

STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
Consumers Energy Company for )  
a certificate of public convenience )  
and necessity to construct and )  
operate the 36-inch Mid-Michigan )  
pipeline line. )

Case No. U-20618

**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 13, 2020.

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 September 3, 2020, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before September 24, 2020.

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: 2020.08.13 15:52:38 -04'00'

August 13, 2020  
Lansing, Michigan

Sharon L. Feldman  
Administrative Law Judge

STATE OF MICHIGAN  
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Case No. U-20618

**PROPOSAL FOR DECISION**

**I.**

**PROCEDURAL HISTORY**

Consumers Energy filed its application to construct and operate the 36-inch Mid-Michigan pipeline on August 23, 2019. The application seeks a certificate of convenience and necessity under 1929 PA 9 (Act 9),<sup>1</sup> to construct and operate a natural gas pipeline approximately 55.8 miles in length at a cost of approximately \$550 million. The pipeline would run from Chelsea north and west to Ovid, Michigan, and would replace the company's current Line 100A, a 20-inch pipeline connecting the same locations. The company's application was accompanied by the testimony and exhibits of five witnesses.

The docket reflects that on September 26, 2019, Consumers Energy submitted proof of mailing the notice of hearing in this case to each landowner who may be

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<sup>1</sup> See MCL 483.101 et seq.

traversed by the proposed pipeline and to each city, incorporated village, township and county within the utility's gas service area, and on October 10, 2019, Consumers Energy submitted affidavits of publication of the notice of hearing as required by the Commission.<sup>2</sup> On September 30, 2019, Robert and Ruth Hummell submitted a petition to intervene, which was docketed on October 1, 2019. On October 4, 2019, ABATE filed a petition to intervene. At the October 11, 2019 prehearing conference, counsel for Consumers Energy confirmed the mailing and publication of notice as reflected in the docket. Also at the prehearing, the Hummells and ABATE were granted intervention, and Michael Wieschowski, Bruce Green, and Ken Norman made comments. A consensus schedule was established as reflected in the scheduling memo filed in this docket on October 11, 2019.

Subsequently, Mr. Wieschowski filed a late petition to intervene. Because Consumers Energy opposed the late petition, a hearing was held on October 30, 2019, at which Mr. Wieschowski was granted late intervention.

On November 19, 2019, Mr. Wieschowski filed a map that later became an exhibit in this proceeding. On January 14, 2020, by email, the Hummells circulated proposed evidence for this case, including a statement signed by Ms. Hummell, to all parties and the ALJ, which was subsequently filed in the e-docket. On January 17, 2020, ABATE and Staff each filed the testimony of one witness. On February 5, 2020, by email, the Hummells circulated a proposed rebuttal statement, which was subsequently filed in the e-docket. On February 7, Consumers Energy filed the rebuttal testimony of three witnesses.

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<sup>2</sup> See Docket Entry #s U-20618-0010 and U-20618-0016.

On February 12, 2020, the Hummells filed “intervention surrebuttal statements” in response to a portion of the rebuttal testimony Consumers Energy filed. Also on February 12, Staff filed a motion to strike the Hummells’ surrebuttal filing, characterizing it as surrebuttal not provided for in the hearing schedule, and Consumers Energy filed a motion to strike the Hummells’ rebuttal filing as improper rebuttal and to strike certain proposed exhibits. On February 14, 2020, Mr. Wieschowski filed what he labeled as rebuttal statements addressing Consumers Energy’s rebuttal filing.

On February 18, 2020, Consumers Energy filed a motion for a protective order, and a motion to strike portions of statements and documents submitted by Mr. Wieschowski. Also on February 18, the Hummells filed answers to Consumers Energy’s and Staff’s motions to strike as well as a motion to permit them to file surrebuttal testimony. Consumers Energy opposed the motion to file surrebuttal testimony in its February 21, 2020 response and alternatively sought to offer the sur-surrebuttal testimony attached to its response.

On February 24, 2020, Consumers Energy filed the revised testimony and exhibit of one of its five witnesses. Also on February 24, 2020, an appearance was filed by counsel for the Hummells, who had previously been unrepresented in this matter.

At the February 25, 2020 hearing, the ALJ granted the motion for protective order, with a ruling filed in the e-docket later that day. After argument on the motions to strike, the ALJ denied the motions, granted Consumers Energy’s motion to present sur-surrebuttal, and offered Consumers Energy and Staff the opportunity to file additional responsive testimony. Both Consumers Energy and Staff declined that opportunity.<sup>3</sup> The hearing was completed in one day, as reflected in the transcript. The evidentiary

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<sup>3</sup> See Tr 77-78, 85.

record is contained within 381 transcript pages and 38 exhibits.<sup>4</sup> All parties filed briefs and reply briefs.

## II.

### **OVERVIEW OF THE RECORD**

The following discussion provides an overview of the testimony and exhibits presented by Consumers Energy, Staff, the Hummells, Mr. Wieschowski, and ABATE. It is intended only to provide a general overview; specific testimony and exhibits are discussed in more detail in the discussion of the disputes among the parties, section IV below.

#### A. Consumers Energy

Consumers Energy presented the testimony of five witnesses: Paul M. Wolven, Jon M. Hagloch, Margaret F. O'Connor, Jonathan J. Guscinski, and Andrew J. Volansky. Mr. Wolven and Mr. Hagloch were cross-examined, while the testimony of the other three witnesses was bound into the record without the need for them to appear.

#### **Paul M. Wolven**

Mr. Wolven is the director of system integrity in the gas engineering and supply, gas asset management team of Consumers Energy.<sup>5</sup> Mr. Wolven described the benefits of replacing the pipeline from an integrity management plan perspective. He described the characteristics of the pipeline between Chelsea and Ovid. He also described the assessment process and repair techniques that are part of the company's transmission integrity management program, citing 49 CFR 192, Subpart O. He

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<sup>4</sup> Unless otherwise noted, all transcript references in this PFD are to volume 3 of the transcripts.

<sup>5</sup> Mr. Wolven's qualifications are set forth at Tr 90 to 91; his testimony is transcribed at Tr 86-119. Mr. Wolven presented Exhibits A-9 through A-12.

presented Table 1 at Tr 93, with a list of in-line inspections since 2007 and the technologies used for each. In Table 2 he summarized the anomalies found in inspections performed in 2007 and 2013. He testified that the company remediated the most significant anomalies after the 2013 inspections, but a number remained. He presented a chart at Tr 98 characterizing the remaining anomalies. Mr. Wolven testified that if the pipeline is not replaced, the company will need to complete 150 remediation digs over the next 20 years.

Mr. Wolven also explained additional inspections of the pipeline following a rupture in 2015. After describing the cathodic protection in place on this portion of the pipeline, he explained that coating on the pipeline is continuing to debond and degrade, also presenting inspection reports in Exhibit A-10. Mr. Wolven testified that 79% of the pipe and coating reports indicate inadequate bonding, such that the coating has failed and may allow moisture to accelerate corrosion of the pipe. Mr. Wolven testified that additional information from EMAT tools confirmed these results, showing 72% of the pipeline or 43.85 miles needs to be recoated.<sup>6</sup> He presented underlying results in his Exhibit A-12.

