. The company argues that the MMPL does not impair the current septic system because: (1) the current route of the MMPL project avoids the existing septic field; (2) equipment will not traverse the septic field during construction; and (3) Consumers will provide a drain field consultant to monitor the drain field. In addition, Consumers asserts that Mr. Stephens' claims that the MMPL project will cause Quiet Cove Park's current septic system to become non-conforming after the fact. The company responds that Mr. Stephens did not identify the precise portions of the zoning setback code he believes apply to the MMPL project. The company avers that it "will comply with all zoning requirements, and there is no evidence in this case identifying any zoning requirements with which the Company will not comply." *Id.*, p. 23.

In response to the ALJ's conclusion that the company failed to establish that it is necessary to place the valve site at the Warner Road location, Consumers argues that Act 9 does not require it to show that the valve site placement is "necessary." *Id.*, p. 24. The company states, "[r]ather, the Commission has historically determined whether the map, route, and type of construction are 'reasonable.' See MPSC Case No. U-20640, April 15, 2020 Order Approving Settlement Agreement." *Id.* Consumers reiterates the arguments set forth in testimony and briefing that the Warner Road Valve Site is reasonable and should be approved.

Consumers also disputes the ALJ's interpretation of 49 CFR 192.179 and her evaluation of the company's proposed valve placement. Consumers explains that, pursuant to 49 CFR 192.179, the valves are not required to be placed less than four miles apart, as claimed by the ALJ; rather, each point on the pipeline must be within four miles of a valve to be a Class 3 location. The company states that the "placement of the Warner Road Valve Site is reasonable and will support the safe operation of the Mid-Michigan Pipeline." *Id.*, p. 25. Furthermore, Consumers avers that it has considered the Hummells' concern with the location of the Warner Road Valve Site and continues to address the issues regarding their reserve septic area. However, the company contends that the proposed Warner Road Valve Site is optimal because it avoids significant impact to other landowners and eliminates additional costs associated with designing an alternative route for the MMPL project.

Consumers also objects to the ALJ's conclusion that it did not comprehensively evaluate the Hummells' proposed alternative route. The company asserts that it "had three weeks to review the routes that the Hummells had sketched and provide an evaluation of the proposal to include in rebuttal." *Id.*, p. 26. Consumers reiterates that the Hummells' proposed route would impact additional homes, including purchasing and demolishing several homes and outbuildings, and it

would significantly increase the cost of the MMPL project. Moreover, the company restates that the Hummells' proposed route crosses I-69 at a significant angle, contrary to the preferences of MDOT, and crosses and recrosses Line 100A. The company argues that its proposed route through the Hummells' property provides the least overall impact to landowners and the environment, considering the cost of construction, and should be approved by the Commission.

In response to the ALJ's recommendations relating to Mr. Wieschowski's property, the company notes that the ALJ did not find that Consumers' proposed route through his property is unreasonable. Consumers states that, "[i]nstead, the recommendation appears to be concerned with whether the Company provided Mr. Wieschowski with enough options for potential routes over his property." *Id.*, p. 11. The company argues that the record evidence does not support the ALJ's recommendation and that the proposed route for the MMPL project through Mr. Wieschowski's property is reasonable and should be approved.

Moreover, Consumers contends that Mr. Wieschowski failed to provide evidence to support his objection to the company's proposed route and did not provide an alternative, specifically identifiable route. And, in response to Mr. Wieschowski's proposal to construct the MMPL project in the same location as Line 100A, Consumers reiterates that this "is not expected to be an available option because the Company plans to keep the existing Line 100A in service during construction to allow the Company to transport natural gas to storage fields during construction." *Id.*, p. 14. Consumers avers that it will work with Mr. Wieschowski to attempt to resolve his concerns, however the company states that Act 9 does not require that it file additional evidence to support alternative routes for Mr. Wieschowski's property. The company argues that there is no legal or factual basis that would require Consumers "to perform additional engineering and

analysis to propose alternative routes in an Act 9 proceeding simply because a landowner does not agree with the route of the proposed pipeline on the landowner's property." *Id.*, p. 15.

