STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter on the Commission's own motion, to consider changes in the rates of all the Michigan rate-regulated electric, steam and natural gas utilities to reflect the effects of the federal Tax Cuts and Jobs Act of 2017: Consumers Energy Company files an application for determination of Calculation C as described in order U-18494.	)	Case No. U-20309

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on August 9, 2019.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before August 23, 2019, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before August 30, 2019.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
For the Michigan Public Service Commission

Sharon L. Feldman

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Date: 2019.08.09 15:50:13 -04'00'

August 9, 2019
Lansing, Michigan

Sharon L. Feldman
Administrative Law Judge

STATE OF MICHIGAN

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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

This Proposal for Decision (PFD) addresses Consumers Energy Company's October 1, 2018 application to reflect in its rates the effects of the federal Tax Cuts and Jobs Act of 2017 (TCJA) related to the company's accumulated deferred tax balances. The company's application included the prefiled testimony and exhibits of Scott B. McIntosh and Heidi J. Myers.

Consumers Energy and Staff attended the November 9, 2018 prehearing conference, and the Attorney General, the Association of Businesses Advocating Tariff Equity (ABATE), Hemlock Semiconductor Operations LLC, and Energy Michigan, Inc. attended and were granted intervention. At the prehearing conference, the ALJ also set a scheduled agreed to by all parties. On February 5, 2019, by agreement of the parties, the ALJ revised the schedule. By ruling dated February 6, 2019, the ALJ granted intervention to the Residential Customer Group (RCG), which had filed a timely petition to intervene but had not appeared at the prehearing conference.[1]

In keeping with the revised schedule, on February 25, 2019, Staff filed the testimony and exhibits of David W. Isakson and Charles E. Putnam; the Attorney General filed the testimony and exhibits of Sebastian Coppola, ABATE filed the testimony and exhibits of Michael P. Gorman. Also in keeping with the revised schedule, on April 3, 2019, Consumers Energy filed the rebuttal testimony and exhibits of Laura M. Collins, Todd A. Wehner, Mr. McIntosh, and Ms. Myers; Staff filed the rebuttal testimony and exhibits of Nicholas M. Revere and Mr. Isakson; and ABATE filed the rebuttal testimony of Michael P. Gorman. At the evidentiary hearing on April 22, 2019, Consumers Energy witnesses Ms. Myers, Mr. McIntosh, and Mr. Wehner appeared and were cross-examined; the testimony of the remaining witnesses was bound into the record without the need for them to appear. As reflected in volume 2 of the transcript, the record is contained in 285 transcript pages and 32 exhibits.

Additionally, on March 4, 2019, Consumers Energy filed a Motion to Require Substantiation Regarding Representation, Substitution of Counsel, or Revocation of Intervention. The RCG filed a response March 18, 2019, with a supplemental response filed on April 10, 2019. On May 10, 2019, Consumers Energy filed a withdrawal of its

[1] Due to an error, the ruling was served on the parties but was not filed in the e-docket until May 29, 2019.

motion, citing and attaching a ruling issued by the presiding ALJ in Case No. U-20275, which addressed a similar motion.

On May 20, 2019, Consumers Energy, Staff, the Attorney General, ABATE, the RCG, and Hemlock Semiconductor filed briefs. On June 10, 2019, these parties filed reply briefs.

In the discussion that follows, a review of the record is presented in section II, and the positions of the parties are presented in section III, with a discussion of the issues in section IV.

II.

OVERVIEW OF THE RECORD

The record in this case is contained in two transcript volumes of 285 pages[2] and 32 exhibits. The testimony of each witness is discussed below.

A. Consumers Energy

Consumers Energy presented the direct testimony of two witnesses.

Scott B. McIntosh

Mr. McIntosh is Vice President of Tax for Consumers Energy.[3] He presented the company's calculations of the excess deferred tax balances based on the TCJA. He testified that in accordance with the Commission's December 27, 2017 order in Case No. U-18494 and the Financial Accounting Standards Board Accounting Standards

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[2] The testimony is entirely contained in transcript volume 2, and all transcript references in this PFD are to that volume.

[3] Mr. McIntosh is a Certified Public Accountant (CPA) whose educational background includes a bachelor's degree in accounting and a master's degree in taxation. His qualifications are set forth at Tr 73; his testimony, including his rebuttal testimony and cross-examination, is transcribed at Tr 68-125.

Codification 740 (ASC 740), Consumers Energy recorded a net regulatory liability of $1.6 billion as of year-end 2017 for the one-time remeasurement of its deferred tax liabilities from 35% to 21%. He testified that the 2017 recording was an estimate, but did not materially change after the company's third-quarter 2018 tax filing.

Mr. McIntosh presented a chart showing the breakdown of the net excess deferred tax liability of $1.6 billion between electric and gas operations and between balances subject to normalization and not subject to normalization.[4] He explained that federal law requires the plant balances subject to normalization to be returned to customers over no shorter a time period than the average remaining life of the assets for which accelerated depreciation was taken. He further explained the average rate assumption method (ARAM) Consumers Energy is using to determine the normalization limits, and a hypothetical example to illustrate the calculation of the amount of excess deferred taxes subject to the normalization limit that can be returned to customers each year.[5] He testified that for excess deferred tax balances that are not subject to normalization, the Commission has discretion to determine how they should be refunded. He also explained why the balances not subject to normalization reflect an asset to be recovered by the company rather than returned to customers:

> Once removing the Excess Deferred Taxes associated with plant differences subject to normalization, the Company needs to recover additional revenue of $130 million due to the TCJA. This is due to the fact that the Company had certain future tax benefits in the form of deferred tax assets that it had previously provided to customers at a 35% rate. Now those tax benefits will no longer be at 35% but rather 21% due to the reduced federal tax rate. As such, the Company must recover this additional revenue in the form of a regulatory tax asset in the same way that it must

[4] See Tr 76.
[5] See Tr 78.

> return the regulatory tax liabilities associated with plant differences subject to the normalization provisions.[6]

He identified the net asset amounts not subject to normalization as $17 million for electric operations and $106 million for gas operations, which included plant-related assets of $67 million and $184 million for gas and electric respectively, and “other” liabilities of $84 million and $78 million respectively.[7]

Mr. McIntosh recommended the following guiding principles to determine how to return the excess deferred taxes to customers:

> 1. These Excess Deferred Taxes should be returned to customers as rapidly as allowed by federal tax law;
>
> 2. However, where possible, Excess Deferred Taxes should flow to customers in a levelized manner that does not create large annual rate fluctuations for customers or cash flow volatility for investors; and
>
> 3. The method to return the Excess Deferred Taxes should be as simple as possible for the Commission and the Company to administer and monitor.[8]

Using these guiding principles, he recommended the following methodology:

> 1. The plant differences subject to the normalization provisions of the federal tax law should be returned to customers using the required ARAM for both the electric and gas businesses;
>
> 2. Once this methodology is approved, any differences between the actual amount of Excess Deferred Taxes calculated using ARAM in a given year and the estimated amount included in general rates shall be recorded as a regulatory liability or asset and be reflected in customer rates over a period agreed to by the Commission in the Company’s next general rate case;

[6] See Tr 80.
[7] See Tr 80; a review of Table A at Tr 76 appears to show a net liability of $17 million for electric operations not subject to normalization limits ($1.172 billion - $1.155 billion = $17 million) rather than a net asset of $17 million, but what appears to be a minor error in Mr. McIntosh’s direct testimony is not relevant to an issue to be resolved in this proceeding.
[8] See Tr 81.

> 3. All other plant differences not subject to normalization should be recovered from customers over the remaining depreciable life for regulatory (book) purposes of its plant assets, which is 27 years for the electric business and 44 years for the gas business;
>
> 4. All other remaining Excess Deferred Taxes, which are primarily related to employee benefits, should be returned to customers over 15 years, which approximates the period used by the Company to account for these costs in its general rate case filings; and
>
> 5. The Company should begin amortizing the Excess Deferred Taxes only once the agreed upon annual amount is included in base rates to ensure that customers receive the full benefit.[9]

He also presented a graph to show the estimated customer rate impacts from the company's proposal for gas and electric operations over the next 30 years. He also provided the caveat that plant differences subject to normalization could change in the future due to asset retirements or other changes in depreciation. Mr. McIntosh presented Exhibits AB-1 and AB-2 in support of his testimony.

Mr. McIntosh also presented rebuttal testimony and was cross-examined.

<u>Heidi J. Myers</u>

Ms. Myers is Director of Revenue Requirements and Analysis at Consumers Energy. She presented Consumers Energy's proposed treatment of excess deferred taxes.[10] She testified that Consumers Energy proposes to reflect the amortization of the net excess deferred taxes as a reduction to the federal income tax expense in future rates cases. She testified that the impacts of previous tax law changes have been handled in a similar manner. Noting that the company's gas rate case was ongoing at the time of

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[9] See Tr 81.

[10] Ms. Myers's educational background includes a bachelor's degree in accounting and an MBA degree. Ms. Myers's qualifications are set forth at Tr 23-24; her testimony, including her rebuttal testimony and cross-examination, is transcribed at 2 Tr 19-68.

her testimony, Ms. Myers testified that Consumers Energy is open to incorporating the findings of this proceeding into that rate case. She also testified that the remaining excess deferred tax balances not yet returned to customers would continue to be reflected in the ratemaking capital structure as a zero-cost source of capital.[11]

Ms. Myers also presented rebuttal testimony and was cross-examined.

B. Staff

Staff presented the direct testimony of two witnesses.