Mr. Wolven also described the company's analysis of the 2015 rupture, which he attributed to a form of environmental cracking, particularly seen when the coating system is compromised. He further discussed the work performed on that pipeline following the rupture and the work remaining to be performed in the future. After explaining additional concerns, including a concern that 6.8 miles of the pipeline are within compressible soils as shown in Exhibit A-11, he estimated that the total cost to maintain the existing pipeline over the next 20 years would be approximately \$206

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<sup>6</sup> See Tr 102-103.

million dollars. He also testified that Consumers Energy has developed a relative risk ranking for this pipeline, which he characterized as high compared to the rest of the pipelines on the company's system. Citing Mr. Guscinski's testimony, Mr. Wolven testified that the company has concluded it is more beneficial for customers and the overall long-term public safety to replace the pipeline instead of continuing to inspect, repair, remediate it going forward.<sup>7</sup>

In sur-surrebuttal testimony, Mr. Wolven addressed information provided by Ms. Hummell regarding the safety of the proposed pipeline in the planned route. He reiterated that Consumers Energy adheres to federal and state requirements for the safe operation of its pipelines. He explained that the potential impact radius (or PIR) for a pipeline does not mean that a pipeline failure would affect people or property within that radius. He testified that a rupture is also a rare event.

Mr. Wolven testified that Moon Lake Estates is within the potential impact radius of the current pipeline, although he acknowledged potential impact radius for the proposed pipeline is greater than for the existing line.<sup>8</sup> He testified that other factors should be considered, including the condition of the existing pipeline as described in his direct testimony.

Mr. Wolven also addressed the significance of a pipeline located within a high consequence area (HCA), explaining that additional integrity management requirements apply to such pipelines.<sup>9</sup>

In cross-examination by counsel for the Hummells, Mr. Wolven agreed that his main focus was to assess the integrity of the existing line, and support replacement of

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<sup>7</sup> See Tr 110.

<sup>8</sup> See Tr 114.

<sup>9</sup> See Tr 114-115.

the line as reasonable and advisable.<sup>10</sup> He testified that he conducted a physical inspection of the proposed route near the mobile home park only within the last two weeks. He testified that he did not play a role in recommending the proposed route of the new pipeline.

### **Jon M. Hagloch**

Mr. Hagloch is a Senior Engineer III in the transmission pipeline engineering department within the transmission enhancement for deliverability and integrity team at Consumers Energy.<sup>11</sup> Mr. Hagloch described the proposed route, engineering and construction specifications, and estimated cost of constructing the replacement pipeline. His Exhibit A-3 shows the general route of the proposed line, indicating that changes in location may be necessary on actual construction. He further described the approximately 56-mile route, through Clinton, Shiawassee, Ingham, Livingston, and Washtenaw counties. He testified that the line would be constructed primarily on rural farmland and wooded land, and routed around areas where the current line runs through more densely populated areas. He indicated that the line would also run through Michigan Department of Natural Resources land, subdivisions, mobile home parks and other residential properties.<sup>12</sup>

Asked whether right-of-way agreements have been secured for the construction, he testified that permanent easement rights 75 to 135 feet in width will be required. He provided sample easements in Exhibit A-6, also noting that certain temporary easements would be required for construction. He testified:

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<sup>10</sup> See Tr 116-117.

<sup>11</sup> Mr. Hagloch's qualifications are set forth at Tr 124-125; his testimony is transcribed at Tr 120-211. He presented Exhibits A-3 through A-6 in his direct testimony and Exhibits A-13 to A-16 in his rebuttal.

<sup>12</sup> See Tr 126.



Certain additional temporary workspace easements will be required during construction. In locations along the route where Consumers Energy does not possess sufficient rights, Consumers Energy will seek to secure the necessary rights from landowners through negotiations or by eminent domain proceedings if necessary. Negotiations with landowners to secure the necessary rights are ongoing, and all necessary rights will be secured prior to the construction start date.<sup>13</sup>

Explaining the route chosen around the town of Chelsea, Mr. Hagloch also testified that the company considered alternate routes, but considers the route selected around Chelsea to provide optimum safety at minimize cost, taking place primarily in existing rights of way.<sup>14</sup>

Mr. Hagloch also described the effort undertaken in selecting a pipeline route.<sup>15</sup> He testified that Consumers Energy concluded alternate or different routes were “not viable” due to “factors such as the: (i) connections to existing City Gates and other pipelines; (ii) ability to feasibly serve customers; (iii) increased overall footprint of the project . . .; and (iv) additional easements necessary with alternative routes.”<sup>16</sup> He stated that these factors would add to the overall cost, schedule, and complexity of the project. He also described the type of permits that will be required for the proposed route, including highway and drain crossings as well as wetland and NPDES permits.

Mr. Hagloch testified that the pipeline will be constructed in accordance with the Michigan Gas Safety Standards, with construction planned for 2023 to 2024. He provided additional details on the construction materials and methods in Exhibit A-4. He

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<sup>13</sup> See Tr 127.

<sup>14</sup> See Tr 127.

<sup>15</sup> See Tr 127-128.

<sup>16</sup> See Tr 128.

also presented a cost estimate in Exhibit A-5, explaining how he developed the \$550 million cost estimate, including the cost categories used and the contingency estimate.<sup>17</sup>

In his rebuttal testimony, Mr. Hagloch addressed testimony provided by Staff, Ms. Hummell, and ABATE.<sup>18</sup> He presented Exhibits A-13 through A-16. In response to Mr. Spence's testimony, concluding that the proposed route is reasonable if the company can work with landowners to address and alleviate their concerns with the proposed route, he testified that Consumers Energy considered criteria identified by Mr. Spence in developing its route, including the overall impact on the environment and landowners, crop production, right-of-way clearing, and inconvenience and safety during construction.<sup>19</sup> He testified that the company also considers construction cost, and the proposed route "represents the most direct route and minimizes the length of pipe line to be installed with the least overall impact to landowners, public lands, wetlands, and the environment."<sup>20</sup>

Mr. Hagloch testified that if Consumers Energy were to follow the existing pipeline north of Chelsea to Ovid, 28 additional homes would need to be purchased. He testified that Consumers Energy did make route adjustments for Chelsea and Sleepy Hollow State Park, and minor adjustments for the Waterloo Recreation Area, and that it was rerouted onto Mr. Wieschowski's property to avoid the demolition of 3 houses. He cited Exhibit A-13 to show where the proposed route parallels the existing pipeline.

Mr. Hagloch testified that Consumers Energy does intend to attempt to mitigate landowner concerns:

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<sup>17</sup> See Tr 129-131.

<sup>18</sup> See Tr 133-145.

<sup>19</sup> See Tr 134.

<sup>20</sup> See Tr 134.

The Company intends to meet with the land owners and work with them to establish a route which addresses their concerns. The company will communicate with these intervening landowners throughout project development, construction, and restoration to address concerns as they arise. The Company can provide Staff with progress reports regarding those meetings if requested. It is worth noting that adjustments to the route on the properties of these intervening landowners will likely result in additional project costs that were not included in the cost estimate at Exhibit A-5.<sup>21</sup>

Mr. Hagloch testified that it is not an option to construct the pipe in the current location of line 100A on Mr. Wieschowski's or the Hummells' property, because it is necessary to keep the existing line in-service during construction. He objected to Mr. Spence's recommendation that locational changes to the proposed route should be minor so as to not impact additional landowners whose easements have not been secured, characterizing it as too restrictive. He did agree that the company would work with landowners to mitigate disruptions to farming activities and to restore the property after construction, while objecting that a 10-month restoration may be inadequate and proposing a 12-month period.<sup>22</sup> Mr. Hagloch agreed with Mr. Spence's recommendations regarding construction materials and operations, except for the recommendation to perform an above-ground electrical survey of the pipeline within three months of the in-service date, testifying that the survey cannot be performed during winter frost conditions, and proposing a 6-month window.<sup>23</sup> He also testified the cost to perform this survey was not included in the cost estimate in Exhibit A-5, and would be approximately \$50, 000.<sup>24</sup>

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<sup>21</sup> See Tr 136.

<sup>22</sup> See Tr 138.

<sup>23</sup> See Tr 138-140.

<sup>24</sup> See Tr 140.