Consumers also notes that the ALJ recommended that the company be provided an opportunity to refile its application "with a comprehensive evaluation of alternatives to the proposed routes through the Hummells' and through Mr. Wieschowski's property." PFD, page 72. If the evaluation results in Consumers Energy proposing a different alternative that involves other landowners, the PFD recommended that "those landowners should be notified of the revised proposal." *Id.*" Consumers' exceptions, pp. 27-28. The company avers that alternative routes will impact other landowners, they may object to Consumers' proposed route, and they may have their own recommended alternatives that may impact more landowners. Thus, Consumers states, "[u]nder the PFD's reasoning, the Company would then be required to file another revised Act 9 proceeding to propose yet more route alternatives. This process has the potential to repeat ad infinitum and result in significant delays of the important and necessary Mid-Michigan Pipeline project." *Id.*, p. 28.

Consumers asserts that it has agreed to work with landowners to minimize the impact of the MMPL project to their property. However, the company argues that Act 9 does not require that all landowners agree to the proposed route. Rather, Consumers asserts that the standard in this case is whether the company's proposed route for the MMPL is reasonable. Consumers states that:

While the Company will do what it can to accommodate landowners in ways that are reasonable and feasible, with adjustments where possible, a determination that a project should be rejected because a landowner is not completely satisfied is not only a deviation from the standard, but a precedent that could lead to, over time, increasing the time between the request for approval of an Act 9 project and the actual commencement of an Act 9 project and increasing costs to amounts that may not be considered reasonable by the Commission.

*Id.*, pp. 15-16. Therefore, Consumers requests that the Commission find that its proposed route for the MMPL project is reasonable and should be approved.

In the event the Commission finds that Consumers should provide alternative routes for the Hummells' and Mr. Wieschowski's properties, the company asserts that the Commission is not required to reject the application and require the company to refile. Instead, Consumers states that:

if the Commission determines that the Company's proposed route is not reasonable, the Commission should approve the Company's application conditioned on the Company filing and the Commission reviewing alternative routes associated with the Hummells' and Mr. Wieschowski's properties. Such a procedure would support administrative efficiency by avoiding the re-litigation of issues that have already been considered in this case.

*Id.*, pp. 28-29. In addition, Consumers contends that, if unexpected circumstances arise during final planning and construction of the MMPL project, such as a burial site, septic field, or an underground obstacle which could impact an HDD, the company should not have to file for Commission approval of a route adjustment. Consumers asserts that it should "have the ability to negotiate with landowners to address these circumstances and to adjust the route in a manner that is the most cost-effective with the least overall impact. 3 TR 137." *Id.*, p. 29. However, the company states that if the Commission determines that it should define the limitation for a discretionary route adjustment, Consumers proposes that location changes within 2,000 feet of the route would be sufficient for it to address any unknown issues.

In its exceptions, ABATE disagrees with the ALJ's determination that it is not appropriate to impose a spending cap in this proceeding. ABATE states that "[b]ecause of the significant potential rate increases represented by the Company's unreasonable contingency cost projections in this proceeding[,] the Commission should not wait to provide the Company further guidance on the reasonableness or appropriateness of these costs." ABATE's exceptions, pp. 1-2. ABATE

reiterates the arguments set forth in testimony and briefing and requests that the Commission approve a capital cost cap of \$473 million that would exclude speculative, undefined, and possibly unnecessary contingency cost projections.

In reply to ABATE, Consumers notes that the ALJ rejected ABATE's request, finding that a cost cap would not be appropriate in this case because the expenses will be reviewed for prudence in a future case. The company states that, "[i]n its Exceptions, ABATE argues that although these costs will be subject to a prudence review in a separate rate case, a cap is appropriate because of ABATE's contention that the amount of contingency included in the Company's filed estimate is unreasonable." Consumers' replies to exceptions, p. 2. Consumers contends that pipeline project costs are not approved by the Commission in an Act 9 proceeding, and the company is not requesting approval of any costs, including contingency costs, in this case. Therefore, Consumers requests that the Commission reject ABATE's proposed cost cap.

In its replies to exceptions, the Staff agrees with Consumers that **"[t]he Mid-Michigan Pipeline project is necessary to replace an aging pipeline that is developing maintenance issues and to ensure gas supplies for summer storage, winter deliveries, and during outages elsewhere on the transmission system."** Staff's replies to exceptions, p. 2 (emphasis in original). The Staff reiterates its arguments set forth in testimony and briefing that a number of anomalies exist in Line 100A, it has an increased risk for an outage, and the MMPL project would eliminate a bottleneck and increase capacity. The Staff notes that the ALJ found that no party challenged the need to replace Line 100A.