Charles E. Putnam

Mr. Putnam is an Auditing Specialist in the Revenue Requirements Section of the MPSC's Regulated Energy Division.[12] He reviewed the Commission's February 22, 2018 order in Case No. U-18494, and the company's 2017 remeasurement of its net deferred tax liabilities.[13] He also explained the normalization limits applicable to excess deferred tax balances classified as protected. He explained that Staff recommends that the company accelerate the beginning of its refund period. He also explained a distinction in the accounting approval Staff recommends relative the company's request to track the difference between excess deferred tax expense reflected in rates and the actual amount in a given year.[14] He testified that under Staff's approach, the company would file a letter by March 31 of each year stating the beginning refundable balances, the year amount refunded, the over/under regulatory asset/liability the company recorded to reflect the

[11] See Tr 26.
[12] Mr. Putnam is a CPA; his educational background includes a master's degree in accounting, a bachelor's degree in physiology, and an associate degree in accounting. Mr. Putnam's qualifications are set forth at Tr 239-242; his testimony is transcribed at Tr 238-246.
[13] See Tr 243.
[14] See Tr 245-246.

difference between actual deferred taxes in a year and the amount included in rates, and the ending refundable balances.

<u>David W. Isakson</u>

Mr. Isakson is a Departmental Analyst in the Rates and Tariffs section of the MPSC's Regulated Energy Division.[15] Mr. Isakson presented Exhibit S-1 to show the interim refunds Staff proposes until the company's electric rates are reset, which he estimated at November 1, 2010. He testified that in Staff's calculations, the prorated share of the excess deferred tax liability attributable to the September 2019 to October 2020 time period is allocated to the different rate classes based on the distribution and production rate base allocators from the cost of service study used in the settlement of Case No. U-20134.[16] He explained that the credits are then calculated using the appropriate forecasted sales for the test year from the same rate case, with an adjustment for Rate EIP to account for some voltage levels having negative distribution revenue.

Mr. Isakson testified that Staff's credit calculation is for the interim period only, and that beginning with Consumers Energy's next electric rate case, the refunding of the excess deferred tax liabilities will be incorporated into rates. Noting that Consumers Energy has an ongoing natural gas rate case, Mr. Isakson testified that Staff agrees with the company that the Calculation C effects should be incorporated in rates set in that case.[17]

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[15] Mr. Isakson's educational background includes a bachelor's and a master's degree in economics; his qualifications are set forth at Tr 229-230. Mr. Isakson's testimony, including rebuttal, is transcribed at Tr 228-237.
[16] See Tr 232, 233-234.
[17] See Tr 234.

C. Attorney General

The Attorney General presented the testimony of one witness.

Sebastian Coppola

Sebastian Coppola is an independent consultant in the fields of energy and utility regulation.[18] Mr. Coppola recommended that the Commission use the company's most recent statement of deferred tax liability and asset amounts, included in Exhibit AG-1, which the company provided in discovery after it filed its case.[19] He further recommended that the unprotected excess deferred tax liabilities be returned over a period not longer than 10 years.[20] For electric customers, Mr. Coppola also recommended the company begin returning amounts equivalent to the 2018 and 2019 amortization of the excess deferred tax balances immediately following a Commission order in this case, through a 12-month negative surcharge. He recommended that the company return the 2020 amortization through a second negative surcharge beginning January 2020, as shown in Exhibit AG-2, to be in effect until the company's electric rates are revised in its next rate case.[21] For gas customers, Mr. Coppola recommended that the company immediately return to customers the amount equivalent to the 2018 amortization and the first 9 months of the 2019 amortization, or $23,771,043 as shown in Exhibit AG-3.[22] He recommended that an amortization amount reflecting the projected test year ending September 2020 be included in rates established in the ongoing gas rate case, Case No. U-20322, or

[18] Mr. Coppola's qualifications are set forth at Tr 259-261; his testimony is transcribed at Tr 258-283.
[19] See Tr 266-268, 275-276.
[20] See Tr 268-269.
[21] See Tr 271.
[22] See Tr 279.

$9,986,309 prior to gross-up as shown in Exhibit AG-3.[23] Mr. Coppola also made recommendations addressing rate design for the negative surcharge and the accounting for the difference between estimates included in rates and actual excess deferred tax balances.

Mr. Coppola presented Exhibits AG-1 through AG-10 in support of his testimony.

D. ABATE

ABATE presented the testimony of one witness.

Michael P. Gorman

Mr. Gorman is a consultant in the field of public utility regulation and a managing principal with the consulting firm Brubaker & Associations, Inc.[24] Mr. Gorman recommended a faster, 10-year acceleration of unprotected excess accumulated deferred tax balances rather than 15 years as proposed by Consumers Energy.[25] He testified that this amortization would not have a negative impact on the company's cash flows "so as to erode its credit positions or financial integrity."[26] He also considered that all unprotected excess amounts, whether attributable to "other plant-non-protected" or "all other-non-protected" should be subjected to the shorter amortization period.[27]

Mr. Gorman recommended that refunds begin as soon as possible with a separate credit that he labels a Calculation C surcharge.[28] He further recommended that the excess deferred tax liabilities be allocated across customer classes using a rate base

[23] See Tr 281.
[24] Mr. Gorman's educational background includes a bachelor's degree in electrical engineering and an MBA degree. His testimony, including direct and rebuttal, is transcribed at Tr 186-225.
[25] See Tr 194.
[26] See Tr 195; also see Tr 199-201.
[27] See Tr 197.
[28] See Tr 190, 201-202.

allocation, and that all customers in each class receive a uniform per-kWh or per-Mcf credit. He characterized having Retail Open Access (ROA or choice) customers on the electric side and transportation customers on the gas side share equally in refunds as "the most balanced and fair means of crediting back to customers the contributions they made" to the accumulation of the excess deferred tax balances.[29]

He presented Exhibits AB-1 through AB-5 in support of his testimony.

E. Rebuttal

Consumers Energy presented the rebuttal testimony of four witnesses; ABATE presented the rebuttal testimony of one witness; and Staff presented the rebuttal testimony of two witnesses.

Ms. Myers

In her rebuttal testimony, Ms. Myers addressed Staff's proposed credit for the gas rate case, Case No. U-20322, indicating that the company agrees with Staff's proposal, with a revised calculation of the credit. Ms. Myers also addressed Mr. Coppola's recommendation regarding interim credits for electric and gas customers, contending that his proposal would have the effect of incorporating three years' worth of amortization in rates all at once, also referencing Mr. Wehner's rebuttal testimony. Addressing Mr. Gorman's testimony, Ms. Myers provided her opinion that a special rider is not necessary to credit the excess deferred tax amounts to customers. Reviewing Mr. Gorman's proposed surcharge mechanism, Ms. Myers objected to the concept of a permanent credit with a true-up mechanism as unnecessarily complex and potentially inconsistent with the

[29] See Tr 190-191, also see Tr 202-205.

test year time periods used in the rate case, including the determination of the test year capital structure. She also objected to Mr. Gorman's proposal to provide equal credits to full service and ROA customers, testifying that it is not possible to determine what each customer contributed to the excess deferred tax balances, and that Mr. Gorman's proposal does not exclude from recovery either new customers or customers who switched to ROA service following a year when PSCR costs were underrecovered.[30] She further explained that the company's proposed allocation as explained by Ms. Collins and Staff's proposed allocation as explained by Mr. Isakson are consistent with the allocation of the excess deferred tax balances in the capital structure prior to the TCJA.[31] She also testified that the average in-service date of the company's 991 electric customer choice accounts is 2007, and that 67% of the excess deferred tax balance is related to plant acquired in 2007 or after. On this basis, Ms. Myer testified, the average choice customer would not have paid the power supply cost portion associated with 67% of excess deferred tax balances.[32]

Mr. McIntosh

In his rebuttal testimony, Mr. McIntosh addressed testimony of Messrs. Putnam, Isakson, Coppola, and Gorman. He identified several points on which the company agreed with recommendations made by one or more of these witnesses:

> 1. That the Commission should approve a temporary Calculation C negative surcharge for electric customers that would go into effect and continue until base rates are set in the next electric case;

[30] See Tr 32-33.
[31] See Tr 33-34.
[32] See Tr 34.

2. That the Commission include an appropriate amount of net Excess Deferred Taxes for the 12 months ending September 2020 in the Company's currently open gas rate case, Case No. U-20322;

3. That the net Excess Deferred Tax amounts due to federal tax reform should be updated for any changes to amounts that were originally recorded at December 31, 2017 to reflect the filing of the Company's 2017 tax return in late 2018;

4. That the Company establishes deferred regulatory accounts to record the annual actual Excess Deferred Tax amortization versus the amounts estimated in rates, or refunded as part of an interim electric credit, with the balance of the account to be reflected in future rates as determined by the Commission; and

5. That it is reasonable to amortize and refund the non-protected non-property deferred tax liabilities over an accelerated 10 year period rather than 15 years.[33]

Mr. McIntosh presented Exhibits A-5 and A-6, which are revised revisions of Exhibits A-1 and A-2, to incorporate these modifications.

Mr. McIntosh objected to Mr. Coppola's recommendation to return excess deferred taxes on a faster schedule, testifying that his proposal would result in a $91.3 million rate reduction in 2020, followed by an increase of $55.6 million in 2021. He also objected to the impact this would have on the company's capital structure, testifying that Mr. Coppola's calculations do not reflect increases to the revenue requirement associated with reducing the deferred tax balances in the ratemaking capital structure.

Addressing Mr. Gorman's testimony, Mr. McIntosh objected to reliance on a long-term credit, rather than incorporating the return of excess deferred taxes into the company's base rates. He cited the complexity of the normalization calculations, and the

[33] See Tr 86.

Commission's treatment of the 1986 federal corporate income tax reduction in support of his position.