Addressing Ms. Hummel's testimony, Mr. Hagloch testified that the route across her property was chosen to provide the least overall impact to landowners and the environment, while considering the cost of construction. He disputed that the proposed route would adversely affect the septic system on her property. He presented Exhibit A-14 to depict the travel lane relative to the septic system.<sup>25</sup> He acknowledged the proposed pipeline would traverse the reserve septic field, but stated the company is evaluating shifting the route to the west and adjusting the I-69 bore workspace as shown on his Exhibit A-15. He also provided further details as to how this would be accomplished.<sup>26</sup> Additionally, he testified Consumers Energy is open to considering other options to mitigate their concerns.<sup>27</sup> He objected to the route proposed by Ms. Hummel in her testimony, however, contending it would adversely impact five properties south of the park as well as a home and outbuilding south of I-69, and would require the pipe line to cross I-69 at a significant angle, contrary to the preferences of the Michigan Department of Transportation. He presented as exhibit A-16 to show this.<sup>28</sup> He also objected to additional costs and risks associated with crossing over and back to the existing line while it is still in operation.

In addressing her safety concerns, he cited Mr. Wolven's rebuttal testimony, and further described safety considerations such as external load calculations and soil conditions, used in designing the proposed pipeline.<sup>29</sup>

Addressing Ms. LaConte's testimony for ABATE, Mr. Hagloch objected to a cap on the capital costs to complete the pipeline, noting that the reasonableness and

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<sup>25</sup> See Tr 140-141.

<sup>26</sup> See Tr 141.

<sup>27</sup> See Tr 142.

<sup>28</sup> See Tr 142.

<sup>29</sup> See Tr 143.

prudence of the construction costs will be evaluated in a subsequent rate case. He also explained that Consumers Energy is not seeking recovery of contingency costs in this proceeding.<sup>30</sup>

In response to cross-examination from Mr. Wieschowski, Mr. Hagloch testified regarding Consumers Energy's property ownership near the Stockbridge Gate and bordering the Wieschowski property on the north.<sup>31</sup> Mr. Hagloch testified that he believes the site is a wetland, and cited a "KMZ file" the company provided to Staff for its review in this case. He explained that area near the Stockbridge Gate valve is filled with gravel for equipment access, and that Consumers Energy is evaluating that area now to determine the nature of the wetland and whether it can be used.<sup>32</sup> He also answered additional questions about the current and proposed pipeline route in relation to Mr. Wieschowski's property.

Mr. Hagloch acknowledged that Consumers Energy is evaluating other options as a result of a February 5 meeting with landowners.<sup>33</sup> He agreed that one option the company would evaluate is staying to the west, also mentioning "Option 3" from the meeting.<sup>34</sup> Mr. Hagloch testified in this context that the route under discussion would require the company to cross the existing pipeline twice, which is expensive, and also explained that 90-degree angles are not possible to accommodate a smart pig.

Mr. Hagloch testified that he was in the area between Oliver Court and Orlando Shores about two weeks ago, where the current line is, acknowledging that the lots are

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<sup>30</sup> See Tr 143-145.

<sup>31</sup> See Tr 146-147.

<sup>32</sup> See Tr 150-152.

<sup>33</sup> See Tr 154.

<sup>34</sup> See Tr 154-155.

narrow, and testifying that by today's standards, those houses could not be built within the company's easement.<sup>35</sup>

He reiterated the company is willing to work with land owners, and would like to continue discussions with Mr. Wieschowski to determine a mutually agreed route.<sup>36</sup>

Answering questions from counsel for the Hummells, Mr. Hagloch testified further regarding his background and experience, and his role in decisions Consumers Energy made regarding the pipeline route.<sup>37</sup> He testified that he physically reviewed the route across the Hummell property two weeks earlier, and could not recall whether that was before or after his rebuttal testimony in this case.<sup>38</sup> He acknowledged he had not been on the property prior to filing his direct testimony, but testified that he drove through the Hummel property and reviewed their proposed route, and concluded there is not enough room there for a 36-inch pipe.<sup>39</sup>

Mr. Hagloch acknowledged he did not take measurements, including for the septic field. He testified that the option of shifting the pipeline to the west to avoid the reserve septic field assumes that field would be 55 feet.<sup>40</sup> Mr. Hagloch also answered questions regarding Exhibit A-3.<sup>41</sup> He agreed that Consumers Energy routed the proposed line around Chelsea for the safety of the residents.<sup>42</sup>

Sheet 42, page 44 of Exhibit A-3 shows the current line and proposed line across the Hummell property. Mr. Hagloch testified the Hummells' property has the next highest intensity of residences. Asked to explain the communication, discussion, or

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<sup>35</sup> See Tr 158.

<sup>36</sup> See Tr 159-160.

<sup>37</sup> See Tr 160-170.

<sup>38</sup> See Tr 171.

<sup>39</sup> See Tr 171-172.

<sup>40</sup> See Tr 175.

<sup>41</sup> See Tr 176-179.

<sup>42</sup> See Tr 177.

examination, the company's team engaged in prior to selecting the route reflected on Sheet 42, Mr. Hagloch testified:

“[A]ll I can say is we have alignment reviews, we’ve completed a 30-percent and 60-percent design reviews, and for this route, you know, we utilized the existing easements and selected the route that we felt had the least impact on other land owners. . . The issue here is you have landowners and you have lakes on both sides, there’s just no other way around. . . without costing substantial money to the project.”<sup>43</sup>

Mr. Hagloch testified he could not remember any discussion regarding the route relative to the mobile home park residents.<sup>44</sup> Again, Mr. Hagloch testified that the company is open to working with landowners to come up with a mutual agreement route. Regarding Sleepy Hollow State Park, Mr. Hagloch agreed the team decided to propose a new alignment for the pipeline to avoid the camp ground and beach area at Sleepy Hollow. In contrast, he testified, there is no other option for the mobile home park.

Mr. Hagloch answered questions about Ms. Hummell’s proposed route. He testified that he overlaid what she suggested on the KMZ file, and followed that route on his physical inspection.<sup>45</sup> He agreed that her proposed route joins back up with the existing alignment. He agreed that he would not expect cost differences on the I-69 crossing she showed.<sup>46</sup> Mr. Hagloch explained where along Ms. Hummell’s route other homes are located, but testified he did not consider whether a shifting of that proposal could still work without the need to take out the home on the north side of I-69.<sup>47</sup>

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<sup>43</sup> See Tr 179.

<sup>44</sup> See Tr 180.

<sup>45</sup> See Tr 183-184.

<sup>46</sup> See Tr 187-189.

<sup>47</sup> See Tr 189-191.

Mr. Hagloch explained that the potential impact radius is used to identify the worst areas, for planned integrity and pipeline inspections. He agreed the size of the pipe and the operating pressure are factors in determining the potential impact radius. He opined that no pipeline would be built “[i]f you follow that impact radius throughout the length of the pipe.”<sup>48</sup> Mr. Hagloch agreed that Ms. Hummell’s proposed route would keep the residences in the mobile home park outside the potential impact radius, although the park driveway would still be within that radius, as would Moon Lake Estates residences.<sup>49</sup> He also acknowledged that Consumers Energy had not depicted the potential impact radius in the drawings submitted in its filing in this case.<sup>50</sup> Mr. Hagloch agreed that the Moon Lake Estates residents would be impacted by whatever route the company chooses.<sup>51</sup>

Mr. Hagloch also objected to the route Ms. Hummell proposed because the company would be required to obtain new easements and demolish some homes.<sup>52</sup> He also agreed that the Hummells’ route would avoid construction over the septic field and reserve septic field, although he believes that Consumers Energy can avoid the septic field and reserve septic field by shifting its proposed route to the west, closer to the telecommunications building.<sup>53</sup>

The Hummells’ proposed route is shown in yellow on Exhibit A-16. Mr. Hagloch explained how he used key points from Ms. Hummell’s map to lay out the route. He

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<sup>48</sup> See Tr 193.

<sup>49</sup> See Tr 194-198.