The Staff agrees with Consumers that remediation of the Hummells' concerns does not warrant a complete rejection of the company's application. The Staff states that "the Commission should approve the application contingent on Consumers relocating the valve site in a manner that



mitigates the impacts identified in the PFD, allows the project to proceed, and maintains the safety, reliability, and integrity of Consumers' system." *Id.*, p. 5 (footnote omitted). Furthermore, the Staff asserts that the Commission could approve the company's current application subject to two options that would mitigate the Hummells' concerns. The Staff states that "[t]he first option is for the Commission to approve the application, but explicitly require Consumers to avoid the septic field and septic reserve area." *Id.*, p. 6. If the Commission approves this condition, the Staff contends that the Commission should order the parties to provide the information necessary to achieve this alternative route. The Staff states that, if the MMPL project "cannot be constructed in a manner that avoids the septic and septic reserve, the Commission could alternatively approve the application with the condition that the segment traversing the Quiet Cove Mobile Home Park is replaced using the 'lift and lay' technique, which would minimize the deviation of the new pipeline from the current route." *Id.*, p. 7. In any event, the Staff asserts that Consumers should not be permitted to alter the route of the MMPL in a manner that impacts additional landowners who did not receive notice. If the company must make an alteration that impacts other landowners, the Staff contends that Consumers should be required to refile the application and notify all affected landowners.

Although the Staff agrees that the company should consider alternative routes for the MMPL through the Hummells' property, the Staff avers that the Commission should not approve the Hummells' proposed route for the MMPL. According to the Staff, the Hummells' proposed route "is unreasonable because it will add to the overall length of the pipeline, is not an optimal route, will impact additional landowners, will require the Company to purchases [sic] additional properties, will displace additional residents, and will add additional costs to the project." *Id.*

The Staff asserts that if the Commission rejects Consumers' application, requires the company to refile, and additional landowners are notified and impacted by the MMPL project, it may result in an endless circle of engineering and cost estimates, with every new application involving new landowners and new potential concerns. The Staff also agrees with Consumers "that the record in this case supports the reasonableness of the Company's proposed route, that Act 9 does not require all landowners to agree to the pipeline route for the Commission to approve it, and when constructed and in operation will serve the convenience and necessities of the public." *Id.*, p. 8. Therefore, the Staff requests that the Commission approve Consumers' application and the route for the MMPL, subject to one of the options described above.

In their replies to exceptions, the Hummells reiterate the arguments set forth in testimony and briefing. The Hummells dispute Consumers' claim that the ALJ failed to recognize the importance of replacing Line 100A. Rather, the Hummells assert that, on pages 4 through 10, 18 through 22, and 33 through 44 of the PFD, the ALJ acknowledged that replacing Line 100A would address the issues of necessity and capacity. However, the Hummells note that the ALJ found that **"the record does not establish that Consumers Energy considered either the full impact of its proposal on the communities or mitigated that impact."** Hummells' replies to exceptions, p. 4, quoting PFD, p. 39 (emphasis in original). The Hummells assert that the ALJ's determination is supported by "well-reasoned findings of fact." *Id.*, pp. 4-5, citing pages 39-57 of the PFD.

The Hummells assert that Consumers misunderstands the emergency egress issue with Quiet Cove Park. The Hummells state that "fire and ambulance service come from Woodhull Township out of Shaftsbury, which is south of I-69; if there is an incident, there is not a direct route to the site and would require use of back road and dirt roads to access the location and as such, the safety

concerns raised by the Hummells are valid and were properly considered and accepted by the ALJ.” *Id.*, p. 6.

The Hummells also contend that Consumers misrepresents the amount of time the company was given to review their concerns regarding the MMPL project’s impact on Quiet Cove Park’s existing septic system and the reserve septic area. According to the Hummells:

it is noted that Mrs. Hummell specifically mentioned that the pipeline was going through the drain field at the October 11, 2019 Pre-Hearing Conference (see Page 33, Lines 10-11 of the Pre-Hearing Conference). Clearly, Consumers had ample time to investigate the drain field implications, but simply did not do so and, therefore, the findings of the ALJ relative to the lack of investigation of the alternative route put forward by the Hummells is well supported by the record.