Laura M. Collins

Ms. Collins is a Principal Rate Analyst-Lead in the Pricing Section of the Rates and Regulation Department at Consumers Energy.[34] Ms. Collins presented rebuttal testimony to address rate design issues raised in Mr. Isakson's and Mr. Gorman's testimony. She testified that she agreed with Mr. Isakson's proposed allocation of an interim refund amount for electric customers based on distribution and production rate base allocators taken from the settlement agreement in Case No. U-20134. She presented Exhibit A-3 to incorporate additional modifications to Staff's Exhibit S-1, reflecting the company's agreement to the use of a 10-year amortization period for unprotected excess deferred tax amounts, the company's updated excess deferred tax calculation based on its 2017 tax return, and her view that Rate GSG-2 customers should receive a credit only on the distribution rate component.[35] Ms. Collins also presented Exhibit A-4 as a revised version of Exhibit S-2, to summarize the credit amounts that would be implemented for electric customers in the interim period before the company's next electric rate case. Finally, Ms. Collins disputed Mr. Gorman's recommendation that all customers receive the same credit regardless of whether they are full-service or choice customers. She testified that this would provide an excess refund to ROA customers who only pay delivery charges, also referencing Ms. Myers's rebuttal testimony.

[34] Ms. Collins's educational background includes a bachelor's degree in finance; her qualifications are set forth at Tr 128-129. Ms. Collins's rebuttal testimony is transcribed at Tr 127-132.
[35] See Tr 130-131.

Todd A. Wehner

Mr. Wehner is Director of Corporate Finance for Consumers Energy.[36] His rebuttal testimony addressed recommendations made by Mr. Coppola and Mr. Gorman. After acknowledging the company's agreement to amortize the unprotected excess deferred income tax balances over a 10-year period, he disputed Mr. Gorman's testimony that the 10-year amortization would not negatively impact the company's cash flows, impair its credit ratings, or weaken its financial integrity. He testified that Mr. Gorman's Exhibit AB-3 shows a 40-50 basis point degradation in the company's Funds from Operations (FFO)-to-debt ratio, asserting that this "clearly weakens the financial integrity of the Company."[37] Mr. Wehner further asserted that the Credit A refunds had an adverse effect that should be considered. Mr. Wehner further objected to the presentation in Exhibit AB-3, contending that it reflects the improper application of data provided in the company's recent electric rate case, Case No. U-20134, which was ultimately settled. He objected that the data in Exhibit AB-3 was presented on a regulatory basis, and assumed the company received the full rate relief it sought in that case, including an authorized return on equity of 10.75%, further objecting that "the Company is not guaranteed to earn the authorized ROE."[38] Mr. Wehner also disputed Mr. Gorman's testimony regarding the company's Standard & Poor's (S&P) credit ratings, citing a statement from Exhibit AB-4, as follows: "Page 3 of Exhibit AB-4 highlights the rationale for the Company's stable

[36] Mr. Wehner's educational background includes a bachelor's degree in electrical engineering and mechanical engineering, an MBA degree, and a Master of Science degree in natural resources; his qualifications are set forth at Tr 140-141. Mr. Wehner's testimony, including rebuttal and cross-examination, is transcribed at Tr 139-184.
[37] See Tr 142.
[38] See Tr 144.

rating outlook to be dependent on the expectation that management will ‘reach constructive regulatory outcomes to avoid any significant rise in business risk.’”[39]

Mr. Wehner also took issue with Mr. Coppola’s testimony, objecting that Mr. Coppola had not performed a “credit analysis” to support his recommendations. He testified: “Mr. Coppola’s omission of credit impacts from implementing his recommendations demonstrates that he may believe there are no negative impacts on the Company’s credit.”[40] Mr. Wehner presented Exhibit A-7 to illustrate his view of the cash flow impacts of the first year of the amortization recommended by Mr. Coppola. He testified that “using the actual 2017 historical ratios for S&P and Moody’s,”[41] Mr. Coppola’s recommendation would add an additional 77 and 84 basis point degradation in addition to the degradation of 2.99% and 3.24% reflected in the company’s recommendation.[42] Mr. Wehner acknowledged that his analysis did not take into account equity ratio or return-on-equity adjustments, testifying that he excluded such considerations “in order to provide a clear illustration of the impact on this key metric.”[43]

Mr. Wehner agreed with Mr. Coppola that deferred taxes benefit customers and the company, asserting that the additional periodic cash flow is used by the company to the benefit of customers, but disputing that it funds dividends and non-utility projects, characterizing any such assertion as “unsupported.”[44] Mr. Wehner further testified:

> Consumers Energy’s capital structure and recovery of investments are subject to approval from the Commission. To the extent Consumers Energy was making dividends, they would be reflected as a reduction in the

[39] See Tr 144.
[40] See Tr 146.
[41] See Tr 146.
[42] See Tr 147.
[43] See Tr 147.
[44] See Tr 148.

> Company's equity ratio, and to the extent Consumers Energy was making non-utility investments, recovery of such investments from rate payers would only occur with approval from the Commission. I am not aware of any such investments or recovery from Consumers Energy.[45]

Mr. Wehner was also cross-examined on his testimony.

Mr. Gorman

In his rebuttal testimony for ABATE, Mr. Gorman took issue with the recommendations of Staff and the Attorney General. He summarized his objections to Staff's recommendations as follows:

> 1. Staff has not developed a fair and reasonable Calculation C credit to customers within the Large General Service Primary Demand Rate ("Rate GPD"). Staff's proposed credit can deprive certain customers of the full excess ADIT credits for which they are entitled to based on their service payments to Consumers during the time period the excess ADIT balances were accumulated. Staff's proposed rate credit within this rate class should be modified to ensure all customers are treated fairly.
>
> 2. If Staff's class allocation and design of a credit for Rate GPD is approved, it should be modified such that all customers that were on Power Supply service on January 1, 2018 should be entitled to the Calculation C credit for Power Supply service and Delivery service if they convert to Retail Open Access ("ROA") service from Power Supply service after January 1, 2018. Essentially, the Calculation C credit will be the same for all GPD customers that were Power Supply customers on January 1, 2018, even if some of the customers switch to ROA service after January 1, 2018.
>
> 3. Staff's analogy of developing a Calculation C credit to be done consistent with credits for Credit A and Credit B is without merit. The three credits are very different, and each credit should be developed in a way that reflects Consumers' cost of service, and fairness to customers based on 2contributions of prepaid taxes in proportion to the customers that contributed to Consumers' balance of such taxes.

[45] See Tr 148.

> 4. Staff's proposal to roll Calculation C into base rates in the next rate case should be denied. Rather, the Calculation C credit should remain in effect indefinitely. The credit will allow for annual reconciliations based on accounting tracking mechanisms Consumers states is needed to remain in compliance with Internal Revenue Code ("IRC") normalization rules. The annual credit will also allow for calibration of this credit to better align credits to customers with the actual annual amortization expense Consumers can take and remain in compliance with the IRC.[46]

Addressing Mr. Coppola's testimony, he stated that he largely agrees with Mr. Coppola regarding the amortization period, but reiterated his concerns that all customers in a rate class should share equally in the credits.[47]

Mr. Isakson

In his rebuttal testimony, Mr. Isakson addressed Mr. Coppola's rate design recommendation, characterizing it as incomplete and explaining that in addition to a calculation of a residential credit, separate credits for each rate and provision should also be derived.[48]

Nicholas M. Revere

Mr. Revere is the Manager of the Rates and Tariffs section of the MPSC's Regulated Energy Division.[49] In his rebuttal testimony, he addressed Mr. Gorman's recommendations that ROA customers receive the same refund on a per-kWh basis as full-service customers. He testified that the method of returning the Calculation C

[46] See Tr 215. Two of these four points as summarized appear to be improper rebuttal and merely cumulative with his direct testimony, since the Staff recommendations responded to in Mr. Gorman's point 1 called for a more rapid return than presented in the company's case, which Mr. Gorman addressed in his direct testimony, and the Staff recommendations responded to in Mr. Gorman's point 4 adopted the company's recommendations, which Mr. Gorman addressed in his direct testimony. Nonetheless, the ALJ has fully considered Mr. Gorman's testimony in making recommendations in this PFD.
[47] See Tr 224-225.
[48] See Tr 237.
[49] Mr. Revere's educational background includes a bachelor's degree in economics; his qualifications are set forth at Tr 248-251. Mr. Revere's rebuttal testimony is transcribed at Tr 247-256.

amounts should mirror how the benefits of the deferred tax balances are currently returned to customers, i.e. included in the capital structure as a zero-cost source of capital, lowering the overall rate of return applied to rate base to determine the company's revenue requirement.[50] He testified that ROA and full-service customers receive the same benefit under this approach from the distribution portion of their rates, but only full-service customers receive a benefit through the power supply portion of the revenue requirement, since only full-service customers pay power supply rates.[51] Mr. Revere provided relative percentages for the power supply and distribution components of jurisdictional rate base on average and illustratively for certain rate schedules.

Mr. Revere testified that Staff objects to a different treatment for the Calculation C refund amounts because in the absence of the TCJA, the deferred tax balances would have continued to benefit customers in this differential way.[52] He characterized this approach as consistent with 55 years of past practice.[53] Addressing Mr. Gorman's contention that customers who were full-service customers prior to becoming choice customers would have paid deferred tax balances through the power supply portion of their rates, Mr. Revere testified that such customers would not have contributed the same amount as customers who remained full-service customers. He also characterized the issue as moot given the established treatment of deferred tax balances in ratemaking.[54]

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[50] See Tr 252-253.
[51] See Tr 252-253.
[52] See Tr 254.
[53] See Tr 254-255.
[54] See Tr 255.

III.

POSITIONS OF THE PARTIES

Consumers Energy and Staff are in agreement that the Commission should adopt the accounting, interim credit for electric customers, amortization time periods, allocation method, rate design, and annual reporting presented in the company's rebuttal testimony.