<sup>50</sup> See Tr 195.

<sup>51</sup> See Tr 199, 203.

<sup>52</sup> See Tr 199.

<sup>53</sup> See Tr 201-202.



acknowledged there are slight differences, characterizing the two drawings she provided as creating some vagueness.<sup>54</sup>

In response to counsel for ABATE questions, Mr. Hagloch confirmed that his testimony states that eight additional homes would need to be acquired, five of which will need to be demolished, under the Hummells' alternative route. He testified that another house south of I-69 possibly would need to be demolished. Mr. Hagloch testified that the company has not quantified additional costs associated with these homes.<sup>55</sup>

### **Margaret F. O'Connor**

Ms. O'Connor is a Principal Environmental Analyst in the Environmental Services Department of Consumers Energy.<sup>56</sup> Ms. O'Connor testified regarding the environmental report that was prepared for this pipeline project, Exhibits A-7 and A-7a, testifying that Consumers Energy does not anticipate any significant adverse environmental impact from this project. She described the nature of the report and how it is prepared. She explained wetland crossings and related construction techniques, as well as surface water bodies and related construction techniques. Ms. O'Connor also discussed threatened and endangered species near the pipeline and actions taken to mitigate the impacts on the Indiana and Northern long-eared bat, as well as planned efforts to minimize the impact of the pipeline construction on soils.

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<sup>54</sup> See Tr 206-207.

<sup>55</sup> See Tr 211.

<sup>56</sup> Ms. O'Connor's qualifications are set forth at Tr 216-217; her testimony is transcribed at Tr 215-241. She presented Exhibits A-7, A-7a, and A-17 through A-20.

Ms. O'Connor also noted the major rerouting of the pipeline around Chelsea and Sleepy Hollow State Park, with reference to maps included in Exhibit A-7.<sup>57</sup>

In rebuttal to Mr. Spence's testimony for Staff, Ms. O'Connor testified regarding the Michigan State Historic Preservation Office (also referred to as SHPO) and the National Historic Preservation Act. She presented Exhibits A-17 through A-20. She testified that in 2015, Consumers Energy retained Merjent, Inc. to review historic resources. She disputed Staff's characterization of the quality of information contained on the websites Merjent reviewed.<sup>58</sup> She also testified that the possibility of an unknown historical site is not a significant concern in this case. She explained that an archaeological resource review and survey were not necessary because the corridor already exists where the pipeline was constructed in 1949; this corridor has been disturbed with little likelihood of new archaeological discoveries. She also testified the company has an Unanticipated Discoveries Plan to investigate and protect any cultural resources discovered during the construction process.

She disagreed that Consumers Energy should consult with SHPO to review documentation relating to the proposed pipeline route, characterizing it as unnecessary and not required by state or federal law. Ms. O'Connor further testified that the pipeline route around Chelsea goes through primarily agricultural land, which has thus been previously disturbed, and Sleepy Hollow State Park was also agricultural land until 1974.

Ms. O'Connor acknowledged that certain wetland areas were excluded from data the company provided to Staff, indicating the omission was inadvertent. She testified

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<sup>57</sup> See Tr 223.

<sup>58</sup> See Tr 232.

she personally reviewed the correct wetland data, and further described the review of wetlands for the Chelsea and Sleepy Hollow rerouting.<sup>59</sup>

**Jonathon J. Guscinski**

Mr. Guscinski is a Gas System and Operation Planning Engineer in the company's Gas Management Services department.<sup>60</sup> Mr. Guscinski provided an overview of the company's Pipeline and storage systems and operations, explaining why the diameter of the current line should be increased to 36 inches. He testified that the increased diameter of the portion of line 100A as proposed in this case will remove a bottleneck, increasing system capacity, and will provide resiliency and flexibility in dealing with system outage days. He discussed summer and winter system operations, and the benefits of the incremental summer and winter capacity, including for filling storage and meeting winter peak day requirements, addressing increased major pipeline outages in summer months, and providing resilience for dealing with planned and unplanned outages and capacity restrictions. He also testified that the pipeline project is complementary to and was considered in conjunction with the Saginaw Trail pipeline project. Mr. Guscinski testified that no alternatives exist that will provide all the benefits of this proposed project, discussing some of the alternative the company considered.

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<sup>59</sup> See Tr 238-241.

<sup>60</sup> Mr. Guscinski's qualifications are set forth at Tr 244-245; his testimony is transcribed at Tr 24-280. He presented two exhibits, Exhibits A-1 and A-2, in support of his testimony.

## **Andrew G. Volansky**

Mr. Volansky is senior rate analyst II in revenue requirement and analysis section of the company's rates and regulation department.<sup>61</sup> He presented the estimated revenue requirements associated with the project as detailed in his Exhibit A-8. He explained that the \$550 million estimate includes 16% contingency and in service dates of 2023 in 2024.

In his rebuttal testimony, Mr. Volansky addressed Mr. Spence's testimony that the company should not be allowed to recover the remaining undepreciated plant for the abandoned facilities. He agreed that the recovery of the remaining net book value of the existing pipeline should not be addressed in this case, but instead in a future gas rate case.<sup>62</sup>

## **B. Staff**

Staff presented the testimony and exhibits of one witness, Kevin Spence, and also presented Exhibit S-10 containing additional discovery responses from Consumers Energy.

## **Kevin P. Spence**

Mr. Spence is a public utilities engineer in the gas operations section of the commission's energy operations division.<sup>63</sup> He explained that Staff has conducted meetings with other state agencies to discuss the proposed Pipeline, including representatives from the Department of Environment, Great Lakes, and Energy, the Michigan Department of Transportation, the Michigan State Housing Development

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<sup>61</sup> Mr. Volansky's qualifications are set forth at Tr 283-284; his testimony is transcribed at Tr 282-289. He presented Exhibit A-8.

<sup>62</sup> See Tr 288-290.

<sup>63</sup> Mr. Spence's qualifications are set forth at Tr 293-297; his testimony is transcribed at Tr 292-327. Mr. Spence presented Exhibits S-0 through S-9.

Authority, the State Historic Preservation Office, and the Department of Natural Resources. After describing the land construction timeline for the pipeline, he described Staff's review of the proposed pipeline route.

Mr. Spence expressed a concern with Consumers Energy's request for flexibility to deviate from its proposed route "as may become necessary upon actual construction."<sup>64</sup> He recommended that the company limit such changes to "minor deviations from the proposed route" as filed in this case, explaining:

Staff considers a "minor deviation" to the proposed pipeline route to be any alteration in location which does not involve the impact of additional landowners. For example, Staff would consider a change in location of the proposed pipeline solely within easements already acquired as a minor deviation; alternatively, changing the location of the proposed pipeline across the road, where the company had not secured easements, would not be considered by Staff to be a minor deviation.<sup>65</sup>

Acknowledging the concerns expressed by the Hummells and Mr. Wischowski, he recommended that the company mitigate each landowner impact on a case-by-case basis and take additional measures to limit the impact to their property:

These additional measures may include, among others: working with the landowners to re-route the proposed pipeline within their property; removing the existing segments of pipeline within their property and locating the replacement pipeline within the preexisting and newly evacuated location; decreasing the spacing between the proposed line and the existing line which will be abandoned; constructing the pipeline with additional depth of cover; and directionally boring large sections to minimize the surface impact in these areas.<sup>66</sup>

He testified that if the company can work with the landowners to address and alleviate their concerns, Staff believes the modified route proposed is reasonable. He further recommended that the company work with land owners to mitigate disruptions to

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<sup>64</sup> See Tr 306.

<sup>65</sup> See Tr 307.