*Id.*, p. 7. In addition, the Hummells note that, in Consumers’ exceptions, the company continues to claim that its proposed route will not adversely impact Quiet Cove Park’s existing septic system or reserve septic area. However, the Hummells assert that the ALJ determined that Consumers “failed to fully and adequately investigate the impacts of the project, as proposed, on Quiet Cove Mobile Home Park, and its associated septic and reserve septic area.” *Id.*, p. 8.

Finally, the Hummells maintain that their proposed alternative route for the MMPL project does not require the acquisition and demolition of additional residences. They cite Ms. Hummell’s testimony that their proposed route does not run through homes and outbuildings and contend that the company has not fully and accurately evaluated their proposed alternative route. *Id.*, p. 9, citing 3 Tr 264-366. The Hummells request that the Commission adopt the ALJ’s findings and recommendations and reject Consumers’ Act 9 application.

In its replies to exceptions, ABATE reiterates that Consumers’ projected contingency costs are excessive, the contingency costs should be rejected, and that the Commission should impose a cost cap. ABATE’s replies to exceptions, pp. 1-3.

## Discussion

MCL 483.109 states that:

Any corporation, association or person within the terms of this act desiring to construct transmission mains for the transportation or conveying of natural gas from its source to the locality or localities where utilized, shall submit to the commission, accompanied by due application, a map or plat of such proposed line or lines which it desires to construct, showing the dimensions and character of such proposed pipe line or lines, its compression stations, control valves, and connections, and shall first receive the approval of the commission of such map, route and type of construction before proceeding with the actual construction of such transmission lines, and it shall be the duty of the commission to examine and inquire into the necessity and practicability of such transmission line or lines and to determine that such line or lines will when constructed and in operation serve the convenience and necessities of the public before approval of such map and proposed transmission line or lines: Provided, That persons, associations or corporations having already acquired the rights of common purchasers and common carriers at the time the provisions of this act became effective shall be required to file the map or plat provided for in this section only.

The ALJ determined that there is no dispute that Line 100A is over 70 years old, that it has a number of significant anomalies, and that replacement of the pipeline would benefit customers, improve system integrity, and increase overall long-term public safety. PFD, p. 34. The Commission agrees. The Commission reviewed Consumers' application, the parties' testimony, and applicable exhibits and finds that the company's proposal to replace the portion of Line 100A between Chelsea and Ovid, Michigan, is necessary because it will address corrosion issues, seam weld anomalies, and other anomalies on the pipeline. *See*, 3 Tr 93-111; Exhibits A-9, A-10, A-11, and A-12. In addition, the Commission finds that Consumers' proposal to increase the diameter of Line 100A to 36 inches will remove the bottleneck, increase capacity, and provide a more resilient and flexible system. *Id.*, pp. 248-249, 253-275; Exhibit A-2. Therefore, pursuant to MCL 483.109, the Commission finds that the proposed MMPL project, when constructed and operated, will serve the public convenience and necessity. *Id.*, pp. 93-99, 101-103, 108-110, 248-249, 251-252, 254-256, 264-267, 271-275, 310-317, 333; Exhibits A-1, A-2, A-4, A-10, and A-12.

Public Act 165 of 1969, MCL 483.151 *et seq.* (Act 165), authorizes the Commission to create and enforce safety standards for pipeline facilities and the transportation of gas. The Michigan Gas Safety Standards were established by the Commission pursuant to Act 165 and are set forth in Mich Admin Code, R 460.20101 *et seq.* The Commission notes that the Staff reviewed Consumers' proposed engineering specifications for the MMPL project and determined that they meet or exceed the Michigan Gas Safety Standards. *See*, 3 Tr 313. The Commission agrees. The Commission also notes that Consumers and the Staff agreed that the company will construct the MMPL using PSL 2 pipe, will obtain GPS coordinates of all girth weld locations, and will conduct an inspection within one year of the in-service date of the pipeline. In addition, Consumers and the Staff agreed that the company will perform an above-ground electrical survey within six months after the in-service date of the MMPL and that Consumers will remediate any anomalies detected within one year. The Commission finds that this construction and testing criteria should be approved. In sum, the Commission finds that the proposed MMPL project will be constructed, tested, and operated in a manner that complies with current applicable engineering and safety standards. *See*, 3 Tr 129, 138-140, 142-143, 194, 313-314, 316-317; Exhibit A-4; Staff's reply brief, p. 6.