The Attorney General agrees in large part with these provisions, but argues that the amortization period for unprotected non-plant balances could be shorter than 10 years, and argues that amortization of the excess deferred taxes should begin as of January 1, 2018, with amortization amounts attributable to 2018 and 2019 refunded prior to the company's next gas and electric rate orders, as proposed by Mr. Coppola.[55] ABATE and RCG support the Attorney General's recommendation for interim credits to reflect 2018 and 2019 amortizations. The RCG argues that the Commission should follow the ratemaking treatment it adopted for the 1986 and 1975 federal income tax reductions.

ABATE and HSC argue that rather than incorporate an amortization of the excess tax balances into future base rates, the Commission should establish a permanent credit to return the annual amortizations to customers. ABATE also argues that the credit should go equally to full service and choice customers, also adopting the recommendation in Mr. Gorman's rebuttal testimony that as an alternative, full-service customers who switched to the choice program after January 1, 2018 should share equally in the credit with full-service customers. Second, as a modification of Mr. Gorman's recommendations

[55] The Attorney General's recommendation for an interim credit for gas operations limits the interim credit to the amortization amounts attributable to the time period prior to the start of the projected test year in the pending gas rate case, as discussed below.

in its briefs, ABATE argues that new customers, new to Consumers Energy's system, should not receive any credit.

HSC also argues that full-service customers as of January 1, 2018 that subsequently switched to the choice program should share equally in the credit with other full-service customers.

IV.

DISCUSSION

In its initial order in Case No. U-18494, issued on December 27, 2017, the Commission noted the passage of the TCJA, and directed Consumers Energy and other named utilities to institute regulatory accounting treatment for any impacts of the new tax law, including current and deferred tax impacts. After providing an opportunity for comment, by order of February 22, 2018, the Commission stated the following with regard to Calculation C that is the subject of this case:

> Calculation C will capture all remaining impacts of the tax law change in a contested case proceeding pursuant to an application filed by each captioned utility no later than October 1, 2018. This proceeding will determine all additional impacts and the method for flowing these benefits back to ratepayers, and shall not be subject to the shortened timeline. This is because of the increased complexity of the components involved in calculations related to excess deferred taxes and other items. The Commission agrees with the Staff and finds that any captioned utility that files a new rate case prior to October 1, 2018, may use the rate case for the determination of Calculation C.
>
> The Commission agrees with the Staff's guiding principles, and seeks to strike a balance between the need to reflect the immediate benefit of the tax law change on customer bills and the need for accuracy, thoroughness, and opportunity for stakeholder input. While many of the utilities proposed fewer proceedings, the Commission believes that the Staff's three-step approach best achieves that balance by providing clear definitions for each proceeding and maximizing the ability of parties to participate in the determinations on each category of benefit. The Commission sees

> significant merit in separating the easier from the more difficult calculations in order to quickly deliver rate relief to customers in the forms of Credits A and B, while deferring the more difficult determinations in Calculation C to a proceeding without an expedited timeline. The Commission seeks, to the extent reasonable, uniformity with respect to the timeline of the benefits, and rejects the comments of UMERC, UPPCo, and MGUC seeking to address these issues in some future rate case that has no definite filing date, and the comments of DTE Gas and NSP-W seeking to address these issues in a pending rate case with a final order date in September. Likewise, the Commission finds that Detroit Thermal, WEPCo, and Presque Isle should make a filing no later than March 30, 2018, seeking, if not a Credit A determination, then a determination of their claim that Credits A and B are inapplicable.[56]

The Commission explained the guiding principles it was adopting on Staff's recommendation as follows:

> The Staff proposes three guiding principles for the Commission to follow: "(1) allowing sufficient time for the utilities to calculate customer impacts accurately, (2) ensuring that the benefits inure to ratepayers as quickly as is practicable, and (3) measuring the tax changes to avoid accounting pitfalls, such as unnecessary complexity, large annual rate fluctuations for ratepayers, penalty interest, and cash flow volatility for investors."[57]

In their briefs, the parties refer frequently to these principles.

Following a review of the undisputed issues in section A below, this PDF discusses the issues in dispute.

A. Undisputed issues

There is no dispute that the updated information presented by the Attorney General in Mr. Coppola's direct testimony and adopted by Consumers Energy in rebuttal accurately captures the protected and unprotected excess tax balances as of December 31, 2017 to be returned to customers. These balances are included in Exhibit

[56] See February 22, 2018 order, Case No. U-18494, pages 12-13.
[57] See February 22, 2018 order, Case No. U-18494, page 8.

AG-1, and differ from the company's initial filing because the company revised its 2017 federal tax filing in the fourth quarter of 2018.

There is no dispute that the appropriate amortization periods for the protected balances subject to federal normalization limits are based on the company's ARAM calculations and approximately reflect the remaining life of the underlying assets, and the appropriate amortization periods for the unprotected plant balances should reflect the remaining life of the underlying assets, 27 years for the electric plant balances and 44 years for the gas plant balances. The parties recognize that the actual excess deferred tax balances and normalization limits applicable to the protected plant balances will change each year with changes in the underlying plant, and that it is appropriate for Consumers Energy to report annually—by March 31 of each year—the beginning refundable balances, the yearly amount refunding, the regulatory asset or liability recorded to reflect the difference between actual excess deferred taxes for a given year and the estimated amount included in rates, and ending refundable balances.[58] The parties also agree, or do not dispute, that gas rates in the Company's pending gas rate case should be adjusted to reflect the net amortization of excess deferred tax balances for gas operations, and that an interim credit should be established for electric operations.

The remaining disputes include the amortization period for the excess unprotected non-plant liabilities, the amount of the interim credit, the rate design and eligibility for the interim credit, and whether a separate credit should be maintained for the approximately 27-to-44 year amortization period. These issues are discussed in sections B through E

[58] See Putnam, Tr 246; McIntosh, Tr 86; Consumers Energy reply brief, pages 1-2 and n1.

below, while section F addresses gas operations, which received relatively little attention in the parties' briefs.

B. Amortization Period for Excess Unprotected Non-Plant Balances

While the parties generally agree that the 10-year amortization period for the non-plant-related excess deferred tax liabilities Consumers Energy adopted in its rebuttal testimony is acceptable, the Attorney General and HSC argue that the ten-year period is the longest period the Commission should adopt. As the Attorney General explains in her brief:

> While the Attorney General agrees that 10-years is more reasonable than the original 15-years proposed by the Company, she welcomes the Commission's consideration of an even shorter time period to refund back to ratepayers the taxes they have overpaid.[59]

HSC similarly states in its brief:

> HSC recommends that the Commission refund to customers the excess ADIT regulatory liabilities to ratepayers as quickly as possible, and no longer than the 10-year amortization period for unprotected excess ADIT regulatory liabilities recommended by ABATE.[60]

Since both of these parties agree that a ten-year period is acceptable, and do not provide any specific shorter period as an alternative or the corresponding calculations, this PFD concludes that the 10-year period should be adopted because it is satisfactory to all parties.

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[59] See Attorney General brief, pages 18-19.
[60] See HSC brief, page 4.

C. Interim Credit Amount(s)

In its filing, Consumers Energy proposed that the amortization of the excess deferred tax balances would begin with and be returned to customers through the company's next rate cases.[61] Ms. Myers testified:

> The Company has an electric rate case before the Commission, Case No. U-20134. This electric rate case is currently in the rebuttal phase of the case. The findings of this proceeding will not be known in time to incorporate in electric rate case, Case No. U-20134. It is, however, expected that the outcome of this case will be known in time for the findings to be incorporated in the next filed electric rate case. The Company will be filing a gas rate case in the fourth quarter of 2018. The outcome of this proceeding will not be known in time to incorporate in the filing of the 2018 gas rate case. However, the Company is open to incorporating the findings of this proceeding in the 2018 gas rate case when the outcome of this proceeding is known.[62]

Staff proposed an interim credit for electric customers only, recognizing that the company's electric rates are not expected to be revised until November 1, 2020 at the earliest.[63] Mr. Isakson presented the calculations of this credit in Exhibits S-1 and S-2, designed to return $29,467,000 to customers in the 12 months following a Commission order in this case, based on an amortization of the excess deferred tax balances beginning in September 2019.

Regarding gas rates, Mr. Isakson testified that Staff agrees with the company's proposal to incorporate the effects of Calculation C in its currently ongoing gas rate case, explaining: "The final rates from that case will go into effect no later than September

[61] See Myers, Tr 25-26.
[62] See Tr 25-26.
[63] Consumer's Energy agreed in Case No. U-20134 that it would not file another rate case until January 1, 2020 at the earliest; unless the parties to that future case were to reach another settlement agreement approved by the Commission, a Commission order in that future case would be expected not sooner than November 1,2020.

2019, so Staff is content with how quickly customers will realize the Calculation C tax effects."[64]

In his testimony for the Attorney General, Mr. Coppola proposed a larger interim credit, based on an amortization of the excess deferred tax balances beginning on January 1, 2018, with the amortized amounts for 2018 and 2019 returned to ratepayers beginning at the conclusion of this case. Mr. Coppola used updated balances based on the company's restated 2017 federal tax filing to recompute the amortizations in Exhibit A-1; he applied the same amortization periods for the protected plant and non-protected plant excess deferred tax balances that Consumers Energy used in its filing, and he used a 10-year amortization period for the non-protected, non-property excess deferred tax liability, which Consumers Energy subsequently adopted.

For electric operations, as shown in Exhibit AG-2, Mr. Coppola calculated amortization amounts for 2018 and 2019 totaling $59,037,609. He recommended that the company begin refunding this amount immediately, over a 12-month period following the conclusion of this case. He recommended that the begin refunding the 2020 amortization amount of $32,212,760 beginning January 1, 2020, until the company's electric rates are reset.[65] He presented an allocation of the amortization for the initial credit by rate class and rate schedule in Exhibits AG-4 and AG-5, using the revenue for each rate schedule from the settlement agreement in Case No. U-20134.[66] He presented an allocation of the amortization for the 2020 credit in his Exhibits AG-6 and AG-7.[67]

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[64] See Tr 234.
[65] See Tr 270-272.
[66] See Tr 272-273.
[67] See Tr 273.