<sup>66</sup> See Tr 308.

farming activities during construction, citing the company's response to discovery in Exhibit S-5, and complete restoration efforts not later than 10 months from the completion of construction.<sup>67</sup>

Mr. Spence explained Staff's review of the need for the pipeline. He testified that Staff agrees that the increased pipeline diameter will eliminate a bottleneck in the filling of storage fields, that the pipeline is the most prudent option to enhance system integrity, and that the pipeline serves the public convenience and necessity.<sup>68</sup> He also reviewed the engineering specifications proposed for the pipeline, testifying that Staff does not have concerns with the specifications, but making certain recommendations primarily regarding inspections and surveys.<sup>69</sup>

Mr. Spence also recommend that that the company not be allowed to recover the undepreciated balance of the existing line when it is abandoned and no longer in service.<sup>70</sup> He testified that Consumers Energy was aware the pipeline was a supply bottleneck when the line ruptured in 2015, investing in plant that would remain in service for less than 10 years. He testified, however, that this is not the case in which a determination should be made; rather, the recovery of the remaining undepreciated plant balance should be determined in the company's rate case following construction of the pipeline.<sup>71</sup>

Addressing the potential impact of the proposed pipeline, Mr. Spence explained the concerns addressed at its interagency meeting. He testified that the State Historical Preservation Office (SHPO) had a concern with the review the company described to

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<sup>67</sup> See Tr 309.

<sup>68</sup> See Tr 310-313.

<sup>69</sup> See Tr 314, 316-317.

<sup>70</sup> See Tr 314-315.

<sup>71</sup> See Tr 316.

determine whether archaeological, historic, and cultural resources would be affected, recommending instead a review of the State Archaeological Site File at the agency. Mr. Spence testified that Staff asked Consumers Energy about SHPO's concern, citing its response in Exhibit S-8.<sup>72</sup> Mr. Spence provided his understanding that the company is not required to comply with section 106 of the National Historic Preservation Act, but recommended that Consumers Energy nonetheless consult with SHPO to review cultural, archaeological, and historic documentation to resolve any adverse impacts prior to construction.<sup>73</sup>

Mr. Spence also testified that based on a review of the wetlands data provided to Staff in discovery and those available from the Federal Wetland Inventory, Staff identified 8 additional wetland locations, providing Exhibit S-9 to show these wetlands.<sup>74</sup> He testified that Staff does not believe Consumers Energy has provided adequate environmental information to support an informed decision regarding the potential impacts, where the pipeline is not aligned with the current pipeline. He recommended that the company reassess the environmental impact of the proposed pipeline.<sup>75</sup> He summarized Staff's recommendations at Tr 324-327.

C. ABATE

ABATE presented the testimony of one witness, Billie LaConte, and also presented Exhibit AB-1 in lieu of cross-examination.

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<sup>72</sup> See Tr 318-319.

<sup>73</sup> See Tr 321.

<sup>74</sup> See Tr 322-323.

<sup>75</sup> See Tr 324.

## **Billie S. LaConte**

Ms. LaConte is an energy advisor and Associate Consultant with the firm J. Pollock, Inc.<sup>76</sup> She clarified that she is not objecting to the requested certificate of public convenience and necessity, but is addressing the proposed project cost.<sup>77</sup> She presented a chart summarizing the utility's projected costs at Tr 335, showing basic cost components. Her Table 2 at Tr 336 showed the provided rate impact for each customer class, testifying that the project could increase gas delivery rates by an average of 6.5%, with a range of 10% to 19.5%. In her view, it would be premature for the Commission to address approval of the capital costs in this case; she recommended that no cost recovery be granted until the utility shows the costs are reasonable and prudent in a future rate case.<sup>78</sup> She addressed the \$77 million in contingency costs included in the company's estimate, testifying that the company's experience should allow it to reduce the risk of cost overruns below this level. She recommended that the Commission approve a capital cost cap for the project of \$473 million, such that in the event costs exceed that level, the company would need to prove the reasonableness and prudence of the costs by a preponderance of the evidence.<sup>79</sup>

### **D. The Hummells**

Ms. Hummel testified on behalf of herself and her husband.

## **Ruth Hummell**

Along with her husband, Ms. Hummell owns and operates the Quiet Cove Park, a manufactured home community in Laingsburg, Michigan. She took the stand and

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<sup>76</sup> Ms. LaConte's qualifications are set forth at Tr 332 and in Appendices A and B to her testimony; her testimony is transcribed at Tr 329-346.

<sup>77</sup> See Tr 333.

<sup>78</sup> See Tr 337-338.

<sup>79</sup> See Tr 339-340.



adopted as her sworn testimony a document entitled “Testimony of Facts by Ruth Hummell,”<sup>80</sup> a document entitled “Rebuttal Statements to Consumers Energy,”<sup>81</sup> and a document entitled “Surrebuttal Statements.”<sup>82</sup> She also presented Exhibits HUM-1 through HUM-4.

In her initial statement of facts, Ms. Hummell states that Consumers Energy’s proposal will have a major impact on the Hummells’ business. She focused in part on the proximity of the proposed line to the Quite Cove sewer lines and the designated sewage replacement area. She stated that removing the ground cover from the sewer lines to accommodate construction would most likely cause freezing in the winter, and also expressed a concern that the sewer lines could not be accessed if repair work was needed. Regarding the designated replacement area, she explained that the community has limited property that can be used for another sewage system:

We wouldn’t be able to continue to sell manufactured homes because of no place to put them. It would make our existing lots obsolete because of their size. We couldn’t take out a site and make [a] bigger one and then add that site back on the property somewhere else. It would devalue our property terribly.<sup>83</sup>

Ms. Hummell also expressed a concern about the safety of the tenants in the community, given the size of the potential impact radius associated with the pipeline, as well as the potential for sewage contamination.

In her rebuttal statement, Ms. Hummell addressed discovery responses received from Consumers Energy. She again addressed the impact of the proposed pipeline on the Quiet Cove sewage system, stating: “There is absolutely no way Consumers can

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<sup>80</sup> See Tr 353-354.

<sup>81</sup> See Tr 355-361.

<sup>82</sup> See Tr 362-367.

<sup>83</sup> See Tr 354.

guarantee the proposed route 36-inch gas line location would not affect Quiet Cove's sewage system."<sup>84</sup> She concluded that the proposed location of the pipeline would "kill" the community sewage system, preventing repairs, interfering with safety fencing, and destroying the frost protection.

She also addressed the impact to the replacement area for the sewage system, citing a letter from the local health department and another from the consultant who designed the system, Exhibits HUM-1, pages 3 and 6, in stating that the proposed pipeline route would destroy this needed reserve.<sup>85</sup>

Ms. Hummell further addressed the potential impact radius of the pipeline relative to Quiet Cove and nearby Moon Lake Estates, which the Hummells do not own, expressing a concern for resident safety in the event of an incident, including a concern that the pipeline would interfere with an escape route and the ingress for emergency vehicles. She also expressed a concern that the route would interfere with Moon Lake Estates infrastructure, explaining that she is familiar with Moon Lake Estates because her father built it.

Ms. Hummell explained a proposed alternative that she had also presented to Mr. Hagloch, hoping he could "make it work with some tweaking."<sup>86</sup>

Ms. Hummell took pains to dispel potential preconceived notions regarding the Quiet Cove residences. After explaining the increased size and value of modern manufactured homes,<sup>87</sup> she explained Quiet Cove's expansion plans, indicating that the

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<sup>84</sup> See Tr 356.

<sup>85</sup> See Tr 357.

<sup>86</sup> See Tr 359.

<sup>87</sup> See Tr 358.

park has zoning approval for additional sites, has designed infrastructure for those sites, and has already put in one site:

Consumers Energy [t]aking this property from us for their site valve area is going to make it difficult if not impossible to continue with our business plans. Consumers Energy's proposed valve site plan ruins the 5 acres of vacant land we have left. We need this property to stay with the growth of the size of new manufactured homes and to continue our sewage system for our community.<sup>88</sup>

She requested that the Commission give serious consideration to the alternative route the Hummells propose.