The Commission further finds that the application, testimony, and exhibits of the parties support and satisfy the Commission's required agency review and environmental obligations under the Michigan Environmental Protection Act (MEPA), Part 17 of the Natural Resources and Environmental Protection Act, MCL 324.1701 *et seq.* (NREPA), and the Michigan Supreme Court's application of MEPA in *Mich State Hwy Comm v Vanderkloot*, 392 Mich 159, 185; 220 NW2d 416 (1974). The Commission reviewed Exhibits A-7 and A-7a (Consumers' MMPL Environmental Impact Assessment (EIA)) and finds that approval of the proposed pipeline

installation will not detrimentally affect the environment or the state's natural resources.

According to Exhibit A-7, the nesting habitat of the NLEB and Indiana bat was noted within four counties along the proposed pipeline route. However, the company states that "[t]he [United States] Fish and Wildlife Service [USFWS] has been contacted and informed Consumers Energy that the pipeline avoids all known NLEB roost buffers." Exhibit A-7, p. 32. Consumers also averred that it will consult with the USFWS and the MDNR to determine whether the MMPL project will affect listed species and to develop avoidance, conservation, or mitigation measures for potentially affected species. *Id.*, pp. 29-30.

The Commission notes that, according to Exhibit A-7a, the proposed MMPL project will cross approximately 37 regulated waterbodies, 22 of which are considered perennial, 13 that are intermittent, and 2 that are ephemeral. Consumers' EIA also states that five regulated waterbodies will be crossed by HDD. Exhibit A-7a, p. 2.

Further, the company's EIA indicates that the proposed MMPL project will cross approximately 109 wetlands, for a total of approximately 55 acres, and that the project construction corridor will be narrowed to a 75-foot width in wetlands. Exhibit A-7a, p. 4. Exhibit A-7a indicates that construction in and around wetlands will be executed pursuant to Part 303, Wetland Protection, of NREPA, and the Federal Energy Regulatory Commission's Plan and Procedures. *Id.*, p. 5. Exhibit A-7a also states that:

Consumers Energy will restore wetlands to preconstruction conditions and will leave existing root systems intact where possible to encourage regrowth and revegetation along the equipment passage and soil storage areas. Consumers Energy will salvage topsoil in areas to be excavated, unless saturated soil conditions are present. The replaced topsoil will be a source of native seeds and propagules.

*Id.* As noted above, Consumers stated that it will contact the USFWS and MDNR to coordinate any avoidance, conservation, mitigation, and management practices for affected listed species in

waterbodies and wetland areas. The Commission notes that, following the receipt of additional information from the company, the Staff determined that the route of the MMPL project causes the least environmental, archeological, historical, and cultural impact. *See*, 3 Tr 322-324; Staff's initial brief, pp. 28, 31.

Therefore, based on Consumers' EIA and the Staff's review, the Commission concludes that no significant adverse environmental effects will result from the construction of the proposed MMPL project and that any impairment to the environment resulting from the installation of the pipeline would be *de minimus*.

Next, the Commission finds that Consumers provided a map and proposed route for the MMPL project, filed as Exhibit A-3, which shows the dimensions and character of the proposed pipeline, the compression stations, control valves, and connections. The company averred that it considered alternative routes but they:

were not viable due to factors such as (i) the need to connect to existing city gates and other pipelines; (ii) the need to provide service to customers; (iii) the increased pipeline footprint that would be required with a different route; and (iv) additional easements that would be required. 3 TR 128. The Company did not consider lengthy, non-parallel routes involving additional landowners to be viable options because such options generally increase project costs and have a greater impact to surrounding land use. 3 TR 134.

Consumers' initial brief, pp. 19-20. Consumers asserted that its proposed route is the most direct route, it minimizes the length of pipeline to be installed, and it has the least overall impact to landowners, public lands, wetlands, and the environment. 3 Tr 134.

The Commission notes that the Staff reviewed the company's proposed route for the MMPL project. According to the Staff:

The primary factors considered were the impact of the proposed route on the environment and landowners. Environmental impacts include the near and long-term impacts of crop production and reroute locations from the existing pipeline from the construction, operation, and maintenance of the proposed Mid-Michigan

Pipeline. Additionally, Staff review[ed] other factors posed by the proposed pipeline project which would impact the environment, such as right-of-way clearing, stream crossings, and wetland crossings. The magnitude of landowner impact involves the proximity of the proposed Mid-Michigan Pipeline, including proposed reroute locations from the existing pipeline, to existing dwellings, the quantity of landowners impacted, the amount of right-of-way required, and the inconvenience and safety of the adjacent landowners during pipeline construction.