For gas operations, Mr. Coppola recommended that the Commission require an immediate refund of the 2018 amortization combined with the first 9 months of the 2019 amortization, $23,771,043 as shown in Exhibit AG-3.[68] He recommended that the remaining months of 2019 and the 2020 amortization be reflected in the rates set in the ongoing gas rate case. He presented the allocation of the 2018-2019 amortization in Exhibit AG-8, using the rate schedules from the settlement agreement in Case No. U-18424.[69]

In its rebuttal filing, Consumers Energy agreed with Staff that an interim credit for electric customers should be established to begin in September 2019 and end when electric rates are reset, and agreed that an adjustment should be made to incorporate an excess deferred tax amortization in the ongoing gas rate case.[70] Consumers Energy revised the calculations in Exhibits S-1 and S-2 to additionally reflect the company's agreement to use the updated excess deferred tax balances consistent with the company's revised 2017 tax return, and its agreement to use a 10-year amortization period for the unprotected non-plant regulatory liability.[71] Ms. Collins presented the revised calculations in Exhibits A-3 and A-4, reflecting an interim credit of $32,289,000 to begin in September 2019.[72]

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[68] See Tr 278-280.
[69] See Tr 280-281.
[70] See Myers, Tr 29; McIntosh, Tr 86; Wehner, Tr 142.
[71] See Collins, Tr 130. Consumers Energy also made a minor modification to Staff's proposed rate design as discussed in section D below.
[72] See Myers, Tr 37; McIntosh, Tr 93; Exhibit A-3, page 2, line 30, columns f and j. Note that Consumers Energy reduced from the actual amortization amount by $898,000 to estimate the impact of a reduction in the deferred tax balance included in the ratemaking capital structure. See Tr 38-39. No party addressed this adjustment in their briefs.

Consumers Energy objected to the larger interim credit proposed by the Attorney General, contending that it reflects three years of amortization in rates all at once, and causes unnecessary large rate fluctuations for customers and large cash flow fluctuations for investors.[73] In his rebuttal testimony, Mr. McIntosh asserted that the larger interim credit would violate the guiding principles he presented in his direct testimony,[74] and would have the effect of reducing rates by as much as $91 million in 2020, as the 2018-2019 amortization and the 2020 amortization credits overlap. He also testified that when rates then reflect only the 2021 amortization amount estimated to be $35.7 million, this will have the effect of increasing rates $55.6 million.[75] Mr. McIntosh also testified that Mr. Coppola had not considered the impact of his recommendation on the company's capital structure and a corresponding increase in the revenue requirement.[76] In his rebuttal testimony, Mr. Wehner asserted that the larger interim credit would have an adverse effect on the company's credit metrics, presenting his calculation of the impact in Exhibit A-7.[77]

In their briefs, Consumers Energy and Staff recommend adoption of the interim credits reflected in Exhibit A-3 and A-4 as discussed above.[78] Consumers Energy argues that its proposal is consistent with the principles articulated by the Commission in its February 22, 2018 order in Case No. U-18494, and similar principles articulated by Mr.

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[73] See Myers, Tr 29; McIntosh, Tr 88-89; Wehner, Tr 145-148.
[74] See Tr 88.
[75] See Tr 88.
[76] See Tr 89.
[77] See Tr 145-148.
[78] See Staff brief, pages 3-4, endorsing the modifications Consumers Energy made to Staff's interim credit calculations. See Consumers Energy brief, pages 4-11.

McIntosh in his direct testimony.[79] The company also cites rebuttal testimony from Ms. Myers, Mr. McIntosh, and Mr. Wehner. It characterizes as a "calculation error" that Mr. Coppola did not reduce the proposed credit to reflect an increase in revenue requirement related to a reduction in the deferred tax balances in the ratemaking capital structure. HSC also supports this interim credit for electric customers.[80]

In her brief, the Attorney General argues that the Commission should adopt the interim credits as proposed by Mr. Coppola, although the Attorney General does not address the company's express agreement to a smaller interim credit. The Attorney General argues that Consumers Energy's concern with rate fluctuations is "pure rationalization,"[81] and disputes that a concern for the company's credit metrics justifies a more gradual return of the excess deferred tax balances.[82] In her reply brief, the Attorney General argues that Consumers Energy is proposing to delay amortization of the excess deferred tax liabilities for electric customers until 2020.[83] The Attorney General further disputes the company's claim that its proposal is more consistent with the principles articulated by the Commission in its February 22, 2018 order,[84] arguing:

> The Commission asks that parties strike a balance while seeking to accurately and promptly returning the benefits of the tax changes to ratepayers. Instead, the Company has created a false equivalence and made large rate fluctuations to be something to be avoided at all costs. The Commission did not state that there could be no large rate fluctuations. In fact, as noted in the Attorney General's Initial Brief, the Commission has already approved large rate reductions in the Credit A and Credit B proceedings.[85]

[79] See Consumers Energy brief, pages 8-9.
[80] See HSC brief, pages 2-3, HSC reply, page 2
[81] See Attorney General brief, page 10.
[82] See Attorney General brief, pages 11-13.
[83] See Attorney General reply, page 2.
[84] See Attorney General reply, pages 3-4.
[85] See Attorney General reply, page 4.

The Attorney General argues that Consumers Energy's "levelized" return proposal does not consider the offsetting size of rate increases the company has received, contending that the $91.3 million interim credit will offset the $99 million rate increase adopted in Case No. U-20134.[86] Further, the Attorney General argues:

> The Company's claim regarding rate fluctuations is contrived. What is considered a rate fluctuation appears to be relative to the Company. It seemingly never voices concerns regarding rate fluctuations when it seeks an increase in rates. The reality is that rates fluctuate regularly due to rate case increases and PSCR/GCR monthly adjustments. So long as the change in rates is fully disclosed, it is unlikely that ratepayers will be concerned about having tax benefits returned to them in one year versus over many years.[87]

The Attorney General also disputes that the company's contentions regarding its credit metrics are significant, characterizing the company's claims as "nothing more than a red-herring."[88]

The RCG urges the Commission to adopt the Attorney General's interim credit. The RCG argues that the Commission should follow the precedent set in addressing prior federal income tax reductions in 1986 and 1975. Regarding the 1986 federal income tax reduction, it cites Case Nos. U-8680, U-8683, and U-8688, and the Court of Appeals decision in *Consumers Power Co v PSC*, 181 Mich App 261 (1989). Regarding the 1970 expiration of the Vietnam era income tax surcharge, the RCG cites *Consumers Power Co v PSC*, 65 Mich App 73 (1975). The RCG disputes Consumers Energy's claim that capital structure impacts need to be considered in determining an interim credit, citing testimony from Ms. Myers at Tr 54-69 and Mr. McIntosh at Tr 121-122 to show that Consumers

[86] See Attorney General brief, pages 4-5.
[87] See Attorney General reply, page 5.
[88] See Attorney General reply, page 5.

Energy has not received an additional equity infusion from its parent company and has not issued additional debt because of the adoption of the TCJA:

> CECO would propose making what is a theoretical mathematical adjustment to its capital structure in the absence of any evidence of an actual increase in common equity or debt related to the adoption of TCJA. RCG asserts that such a theoretical change to capital structure costs is unnecessary and not supported by the evidentiary record.[89]

The RCG notes that the capital structure argument was rejected by the Court in the cases it cited. In its reply brief, the RCG further argues that a period of 21 months will have elapsed from the effective date of the TCJA until the expected date, September 2019, of any return of excess deferred tax balances to ratepayers.[90]

In its reply brief, ABATE supports the Attorney General's recommendation.[91] ABATE argues:

> The Company opposes the Attorney General's proposal, claiming that it would have detrimental impact on the Company's cash flow. (Consumers' Initial Br, p 9.) Instead, the Company proposes to pass through the benefit of the net tax savings in conjunction with future rate case proceedings. ABATE agrees with the Attorney General that, "The Company's proposal to wait until later rate cases to pass the savings on to ratepayers is not fair and reasonable." (Attorney General's Initial Br, p 9.) Importantly, the Company has not provided any evidence that suggests returning the funds over 27 and 44 years is appropriate, especially given the fact that the 2018 and 2019 funds are already owed to customers. (Id. at 10.)[92]

ABATE also disputes that the Attorney General's interim credit proposal would harm the company's credit metrics, arguing that in the absence of the TCJA, Consumers Energy

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[89] See RCG brief, page 4.
[90] See RCG reply, page 2.
[91] See ABATE reply, pages 4-5.
[92] See ABATE reply, page 4.

would have reduced its deferred tax balances through payment to the federal government.[93]

In its reply brief, Consumers Energy again relies heavily on Ms. Myers's and Mr. Wehner's rebuttal testimony.[94] Consumers Energy also argues that the interim credits proposed by the Attorney General would partly duplicate the interim credit the company has agreed to implement at the conclusion of this case.[95] The company urges the Commission to reject the added complexity it perceives in the Attorney General's proposed credits. It also objects to RCG's references to decisions on earlier federal tax reductions as vague.[96] It finds no inconsistency between the earlier decisions cited and the company's recommendations in this case.[97] It also argues regarding capital structure effects that the company would not be expected to increase debt or equity until the excess deferred tax amortizations "are flowing to customers through rates."[98]

In its reply brief, Staff contends that the rationale for the Attorney General's proposed credit, that Consumers Energy was not proposing to return any of the excess deferred tax balances until its next electric and gas cases, no longer exists since the company has proposed an interim credit for electric customers and agreed to include an amortization of the excess deferred tax balances in its ongoing gas rate case.[99]

This PDF finds that the interim credit for electric customers endorsed by Consumers Energy and Staff is reasonable and should be adopted, with disputes

[93] See ABATE reply, pages 4-5.
[94] See Consumers Energy reply brief, pages 6-12.
[95] See Consumers Energy reply brief, pages 12-13.
[96] See Consumer Energy reply, pages 23-27.
[97] See Consumers Energy reply, page 25, also citing Myers, Tr 65-66; McIntosh, Tr 91.
[98] See Consumers Energy reply, page 26.
[99] See Staff reply brief, pages 2-3.

regarding the rate design for the interim credit discussed in section D below. As shown in Exhibit A-3, Consumers Energy's revised proposal would return $32,289,000 to electric customers in a 12-month period beginning in September 2019. ABATE and the Attorney General incorrectly contend that the company proposes to delay return of the balances until its next electric rate case, when the company clearly and explicitly revised its original proposal to provide a more immediate return. Recognizing that it is possible to consider the amortization of the deferred tax balances as beginning on January 1, 2018, this PFD does not find that the Attorney General has offered a compelling reason to do so. Because the deferred tax balances continue to benefit ratepayers as a zero-cost source of capital in ratemaking, providing a relatively "levelized" amortization of the excess deferred tax balances to be returned to customers appears reasonable, avoiding the confusion that could be caused by the multiple credits and rate changes embodied in the Attorney General's proposal.