In her surrebuttal, she responded to testimony Mr. Hagloch provided regarding the alternate route she proposed. She stated that, contrary to his testimony, the Hummells' proposed route did not run through the houses and outbuildings in sections 15 and 22 in Woodhull Township:

We suggested the Henry and Margaret Pratt Property. This is a large parcel with no houses on it. Using Part of this property would route the gas line away from the houses that Jon M. Hagloch said would have to be taken out.<sup>89</sup>

She further explained potential variations, and noting his objection to crossing the existing line, she stated: "I see you have done that on a few occasions in your proposed route in other areas."<sup>90</sup>

She also objected that Mr. Hagloch has not addressed her safety concerns given the potential impact radius, further discussing Moon Lake Estates impacts.<sup>91</sup> She testified that Quiet Cove and Moon Lake Estates communities would "clearly suffer a

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<sup>88</sup> See Tr 361.

<sup>89</sup> See Tr 364.

<sup>90</sup> See Tr 364.

<sup>91</sup> See Tr 365-366.

disproportionate hardship,” and that Consumers Energy “demonstrates impermissible bias against manufactured residential property owners.”<sup>92</sup>

E. Michael Wieschowski

Mr. Wieschowski testified on this own behalf.<sup>93</sup> He presented what he labeled as rebuttal testimony, written as responses to Consumers Energy’s answers to discovery, along with Exhibits MW-1 and MW-2.<sup>94</sup> In his testimony, he objected to the information he was provided in advance of the company’s filing. He objected to Consumers Energy’s reliance on its current easement to justify the new route:

The RIGHT OF WAY document does not say anything about turning the easement EAST across our property. Consumers [E]nergy has no rights on our property other than being able to access the current easement.<sup>95</sup>

He disputed the company’s claim that the route it selected represents the least overall impact to landowners and environment:

We have built and are living our American dream, in our dream home, on our dream property. Jon M. Hagloch has NEVER been to our property or to the other homes he says need to be destroyed. Nobody from Consumers Energy has measured any of the distance between the existing pipeline and the homes that supposedly need destruction. It appears Consumers Energy views the world and makes life changing decisions based on view from google maps.<sup>96</sup>

He also disputed that the existing pipeline must remain in service during construction, proposing that the construction could take as little as six weeks.<sup>97</sup>

Mr. Wieschowski described a meeting with the company on February 5, 2020, questioning whether Consumers Energy would be willing to use the horizontal

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<sup>92</sup> See Tr 366.

<sup>93</sup> Mr. Wieschowski’s testimony is transcribed at Tr 369-379; he also presented Exhibits MW-1 and MW-2.

<sup>94</sup> See Tr 371-377.

<sup>95</sup> See Tr 373.

<sup>96</sup> See Tr 374.

<sup>97</sup> See Tr 374.

directional drilling (HDD) method across his property in light of the company's rebuttal testimony. He also stated that he had proposed a reroute to Consumers Energy at that meeting and was waiting for a response.<sup>98</sup> He described the proposed route and requested it be adopted. He took issue with Consumers Energy's assertion in a discovery response reprinted at Tr 376-377 that additional homes would need to be demolished to construction the pipeline in the existing route, and with its estimate of the associated cost.<sup>99</sup>

### III.

#### **POSITIONS OF THE PARTIES**

In its initial brief, Consumers Energy argues that its proposed pipeline serves the public convenience and necessity and should be approved under Act 9, MCL 483.109. In a brief that largely reiterates the testimony of its witnesses, the company argues that the pipeline is necessary to improve system capacity and integrity; it argues the method and materials used construction are reasonable, the pipeline construction will be protective of the environment, and it will be constructed and operated in a safe manner. Consumers Energy also cites the September 11, 2019 State Energy Assessment the Commission issued in Case No. U-20464, arguing the pipeline is consistent with the direction provided in that report. While asserting that it will seek to resolve concerns raised by the intervening landowners, Consumers Energy objects to alternative route proposals made by Ms. Hummell and Mr. Wieschowski, as explained by Mr. Hagloch. It argues that its proposed route "provides the least overall impact to landowners and the

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<sup>98</sup> See Tr 375.

<sup>99</sup> See Tr 376-377.

environment, considering the cost of construction, and should be approved.”<sup>100</sup>

Consumers Energy explains its objections to Ms. LaConte’s proposed cap by summarizing Mr. Hagloch’s testimony,<sup>101</sup> and explains its objections to several of Staff recommendations by summarizing Mr. Hagloch’s, Ms. O’Connor’s, and Mr. Volansky’s testimony.<sup>102</sup>

After providing a summary of the record in this case, Staff agrees that Consumers Energy has established a reasonable route, if the company adopts Staff’s further recommendations that route deviations be limited to what Mr. Spence identified as “minor deviations” within acquired easements, and that Consumers Energy work with the Hummells and Wieschowskis to reroute the proposed pipeline within their property as explained by Mr. Spence. Staff also agrees that Consumers Energy’s proposal is based on engineering standards that meet or exceed the Michigan Gas Safety standards, noting that the company agreed to certain recommendations Mr. Spence made, and further agreeing with Consumers Energy that the electric survey of the competed pipeline should be completed within 6 months of the date the pipeline is placed in service. Staff also agrees that a determination regarding recovery of undepreciated plant balances for the existing pipeline should be made in a rate case, rather than this case. Finally, after reviewing the company’s Unanticipated Discoveries Plan and Ms. O’Connor’s rebuttal testimony, Staff agrees with Consumers Energy that it is not necessary for Consumers Energy to consult with or review additional archival

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<sup>100</sup> See Consumers Energy brief, pages 23, 35.

<sup>101</sup> See Consumers Energy brief, pages 29-30, citing Hagloch, Tr 143-145.

<sup>102</sup> See Consumers Energy brief, pages 21-22, citing Volansky, Tr 288-289; pages 22-24, citing Hagloch, Tr 125, 136-140; pages 27-29, citing O’Connor, Tr 232-240.

records regarding archaeological, historical, or cultural resources along the route, unless it discovers such resources during construction.

In their brief, the Hummells begin by recognizing that Consumers Energy bears the burden of proof in this case to show that its proposed pipeline and related facilities are safe and will serve the public convenience and necessity. The Hummells argue that Consumers Energy did not adequately consider the safety of the residents of Quiet Cove and Moon Lake Estates, contrasting the company's efforts to reroute the proposed pipeline around the Chelsea and Sleepy Hollow. They also argue that the company did not adequately consider the significant impairment to the Quiet Cove property, including the potential impairment of its sewage system and reserve sewage field, and the interference with area of expansion. The Hummells argue that the route they proposed is a reasonable, cost-effective, and safe alternative that would alleviate the impacts to Quiet Cove, and challenge Consumers Energy's dismissal of that route as based on an incomplete and inaccurate assessment of that route.

Mr. Wieschowski argues that the proposed route across his property will put his family in danger, cause mass destruction of the property, and significantly impair its value. He disagreed that the route was necessary to avoid other homes in the area, recommending an alternative route to the west of the current pipeline, and recommending HDD construction.

ABATE asks that the Commission clarify that cost recovery for the pipeline is not approved in this case, discussing the projected cost and rate impact. Objecting to what it characterizes as a "troublingly high contingency cost estimate," ABATE further asks the Commission to establish the cost cap recommended by Ms. LaConte, with the

proviso that the utility may recover all costs it can subsequently demonstrate were reasonably and prudently incurred. ABATE argues the Commission has repeatedly denied recovery of projected contingency costs, citing the Commission's December 11, 2015 in Case No. U-17767 and February 28, 2017 order in Case No. U-17990. It argues the company's experience with pipeline projects should improve its ability to estimate costs. ABATE contends this cost cap would provide an incentive for the utility to keep its costs down. ABATE also agrees that the company should not be guaranteed recovery of the undepreciated plant balance for the current line when it is taken out of service, but recovery should be addressed in a future case.