*Id.*, pp. 304-305. Apart from the aforementioned landowner concerns, the Staff found Consumers' proposed route to be reasonable.

To address the Hummells' and Mr. Wieschowski's concerns, the Staff recommended that Consumers take additional measures to mitigate the effect of the MMPL project on each landowner's property. *Id.*, p. 307. The Staff stated that these additional measures may include, but are not limited to:

Working with the Landowners to re-route the proposed pipeline within their property; removing the existing segments of pipeline within their property and locating the replacement pipeline within the preexisting and newly evacuated location; decreasing the spacing between the proposed line and the existing line which will be abandoned; constructing the pipeline with additional depth of cover; and directionally boring large sections to minimize the surface impact in these areas.

*Id.*, p. 308. If these limitations and measures are approved, the Staff found Consumers' proposed route to be reasonable.

In summary, the Hummells asserted that Consumers' proposed MMPL route and the Warner Road Valve site are "not consistent with public safety, cost efficiencies, and [are] not practical." Hummells' initial brief, p. 5. The Hummells provided several maps and diagrams in Exhibit HUM-3 that demonstrate a proposed alternative valve site and route for the MMPL.

The Commission notes that Consumers objected to the Hummells' proposed alternative route and valve site because they "did not present testimony by an engineer or other professional [in] proposing their alternative route, evaluating the landowner and environmental impacts of the



alternative route, or supporting whether the alternative route is reasonable.” Consumers’ reply brief, pp. 12-13. In addition, the company claimed that the Hummells provided their proposed alternative route in their direct case and Consumers had only three weeks to review the sketched routes and provide an evaluation for rebuttal. Consumers stated that, “[i]n that short time frame, the Company did not independently fully engineer, develop cost estimates for, or perform an environmental analysis of the Hummells’ proposed alternative route.” Consumers’ exceptions, p. 26. In any event, the company asserted that, after a review of the Hummells’ proposal, the alternative route and valve site impact other landowners’ properties, appear to require the demolishing of additional homes and outbuildings, require additional easements, and would require a new environmental analysis and report. *See*, 3 Tr 142; Exhibit A-16. Further, Consumers contended that the Hummells’ proposed route crosses I-69 at a significant angle, contrary to the preferences of MDOT. *Id.*

Although Mr. Wieschowski provided a map of an alternative route, he also requested that the MMPL project be constructed within the same route as the existing pipeline in some locations. *See*, Exhibit MW-1; 3 Tr 373-374. In addition, he suggested that the pipeline could be installed on Consumers’ property on the west side of the Stockbridge Gate and requested that the company use the HDD method along the westerly side of the entire length of the current easement on his property. 3 Tr 376. Consumers averred that it is evaluating alternative routes for the MMPL on Mr. Wieschowski’s property. 3 Tr 151-152.

The Commission has reviewed the application, briefs, record evidence, and proposed pipeline routes presented in this case. The Commission finds that the Hummells’ proposed route would likely require the demolition of additional homes and outbuildings, would require the acquisition of new easements, and would require a new environmental analysis and report. Consequently, the

Hummells' proposed route would affect additional landowners and would significantly increase the cost and complexity of the project. Regarding Mr. Wieschowski's proposed alternative route, the Commission finds that it lacks sufficient detail and would require a new environmental analysis and report.

The Commission finds persuasive Consumers' testimony that it considered alternative routes, but that, due to system configuration restrictions, service concerns, geographic limitations, and cost considerations, the company was compelled to design the route as depicted in Exhibit A-3. *See*, 3 Tr 134, 140, 153, 163, 166, 172, and 179. The Commission also finds persuasive that the route set forth in Exhibit A-3 affects the fewest number of landowners and that Consumers' completed EIA demonstrates that the construction impact on public lands, wetlands, and the environment is *de minimus*. Therefore, the Commission finds that Consumers' proposed route for the MMPL project is the most reasonable and practicable.