Similarly, this PDF finds that it is reasonable for the company to return an initial amortization of the excess deferred gas plant balances to customers through the pending gas rate case as proposed by Staff and Consumers Energy. To adopt the Attorney General's proposal would result in both an ongoing credit and a rate case adjustment for overlapping time periods that would need to be reconciled, which this PFD considers an unnecessary complexity given the ratepayer protections built into the ratemaking formula.

In making these recommendations, this PFD expressly does not rely on the company's analysis of the impact of the Attorney General's proposal on the company's credit metrics, because the 2017 data underlying the company's analysis is clearly stale, not capturing the effects of two electric rate orders and one gas rate order.[100] The ALJ also notes that by reducing the company's long-term tax obligations to the federal government, the TCJA has the effect of reducing a debt-like obligation,[101] which could or should be considered in evaluating the company's FFO-to-debt ratios after January 1, 2018. This PFD is also not persuaded that in order to adopt the Attorney General's proposal, the Commission would be required to provide offsetting revenue to compensate the company with additional revenue to reflect a reduction in the deferred tax balances that would be included in the ratemaking capital structure. Consumers Energy entered into a settlement agreement in Case No. U-20134, knowing of the pendency of this case, and it nonetheless committed not to seek additional rate relief until 2020. And the company's next rate filing, under a 10-month rate schedule, could be filed in less than four months from the date the Commission's order in this case.

D. Rate Design

In proposing its interim credit, Staff specified a design for the credit that allocated the amortized amount of the net excess deferred tax liabilities to rate classes using the production and distribution rate base allocators taken from cost of service study associated with the settlement agreement in Case No. U-20134 to determine power-supply-related and distribution-related components. Mr. Isakson explained that the credits are based on an allocation of the total amount to the different rate classes based

[100] See Wehner, Tr 157. Also see Case No. U-18322, orders dated March 29, 2018 and June 28, 2018; Case No. U-20134, orders dated January 9, 2019; Case No. U-18424, order dated August 28, 2018. In the face of these myriad orders, the company's claim that it has isolated the impact of the TCJA or any particular related proposal is rejected. Also see Exhibits AG-14, AG-15, and AG-16.
[101] See Wehner, Tr 162.

on the distribution and production rate base allocators from the cost of service study used in the settlement agreement in Case No. U-20134:

> By using these allocators each rate class' share of the prorated regulatory liability was split between power supply and distribution credits, similar to TCJA Credits A and B. When necessary, such as for Rate GPD, the credit was designed for each rate by further allocating the total rate class Calculation C amounts on the rate's contribution to proposed power supply and distribution revenues from the previous case. Finally, credits are determined by dividing the refund amount by the appropriate forecasted sales for the test year from the same case.[102]

In agreeing to an interim credit, Consumers Energy adopted this approach, with a minor modification. Ms. Collins explained the company's revision to the interim credit calculated for Rate GSG-2 customers, contending that these customers should receive a credit only for the delivery component of their rate:

> The LMP that customers on Rate GSG-2 pay is simply a pass through of costs and there are no deferred tax impacts. The capacity these customers pay is based on the Palisades Power Purchase Agreement which also does not have any deferred tax impacts. Therefore, Rate GSG-2 customers should receive the Credit C refund on the delivery only.[103]

ABATE opposed this rate design. Mr. Gorman's direct testimony proposed that the excess deferred tax balances be returned to electric customers equally within each rate class, on a per-kWh basis, and within each gas rate class on a per-Mcf basis. Mr. Gorman distinguished the Credit A and Credit B analysis from the Calculation C analysis:

> In contrast to Credit A and Credit B, Calculation C is composed of payments customers made to the utility prior to January 1, 2018. During this historical time period, customers paid income tax expense to the utility that exceeded the Company's current income tax payments to government taxing authorities. That difference was recorded as ADIT.

[102] See Tr 232.
[103] See Tr 131.

> Because the amount of tax collected as ADIT will ultimately be remitted to government taxing authorities at a lower corporate tax rate, the amount of prepaid taxes the Company collected from customers in the past is now in excess of the tax the Company will ultimately pay to government taxing authorities.
>
> As such, the Calculation C for excess ADIT should reflect credits to customers for excess rate payments from past time periods which is notably different than tax savings related to prospective cost of service.[104]

He considered this distinction significant for the potential impact on ROA customers, also looking forward to future credits:

> The significance of this is that certain customers that may have taken bundled service from Consumers in the past may change to ROA service in the future. However, these ROA customers that switch will not get an equitable share of Calculation C credit if the credits are allocated based on prospective cost of service. The customers paid bundled service rates when the excess ADIT was collected from customers. These customers will get a refund of far less than the excess taxes that they paid in the historic period, when excess ADIT was collected.[105]

In his rebuttal testimony, addressing Staff's proposal, Mr. Gorman testified that if Staff's recommendation were adopted, the Commission should treat customers who became ROA customers after January 1, 2018 as full-service customers. Mr. Gorman distinguished the Calculation C analysis from the Credit A and Credit B analysis:

> In significant contrast, Calculation C reflects a refund of collections from customers of ADIT that are now in excess of the utility's future income tax liability. These customer payments to Consumers were for time periods before January 1, 2018, or prior to when the new reduced federal corporate income tax rate was put into effect. As such, the collections of excess ADIT are based on payments from customers to Consumers for periods prior to January 1, 2018. The purpose of the Calculation C credit will be to credit back to customers the excess income tax payments from customers to Consumers for deferred income taxes that were no remitted to government taxing authorities. When these taxes become due, they will be remitted at the reduced federal income tax rate.

[104] See Tr 202-203.
[105] See Tr 203.

> More specifically, customers paid Consumers' future income tax liabilities in these deferred tax payments assuming they would ultimately be remitted to government taxing authorities at a 35% federal income tax rate. Customers were required to pay these deferred taxes under this understanding, but now Consumers will remit taxes when due at a 21% federal income tax rate. This federal reduced tax rate creates an excess ADIT balance that Consumers must now "refund" to customers. Consumers collected this excess ADIT balance from customer payments for service prior to January 1, 2018. For periods after January 1, 2018, service charges (including Credit A and Credit B) will reflect the new federal corporate tax rate.[106]

Mr. Gorman considered the bifurcated power supply and delivery credits Staff recommends to produce a credit that is not fair and balanced to ROA customers:

> Under Mr. Isakson's proposed pricing structure for GPD Voltage Levels 1-3, a customer that takes Power Supply from Consumers will get both a Power Supply credit (on a kWh basis) and a Delivery service credit (on a demand basis) for all billable kWh and Delivery Maximum demand (kW) metered when the Calculation C is in effect. In contrast, for customers on ROA service, they will only get a credit associated with the Delivery Maximum demand (kW) billing units and Calculation C credit because these customers do not buy Power Supply from Consumers.
>
> However, certain ROA service customers may have been fully bundled service customers prior to January 1, 2018. These customers would have paid excess ADIT based on pricing for both Power Supply and Delivery service rates. However, according to Staff's pricing structure they would only receive a credit based on their Delivery service costs, if they switch after January 1, 2018. This proposal simply deprives these customers of the full credit they are due, and the harm to these customers is material.[107]

Mr. Gorman also provided an example to show that a customer switching to ROA service could receive a credit approximately $19,000 per year less than it would have received as a full-service customer under Staff's proposal.[108] He then explained:

> The fundamental fairness problem with Mr. Isakson's proposal is he is not attempting to create a credit that refunds to the customers the amount the customers contributed to Consumers' excess ADIT balances. Rather, he is

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[106] See Tr 217-218.
[107] See Tr 218.
[108] See Tr 219.