In its reply brief, ABATE rejects Consumers Energy's contention that its proposed cost cap that excludes contingency projections is outside the scope of the proceeding, and reiterates the arguments regarding contingency costs made in its initial briefs. While using the term cost cap, ABATE again makes clear that its proposal is that Consumers Energy may recover for expenditures above the cap if it shows in a future proceeding that those expenditures were reasonable and prudent.<sup>103</sup>

In its reply brief, Consumers Energy reprises the rebuttal testimony of its witnesses, Mr. Hagloch and Mr. Wolven. It argues that the Hummells "do not present any evidence or argument that support abandoning the substantial public benefits that will be realized as a result of the Mid-Michigan pipeline because of their desire to move the route off their property."<sup>104</sup>

In its reply brief, Consumers Energy responds to the Hummells' concern that the pipeline will kill Quiet Cove and their argument that Consumers Energy has not properly

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<sup>103</sup> See ABATE reply, pages 2-3.

<sup>104</sup> See Consumers Energy reply, page 5.



considered the cost associated with this destruction by arguing both that there is no evidence in the record that a taking of the Hummells' property will be necessary or that it would be more expensive than alternatives, and that "matters related to takings, condemnation, and just compensation are not within the scope of the proceedings before the Commission."<sup>105</sup> It argues that its proposed route "reasonably considers the overall impact to landowners," while the Hummells' route "shifts any impact of the pipeline away from them and onto other landowners without any analysis as to the significance of the impact to these landowners or the environment."<sup>106</sup> Consumers Energy also argues that Mr. Wieschowski's objection and proposed alternatives are without merit.<sup>107</sup>

Responding to ABATE, Consumers Energy argues that the cases ABATE cites are rate cases, and that consideration of cost recovery in this case is premature and beyond the scope of the case.<sup>108</sup> Consumers Energy also notes points of agreement with Staff, and reiterates its points of objection based on Mr. Hagloch's rebuttal testimony.<sup>109</sup>

The Hummells emphasize their concern for the preservation of the reserve sewerage system for the park, citing Exhibits HUM-1 and HUM-2 and contending that the installation of a high pressure gas line is incompatible with the preservation of the reserve system. Specifically regarding the valve installation, the Hummells dispute Consumers Energy's assertion that the proposed valve location is justified by its accessibility to I-69--arguing that there is no freeway exit at Warner Road, and that the

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<sup>105</sup> See Consumers Energy reply, page 9.

<sup>106</sup> See Consumers Energy reply, page 13.

<sup>107</sup> See Consumers Energy reply, pages 14-20.

<sup>108</sup> See Consumers Energy reply, page 20.

<sup>109</sup> See Consumers Energy reply, pages 2-5.

nearest freeway exhibit is 6.5 miles to the east or 1.5 miles to the west—and dispute Consumers Energy’s claim that valve sites must be placed at least every 4 miles—contending that some other proposed valve sites along the route are spaced farther apart.<sup>110</sup> The Hummells renew their concern for safety, and argue that their proposed route is reasonable, practicable, and services the best interests and safety of the public and residents of both Quiet Cove and Moon Lake Estates.<sup>111</sup> The Hummells argue that their proposed route as not accurately or appropriately examined by Consumers Energy, characterizing it as misinterpreted or deliberately manipulated, and citing cross examination of Mr. Hagloch.<sup>112</sup> The Hummells dispute that the route that they propose impacts other residents.<sup>113</sup> They argue that the benefits of their proposed route include: moving the pipeline away from the high consequence areas and out of the middle of the Moon Lake Estates; relocating the valve site from the Quiet Cove high consequence area, away from the drain field and reserve replacement areas; reducing the scope of the potential impact radius; and potentially shortening the traveled route.<sup>114</sup>

#### IV.

#### **DISCUSSION**

Act 9 governs the issuance of certificates of public convenience and necessity.

MCL 483.109 states:

Any corporation, association or person within the terms of this act desiring to construct transmission mains for the transportation or conveying of natural gas from its source to the locality or localities where utilized, shall submit to the commission, accompanied by due application, a map or plat of such proposed line or lines which it desires to construct, showing the

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<sup>110</sup> See Hummell reply, pages 5-6.

<sup>111</sup> See Hummell reply, pages 7-9.

<sup>112</sup> See Hummell reply, pages 7-8.

<sup>113</sup> See Hummell reply, page 8.

<sup>114</sup> See Hummell reply, pages 8-9.

dimensions and character of such proposed pipe line or lines, its compression stations, control valves, and connections, and shall first receive the approval of the commission of such map, route and type of construction before proceeding with the actual construction of such transmission lines, and it shall be the duty of the commission to examine and inquire into the necessity and practicability of such transmission line or lines and to determine that such line or lines will when constructed and in operation serve the convenience and necessities of the public before approval of such map and proposed transmission line or lines: Provided, That persons, associations or corporations having already acquired the rights of common purchasers and common carriers at the time the provisions of this act became effective shall be required to file the map or plat provided for in this section only.

Determining whether Consumers Energy's proposal serves the public convenience and necessity is the principal issue in this case.

In the discussion that follows, the need for the replacement pipeline is discussed in section A; the reasonableness of the route given the objections of the landowners is discussed in section B. The remaining issues are discussed in sections C and D.

A. Need for new pipeline with expanded capacity

No party challenges Consumers Energy's analysis of the overall need to replace the current Line 100A from Ovid to Chelsea, or its plan to increase the diameter of the pipeline to 36 inches. Mr. Wolven testified extensively to the underlying analysis, as discussed above, and Mr. Spence testified that he also reviewed the company's analysis. Instead, the points of dispute among the parties relate to the reasonableness of the route in particular locations, the degree of flexibility that should be afforded the company to modify the route, and whether any constraints should be placed on future cost recovery for the pipeline. As discussed in section B below, the Hummells and Mr. Wieschowski argue that the utility did not give adequate consideration to alternatives to the proposed route where it crosses their property. Section C discusses issues

regarding the construction and operation of the pipeline, including the dispute between the utility and Staff over the degree of flexibility Consumers Energy should be given to deviate from an approved route. Section D considers cost-related issues raised by ABATE and Staff.

B. Reasonableness of route

In support of its application, Consumers Energy contends and its witnesses testified that the company's proposed route "represents the most direct route and minimizes the length of pipeline to be installed with the least overall impact to landowners, public lands, wetlands, and the environment."<sup>115</sup>

While Staff generally agreed with the reasonableness of the proposed route, Staff recommended that approval of the proposed route be conditioned on the company taking additional measures to address the landowners' concerns. Mr. Spence specifically addressed these concerns:

Staff recommends that the Company mitigate each Landowner impact on a case-by-case basis and to take additional measures in these locations to limit the effect to their property. These additional measures may include, among others: working with the Landowners to re-route the proposed pipeline within their property; removing the existing segments of pipeline within their property and locating the replacement pipeline within the preexisting and newly evacuated location; decreasing the spacing between the proposed line and the existing line which will be abandoned; constructing the pipeline with additional depth of cover; and directionally boring to minimize the surface impact in these areas.<sup>116</sup>

He testified:

In Staff's opinion, these measures can reduce the short-term impacts to the Landowners during construction and increase the long-term safety of the pipeline during operation and maintenance activities.<sup>117</sup>

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<sup>115</sup> See Consumers Energy brief, page 19, citing Hagloch, Tr 134; also see Consumers Energy brief, pages 23, 31, 35, 36; Consumers Energy reply, pages 1, 8, 13.

<sup>116</sup> See Tr 308.

<sup>117</sup> See Tr 308.