However, as recommended by the Staff, the Commission approves Consumers' proposed route with the condition that the company shall work with affected landowners to implement additional measures to mitigate, on a case-by-case basis, the impact of the MMPL project on their properties. *See*, 3 Tr 307-309; Exhibit S-5. Specifically, the parties shall work together to ensure that construction of the MMPL project does not impair Quiet Cove Park's existing septic system, does not traverse the reserve septic area, and that Consumers has the ability to comply with all set back and zoning requirements. The Commission also expects the parties to work together to amicably determine the route of the pipeline and the placement of valve sites without additional intervention by the Commission. The Commission finds that Consumers shall limit any changes in construction location to minor deviations, as defined by the Staff. *See*, 3 Tr 307; Staff's initial

brief, pp. 21-23. Finally, Consumers shall provide the Staff with reports detailing the progress of its meetings with affected landowners.

In conclusion, the Commission approves Consumers' proposed route of the MMPL project, as set forth in this order, and approves the company's map as presented in Exhibit A-3, depicting the general route of the MMPL, and the type of construction. The Commission finds that the MMPL will be operated in a safe manner, will comply with Michigan's Gas Safety Standards, will provide an economic option for the transmission of gas to market, and will be designed, constructed, and operated in an environmentally-acceptable manner.

The Commission recognizes the importance of replacing aging pipeline to reduce the risk to system integrity, to improve public safety, and to increase system capacity and flexibility. The Commission also acknowledges that pipeline replacement projects, such as the MMPL, may have a significant impact on the utilization, enjoyment, and value of affected landowners' properties. Therefore, in future Act 9 proceedings, the Commission encourages the utility to explore and exhaust all alternative routes prior to requesting Commission approval of the proposed pipeline so as to mitigate and assuage landowner concerns and to avoid prolonged Act 9 proceedings.

Finally, the Commission agrees with the Staff that a determination regarding the recovery of the remaining undepreciated plant balance should be decided in Consumers' natural gas rate case following the completion of the MMPL. In addition, the Commission declines to approve a cap on the capital costs for the MMPL project as requested by ABATE. While the Commission appreciates ABATE's recommendations to mitigate cost impacts and contingencies associated with a project of this scale, unlike a certificate issued under MCL 460.6s for new electricity generation, cost caps are not explicitly provided for under Act 9. The Commission finds that

construction and contingency costs will be evaluated for reasonableness and prudence in a subsequent natural gas rate case.

THEREFORE, IT IS ORDERED that:

A. After obtaining all other necessary permits, Consumers Energy Company is authorized to construct and operate the Mid-Michigan Pipeline between Chelsea and Ovid, Michigan, as proposed in its application filed on August 23, 2019, and as set forth in this order, subject to the requirements of 1929 PA 9, MCL 483.101 *et seq.*

B. The map, route, and type of construction of the Mid-Michigan Pipeline as proposed in the application, as depicted in Exhibit A-3, and as set forth in this order are approved, allowing for minor route deviations as defined by this order.

C. Within 60 days after completion of construction, Consumers Energy Company shall file a completion report, including pressure test data and an “as built” map of the constructed pipeline.

D. If Consumers Energy Company provides transportation for others, it shall file with the Commission signed transportation contracts and shall provide transportation in a non-discriminatory manner.

E. Upon abandonment or deactivation, the pipelines shall be abandoned in accordance with the Michigan Gas Safety Standards, MCL 483.151 *et seq.*

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungpl@michigan.gov](mailto:pungpl@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Daniel C. Scripps, Chair

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Sally A. Talberg, Commissioner

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Tremaine L. Phillips, Commissioner

By its action of November 19, 2020.

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Lisa Felice, Executive Secretary


# PROOF OF SERVICE

STATE OF MICHIGAN )

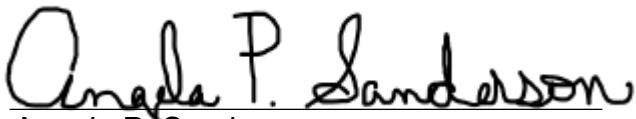
Case No. U-20618

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on November 19, 2020 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

  
Brianna Brown

Subscribed and sworn to before me  
this 19<sup>th</sup> day of November 2020.



Angela P. Sanderson  
Notary Public, Shiawassee County, Michigan  
As acting in Eaton County  
My Commission Expires: May 21, 2024

**Service List for Case: U-20618**

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