> simply allocating annual excess ADIT balances using forward-looking estimated cost of service. However, Consumers' forward-looking cost of service bears no relationship to the customers' past payments to Consumers that resulted in the excess ADIT balance in the first instance, nor is it a factor for developing a credit that fairly returns the excess ADIT balance to the customers who paid excess prices and created the balance.[109]

Both in his direct and rebuttal testimony, Mr. Gorman analogized the amortized return of excess deferred tax balances to the securitization charges adopted by the Commission pursuant to 2000 PA 142.[110] In particular, in his direct testimony, Mr. Gorman cited the Commission's order in Case No. U-18250, and in his rebuttal testimony, Mr. Gorman cited Case No. U-17473.[111]

In his rebuttal testimony for Staff, Mr. Revere explained Staff's disagreement with Mr. Gorman's view that full-service and ROA customer credits should be the same:

> The method of returning the Calculation C amounts should mirror how the benefits of the deferred tax balances are currently returned to customers. To do otherwise would create an avoidable and inappropriate inconsistency between what would have happened absent passage of the Tax Cuts and Jobs Act (TCJA) and Calculation C.[112]

He noted that the benefits of deferred tax balances are currently returned to customers through the ratemaking capital structure, because they are included as a zero-source cost of capital. Mr. Revere testified that in the absence of the TCJA, the benefits of the deferred tax balances at issue would have remained in the ratemaking capital structure providing benefits to customers until the tax became due. He traced this treatment back at least 55 years, also presenting as Exhibit S-4 the Commission's April 22, 1970 order

[109] See Tr 220.
[110] See MCL 460.10h-10o.
[111] See Tr 206-207, 221-222.
[112] See Tr 252.

in Case No. U-3189. Mr. Revere addressed Mr. Gorman's testimony that ROA customers would have paid the "power supply" as well as the "distribution" portion of the deferred tax balances when they were full-service customers as follows:

> While it is true that customers who were not always ROA customers would have 'paid in' to power supply deferred tax balances, and ABATE witness Gorman correctly recognizes that it is likely impossible to determine what portion of the deferred tax balances are associated with ROA customers, the correct answer is certainly not that they paid in equal proportion to customers who have always been full service and never ROA. The issue is moot, however, as in order to remain consistent with the current treatment of the benefits of deferred tax balances, the Commission should reject ABATE witness Gorman's proposed treatment.[113]

Ms. Myers and Ms. Collins also addressed ABATE's proposed rate design in their rebuttal testimony. Ms. Collins testified that to provide all customers with the same credit would be over refunding to RIA customers who only pay delivery charges.[114] Ms. Myers testified:

> The excess ADIT amounts have been included in the capital structure and will continue to be included in the capital structure at zero cost until returned to customers. As such, customers have received, and will continue to receive, benefit from these zero-cost amounts in the capital structure using rate base as an allocator with a differentiation between power supply and delivery. Without a sound reason why, it would not make sense to have the credit for the excess ADIT utilize a different allocation methodology than the long-standing methodology used for the very same dollars as they have been housed in the capital structure providing benefit to customers.[115]

Ms. Myers also presented data to provide context to Mr. Gorman's claim of unfairness:

> There are currently 991 electric customer choice accounts. The average in-service date of these accounts is 2007. Therefore, 67% of the electric excess ADIT is related to plant that is 2007 or newer. Thus, well over half of the electric excess ADIT was paid in after the average in-service date of the customer choice accounts. This means that the average customer choice account would not have paid the power supply portion of 67% of the

[113] See Tr 255.
[114] See Tr 132.
[115] See Tr 33-34.

> total electric excess ADIT. While it is true that it is not possible to determine what each individual customer has contributed to the excess ADIT, knowing that the average customer choice account would not have paid the power supply portion of 67% of the excess ADIT makes it difficult to justify providing current customer choice customers the same credit as bundled service customers.[116]

In their briefs, ABATE and HSC do not challenge the allocation of the amortized excess ADIT balances to each rate class using the rate base allocators proposed by Staff or advocate for the uniform credit as Mr. Gorman originally proposed. Instead, they argue in favor of the recommendation Mr. Gorman presented in his rebuttal testimony that ROA customers who were full-service customers prior to January 1, 2018 should receive the same credit as full-service customers.

Citing Mr. Gorman's testimony at Tr 205, ABATE acknowledges it is not possible to determine what each customer contributed to the excess deferred tax balances.[117] In its initial brief, ABATE addressed an example provided by Ms. Myers in her rebuttal testimony of a full-service customer that is able to avoid responsibility for PSCR undercharges during a PSCR year by switching to the choice program. ABATE argues that this argument is flawed because a PSCR factor is only in effect for a single year: "This pales in comparison to the amount of time the Calculation C surcharge credit will be in effect."[118] ABATE argues that the Commission's determinations in this case will impact customer rates for decades to come.[119] ABATE argues:

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[116] See Tr 34.
[117] See ABATE brief, page 9.
[118] See ABATE brief, page 10.
[119] See ABATE brief, page 10.

> [I]t is critical to recognize that the Company's excess ADIT balances accrued prior to the enactment of the TCJA, which carried an effective date of January 1, 2018. Since the Company collected these funds from customers in the past, it is immaterial to consider how the funds relate to the Company's costs for providing either bundled or ROA electric service in the future. The same is true for the Company's costs for providing natural gas sales or transportation service. The Calculation C credit is supposed to reimburse customers for their contributions to the Company's excess ADIT from *past*periods [sic]. Contrary to Staff's position, these contributions do not relate to the Company's cost of providing prospective service during the period that customers receive the benefit of the credit surcharge. As such, the credit should not distinguish between customers taking bundled service versus delivery service for those customers that moved to ROA service after January 1, 2018.[120]

ABATE views the ratemaking treatment of deferred tax balances as irrelevant:

> The Commission (and the Company) should be indifferent about how the various customer classes will benefit from a lower overall rate of return in the future. The objective should be to align the Calculation C benefits with the extent that the Company overcharged those customers prior to January 1, 2018. [121]

ABATE contends that Staff has misinterpreted the Commission's April 22, 1970 order in Case No. U-3189 (Exhibit S-4) specifying the treatment of deferred tax balances.[122] ABATE argues that it does not challenge the future ratemaking treatment of deferred tax balances consistent with this order.[123]

Also citing Mr. Gorman's testimony, HSC argues that Staff's proposal deprives these customers of the full credit they are due, and the harm to these customers is material and will continue for decades.[124] In its reply brief, HSC argues that a customer's

[120] See ABATE reply, page 7.
[121] See ABATE reply, page 8.
[122] See ABATE reply brief, page 8.
[123] See ABATE reply, page 9.
[124] See HSC brief, pages 4-7.

decision to switch to ROA, or some other service after January 1, 2018 would not change the amount paid to the utility during the period it accumulated excess ADIT amounts.[125]

Both ABATE and HSC cite the Commission's treatment of securitization charges under 2001 PA 142. HSC and ABATE cites the Commission's December 6, 2013 order in Case No. U-17473, and ABATE also cites the Commission's June 2, 2003 and October 14, 2004 orders in Case No. U-13715 and its September 22, 2017 order in Case No. U-18250.[126] They essentially argue that the return of the deferred excess tax balances to customers should be considered akin to non-bypassable securitization charges.

Staff and the company are now in agreement that the interim credits for electric customers should be adopted consistent with the design reflected in Exhibits A-3 and A-4. In its brief, Consumers Energy relied on the testimony of Mr. Revere and Ms. Myers to support the rate design in Exhibit A-3.[127] Staff cited Mr. Isakson's direct testimony as well as Mr. Revere's and Ms. Myers's rebuttal testimony.[128] Staff also disputed ABATE's analogy to securitization charges, citing the underlying statute:

> MPSC Case No. U-18250, referenced by witness Gorman, involved the securitization of qualified costs, through a statutorily authorized financing order. 9/22/2017 Order. That case relates to qualified costs associated with the Palisades nuclear plant. Regarding U-18250, the facts and the statutes involved—MCL 460.10h(c) and MCL 460.562(e)—are dissimilar from the facts and statute involved in this case, which pertains only the TCJA Calculation C. There is no statutorily mandated "non-bypassable" event at issue in this case. The fact that a statute was created specifying that the surcharge was non-bypassable in MPSC Case No. U18250 shows that the

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[125] See HSC reply, page 3.
[126] See ABATE brief, pages 11-15.
[127] See Consumers Energy brief, pages 16-20.
[128] See Staff brief, pages 4-8.

> Legislature was aware that choice customers and full-service customers are not always treated the same. [129]

In its reply brief, Consumers Energy also disputed that the treatment of securitization surcharges is analogous:

> [S]ecuritization charges are designed by statute to provide a guaranteed stream of income in order to provide assurance of bond repayment to prospective lenders. Nonbypassability is a legal mechanism to prevent erosion of the customer base that will be required to repay the loan and, hence, to achieve the highest possible bond rating to reduce customer costs. There is no analogy between securitization and the facts of this case, which involve a refund to customers (not the collection of loan payments from customers) and the impact of that refund on Consumers Energy's corporate credit rating (not the impact of a guaranteed income stream on a bond rating). The nonbypassability of securitization charges required by law has nothing to do with a desire to ensure that ROA customers pay for costs incurred – either theoretically or in actuality – while they were full-service customers. Securitization charges are required to be nonbypassable even where the underlying cost represented by the securitization bond was not incurred for the benefit of the customers paying the charges at all.[130]

In its reply brief, Staff addressed the contention that ROA customers who switched to the choice program after January 1, 2018 should receive the same credit as full-service customers.[131] Staff argues that because it is not possible to trace what individual customers paid toward the deferred tax balances, the same arguments presented in its reply brief support rejecting this proposal:

> The necessary evidence is not on the record to know if a customer that moved to ROA after January 1, 2018 had previously been a choice customer; thus, based on the record it cannot be determined exactly who paid in what and when.
>
> Therefore, the same arguments apply to customers switching after this date as before, and the position should be rejected. (Staff Initial Brief, pp 5-6.) ABATE also claims that full-service customers would reap an additional benefit every time another customer elects to receive ROA service. (ABATE

[129] See Staff brief, page 9.
[130] See Consumers Energy reply, page 20.
[131] See Staff reply, pages 4-5.

> Initial Brief, p. 6.) This is also incorrect. As choice service is capped, any customer switching its service to ROA service would likely be offset by a customer returning to full-service, resulting in the same outcome as if no change had occurred. For these reasons, as well as those stated in Staff's initial brief and testimony, ABATE's proposal should be rejected.[132]

In its reply brief, HSC acknowledges the statutory requirement regarding securitization charges, but argues that the Commission retains the discretion in this case to adopt HSC's recommendation, characterizing the securitization orders as "informative from both a fairness and rate design implementation perspective."[133] It argues:

> If an obligation to pay costs attributable to generating assets in the past follows a customer who subsequently switches from full service to choice, then it stands to reason from a fairness perspective that a refund attributable to excess ADIT accumulated in the past should follow a customer who subsequently switches rates.[134]

HSC further argues that for administrative ease, the Commission could also provide that choice customers returning to full-service after January 1, 2018 are entitled to the full-service rate credit.[135] Recognizing that it is not possible "to perfectly track every customer's contributions to Consumers excess ADIT balances . . . to perfectly refund excess ADIT," HSC argues that it is possible and reasonable to recognize that large industrial full-service Rate GPD customers on January 1, 2018 "likely made substantial contributions to Consumers' excess ADIT and should receive refunds commensurate with those contributions."[136]

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[132] See Staff reply, pages 4-5.
[133] See HSC reply, page 4.
[134] See HSC reply, page 5.
[135] See HSC reply brief, page 6.
[136] See HSC reply brief, page 6.

This PDF recommends that the Commission adopt Staff's proposed rate design as modified by Consumers Energy in designing the interim credits. At the heart of ABATE's and HSC's argument is a contention that certain customers are "entitled" to a particular share of the excess deferred tax balances, notwithstanding their acknowledgement that it is not possible to trace prior contributions, notwithstanding that no party is proposing historical refunds, and notwithstanding that the amortization period will extend approximately 30 years into the future for electric operations and 45 years for gas operations. The fact that the bulk of the excess deferred tax balances must by law be returned to customers over several decades precludes historical refunds. This PFD rejects the underlying contention that any particular customer is "entitled" to a credit: since the parties recognize that the Commission may provide for a return of the excess deferred tax balances to customers over the next several decades, there is no entitlement to a historical refund. Note that in its February 22, 2018 order directing Consumers Energy to make a Calculation C filing, the Commission expressly stated:

> [R]egarding Energy Michigan's comments seeking an investigation of the number of former full-service customers who contributed to deferred taxes, the Commission notes that Energy Michigan fails to acknowledge the long line of Commission precedent rejecting historical refunds in various types of proceedings as far back as 1994. In re Application of Consumers Energy Co, 313 Mich App 175, 194; 881 NW2d 502 (2015); Attorney General v Public Service Comm, 215 Mich App 356, 361-369; 546 NW2d 266 (1996); May 10, 2011 order in Case No. U-16302, p. 8; December 21, 2010 order in Case No. U-16441, pp. 7-8; May 17, 2005 order in Case No. U-13990, pp. 21-22; and October 29, 2003 order in Case No. U-13622, pp. 11-14.[137]

Because an attempted refund to customers who paid the taxes appears highly problematic, and because the determination was made long ago that deferred taxes

[137] See February 22, 2018 order, Case No. U-18494, page 13.

would be used to offset future rates, it is reasonable to provide the benefits of the interim credit to current (and future) customers in a manner that mirrors the benefit to current customers from the excess deferred taxes retained by the company, just as Mr. Isakson and Mr. Revere explained.[138]

The argument that full-service customers who became choice customers after January 1, 2018 will be materially harmed for decades should be rejected as without credible evidentiary support on this record. Full-service customers were not forced to become choice customers; the logical inference is that these customers perceived it to be to their financial advantage to become choice customers. Moreover, within certain constraints, they are free to return to full service, so the concept of extending the financial impact to "decades" is preposterous on its face. While the magnitude of the "credit" for full-service customers compared to choice customers may be sizeable, the magnitude may also be significant for a variety of customers, including companies who have left the company's system and residential customers who may have moved. Because accurate historical refunds are not possible, Staff and Consumers Energy have reasonably identified a logical, prospective allocation of the amortization amounts to be returned to be returned to customers.

ABATE also argues in its brief that customers joining Consumers Energy's system after January 1, 2018, the date of the TCJA, should not be allowed to share in the return on the excess deferred tax balances, characterizing it as inequitable.[139] In its reply brief, ABATE further forecasts that the Company is likely to see an influx of new, high-load

[138] See Isakson, Tr 233; Revere, Tr 252-256.
[139] See ABATE brief, page 10; ABATE reply, page 5.[139]

customers as a result of marijuana legalization.[140] This PFD recommends that the Commission reject this limitation on the interim credit. Consistent with the foregoing discussion, this PFD finds that the deferred tax balances generally, accumulated through revenue collected from customers *in the past*, had already been dedicated to the benefit of current customers as a zero-cost source of capital in setting rates, until such time as they would in due course be paid to the federal government. Thus, it is not fundamentally inconsistent with the collection of revenue from customers that current and future customers would benefit from the accumulated deferred tax balances, even if they were not customers as of January 1, 2018.

E. Duration of Credit

ABATE argues that a separate Calculation C credit should remain in place through the duration of the amortization of the excess deferred tax balances.[141] In recommending the distinct credit, ABATE recognizes that the credit would be subject to an annual true-up to maintain compliance with the federal normalization requirements. Mr. Gorman testified:

> This credit must be reconciled each year to reflect the tracking accounting mechanism proposed by Consumers to ensure it remains in compliance with Internal Revenue Code normalization rules. Further, tracking in this account can also allow Consumers to adjust prices to reflect this balancing account treatment, and ensure that all customers that should receive the Calculation C credit receive such a credit.[142]

HSC also argues for a separate credit to remain in place, arguing that it will be easier for interested parties to review and audit.[143] It argues that a credit can be adjusted between rate cases to reflect revised accounting data. HSC, presumably focusing only

[140] See ABATE reply, page 5.
[141] See ABATE brief, pages 4-6.
[142] See Tr 224; also see Tr 215.
[143] See HSC brief, pages 7-8; HSC reply brief, page 7.

on electric rates, argues in the alternative that the Commission should defer a determination until the utility's next rate case. It argues that experience in the interim will inform a decision whether the credit mechanism poses increased risk of violating federal normalization limits.

Staff and Consumers Energy do not believe a separate credit should be required. Mr. McIntosh testified in rebuttal that the normalization limits are best reviewed and addressed within a general rate case proceeding, asserting: "The Company believes that Mr. Gorman's proposed method is more likely to result in a normalization violation because it will be much more difficult to keep all of the required components to avoid a normalization violation in sync."[144] He testified that the impact of the 1986 federal tax reduction on deferred tax balances was addressed through general rates without a separate credit:

> It should also be pointed out that there is significant regulatory history in Michigan that demonstrates that handling the return of Excess Deferred Taxes through general rates is the method preferred by the Commission. The last time that there was a major reduction in the federal corporate income tax rate occurred with the Tax Reform Act of 1986. For over 30 years, the annual amount of Excess Deferred Taxes due to this prior federal rate reduction have been included as part of general rate cases and have not been included on customer bills as a permanent negative bill surcharge. The Company is not aware of any adverse customer issues related to this long-standing and Commission established method which has helped avoid normalization issues. The Company therefore does not believe that a permanent negative bill surcharge is appropriate or advisable in this case as it would significantly increase the potential for a normalization violation with no additional customer benefit.[145]

[144] See Tr 90-91.
[145] See Tr 91.

This PFD recommends that the Commission decline to create a long-lived Calculation C credit to be separately stated on customer bills, given the extended term over which the excess tax balances must be returned to customers under federal law, approximately 27 years for electric operations and 44 years for gas operations. The accounting and annual reporting requirements agreed to by Consumers Energy should make it possible to track the amounts returned and amounts outstanding within the context of a rate case. Additionally, as shown by the discussion above, it appears that the primary motivation for ABATE and HSC in seeking such a long-lived credit is to separately determine eligibility for the credit, while this PFD does not recommend that the Commission adopt those alternative eligibility parameters.

F. <u>Gas amortization</u>

While the parties appear to be in general agreement that, in the absence of a specific credit, gas rates in the company's ongoing gas rate case should be adjusted to reflect an amortization of the deferred tax balances, the parties have not presented an agreed-upon amortization amount in their briefs. Mr. Coppola did recommend a specific amount to be reflected in gas rates, but his recommendation was premised on an amortization beginning in 2018. Staff presented a calculation as part of its direct testimony, but has subsequently acquiesced in the additional adjustments made by Consumers Energy and reflected in Exhibit A-6 for gas operations. As indicated in this exhibit, Consumers Energy's amortization is coordinated with the start of the test year in Case No. U-20322, which is October 1, 2019 through September 30, 2020. In cross-examination, Mr. McIntosh testified that the gas case test year amortization amount would be $13,796,000.[146] This testimony is consistent with Exhibit A-6: adding the 2019 amortization amount of $3,810,000 to 9/12th of the 2020 amortization amount of $13,315,000 equals $13,796,250.

V.

CONCLUSION

For the reasons discussed above, this PFD recommends that the Commission approve Consumers Energy's statement of excess deferred tax balances as of December 31, 2017, as updated and reflected in Exhibit AG-1, approve the amortization periods reflected in Exhibits A-5 and A-6, and approve the accounting and reporting recommended by Staff and adopted by Consumers Energy. This PFD also recommends that the Commission approve an interim annual credit of $32,289,000 for electric customers as presented in Exhibits A-3 and A-4, to begin following a Commission order in this case and continue until electric rates are reset, and include the amortization of a net excess deferred tax liability in the ongoing gas rate case as presented in Exhibit A-6, or $13,796,000. This PFD further recommends that the Commission decline to establish a continuing credit for electric or gas operations through the duration of the amortization period, but instead recommends the Commission include the amortization amounts in setting base rates going forward. Consistent with this recommendation, this PFD recommends that the Commission decline to provide ROA customers who ceased to be full-service customers after January 1, 2018 with a credit equivalent to the credit provided

[146] See Tr 95.

to full-service customers, or to limit eligibility for the credit to customers of record as of January 1, 2018.

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
For the Michigan Public Service Commission

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Sharon L. Feldman
Administrative Law Judge

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