Mr. Spence conditioned Staff's agreement with the reasonableness of the route as follows:

If the Company can work with the Landowners to address and alleviate their current proposed pipeline route concerns, Staff is of the opinion that the modified proposed Mid-Michigan Pipeline route is reasonable considering landowner impact.<sup>118</sup>

Staff renews this recommendation in its brief.<sup>119</sup>

The intervenor landowners dispute Consumers Energy's assertion, contending that Consumers Energy's proposal has an unreasonable impact and that alternatives should be adopted. The Hummells' concerns regarding Quiet Cove and Moon Lake Estates are addressed in section 1 below, while Mr. Wieschowski's concerns regarding his property are addressed in section 2 below.

#### 1. Quiet Cove and Moon Lake Estates

Quiet Cove is a manufactured home community with 44 residents, which is owned by Mr. and Ms. Hummell. Quiet Cove is located between two lakes, Colby Lake and Moon Lake, and east of Colby Lake Road. Moon Lake Estates is a manufactured home community with 103 residents; it is west of Quiet Cove and Colby Lake Road, and is also located between Colby Lake and Moon Lake. The record establishes that Quiet Cove is a 17.5-acre parcel, zoned "R-T, Mobile Home Development," and that:

The intent of this district is to provide for mobile home parks and mobile home subdivisions in areas within the County where public utilities and public services are available and to insure that the residents of such areas will be provided with certain minimum standards of design, safety and convenience.<sup>120</sup>

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<sup>118</sup> See Tr 308.

<sup>119</sup> See Staff brief, pages 23-24.

<sup>120</sup> See Exhibit HUM-1, page 4, letter from Shiawassee County Community Development dated December 4, 2019.

Although the Hummells own Quiet Cove, Ms. Hummell explained her familiarity with Moon Lake Estates:

I am very familiar of [sic] most of what is underground in Moon Lake Park. My father Warren Melrose, built the Moon Lake Community and I . . . helped him do it. It was built in two sections 1960s and 1970s. Parts of it [were] converted from old campsites to permanent sites. I am very knowledgeable of how the plans and layout of the Moon Lake Park was built. The 1949 gas line was in place prior to the Moon Lake Park being built. It was easy to build the park over and around the existing gas line main back then. You knew where the gas line layed in the ground & there wasn't anything else in the ground at this time.<sup>121</sup>

Also as noted above, Ms. Hummell described the residences in the manufactured home parks:

The requirements of mobile homes have changed since the 1950's. They no longer are the trailers of pre 1976. They used to be 8 or 10 ft wides easy to move and tow down the roadway. Today there are beautiful huge and heavy manufactured homes. They are Not trailers anymore. They are Double wides, 16 ft wide singles, triplewide, modular homes. In fact, we have one triple wide manufactured home in our community with a garage. They are Nice well-built manufactured homes.<sup>122</sup>

Consumers Energy did not expressly address the route through these communities in its direct testimony. Its general assertions about the reasonable of its proposed route are noted above and below. Testimony regarding the pipeline route through these communities was provided by company witnesses Mr. Wolven and Mr. Hagloch, by Ms. Hummell, and by Staff witness Mr. Spence. Maps can be found in the record in this case in Exhibit A-3, page 44 (Sheet 42), Exhibits A-14, A-15, and A-16, and Exhibit HUM-3, pages 3-6. This section considers whether consumers Energy gave adequate consideration to the pipeline route impact on Quiet Cove and Moon Lake

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<sup>121</sup> See Tr 358.

<sup>122</sup> See Tr 358.

Estates, including a reasonable evaluation of alternatives to protect the safety and viability of the communities.

As noted above in sections II and III, the Hummells object to the proposed route based on safety concerns as well as concerns that the proposed route would impair the current and reserve septic systems necessary for Quiet Cove and destroy the area that has been developed for park expansion. In their brief, the Hummells argue that the proposed route over their property “totally fails to protect the public safety interest of the residents of Quiet Cove and Moon Lake Estates Mobile Home Parks and inappropriately, and without just cause, results in a disproportionate and wrongful impact on the residents.”<sup>123</sup> They rely on Ms. Hummell’s testimony as well as cross-examination of Mr. Hagloch and multiple exhibits.

Specifically regarding the Quiet Cove and Moon Lake Estates communities, Consumers Energy argues that its proposed route primarily follows the existing pipeline through the Hummells’ property,<sup>124</sup> and repeats its claim that its proposed route “minimizes impact to the surrounding properties,” “reasonably considers overall impact to landowners,”<sup>125</sup> and “results in the least overall impact to landowners.”<sup>126</sup> Consumers Energy relies primarily on the rebuttal testimony of Mr. Hagloch and Mr. Wolven, as well as multiple exhibits, including discovery responses it provided to the Hummells that repeat the same generalization. Consumers Energy also argues that by challenging the route across their property, the Hummells support “abandoning the substantial public

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<sup>123</sup> See Hummell brief, page 5.

<sup>124</sup> See Consumers Energy brief, page 31, also citing its discovery response in Exhibit HUM-4, page 5.

<sup>125</sup> See Consumers Energy brief, page 35.

<sup>126</sup> See Consumers Energy brief, page 36.

benefits that will be realized as a result of the Mid-Michigan Pipeline because of their desire to move the route off their property.”<sup>127</sup>

Notwithstanding the company’s assertions, however, the record does not establish that Consumers Energy considered either the full impact of its proposal on these communities or alternatives to avoid or mitigate that impact. After reviewing the record in detail, this PFD makes the following findings of fact, with additional explanation following each finding.

**a. Consumers Energy’s proposed route did not adequately consider alternatives to protect the safety of residents of the Quiet Cove and Moon Lake Estates communities.**

The Hummells are concerned that the expanded pipeline carries increased safety risks to the residents, noting that the federal potential impact radius (PIR) is approximately 770 feet. They note that Consumers Energy cited safety concerns in deciding to go around Chelsea and to reroute the line from a parallel path through Sleepy Hollow State Park.

Consumers Energy’s response is that the potential impact radius is not relevant to determine safety, but instead only governs how the pipeline is maintained and operated. It also responds that it considered safety only along with other factors in deciding to reroute the line at Chelsea and Sleepy Hollow.<sup>128</sup>

This PFD finds that the Hummells are reasonably concerned with the number of residences falling within the potential impact radius of the line. The potential impact radius is defined in 49 CFR 192.903 as follows:

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<sup>127</sup> See Consumers Energy reply brief, page 5.

<sup>128</sup> See Consumers Energy brief, pages 33-34; reply brief, pages 6-7; Wolven, Tr 114-115; Hagloch, Tr 142-143.



Potential impact radius (PIR) means *the radius of a circle within which the potential failure of a pipeline could have significant impact on people or property*. PIR is determined by the formula  $r = 0.69 \times (\text{square root of } (p \times d^2))$ , where 'r' is the radius of a circular area in feet surrounding the point of failure, 'p' is the maximum allowable operating pressure (MAOP) in the pipeline segment in pounds per square inch and 'd' is the nominal diameter of the pipeline in inches.

This PFD also accepts Consumers Energy's assurances that it intends to construct and operate the pipeline to meet or exceed all safety standards.<sup>129</sup> Nonetheless, given the number of residents within these communities, Consumers Energy should be required to show that it has carefully considered alternatives that would enhance the safety of these residents.<sup>130</sup>

Next to Chelsea, where Consumers Energy considered the safety of residents in deciding to modify the proposed route,<sup>131</sup> Quiet Cove and Moon Lake Estates constitute the only other significantly-residential, densely-populated area along the current and proposed route. Consumers Energy acknowledged that this constituted a Class 3 area,<sup>132</sup> and a "high consequence area" or HCA under the federal rules,<sup>133</sup> and that other than Chelsea, there are no other such populous areas along the pipeline route. While the remainder of the pipeline route is rural farmland and forestland, the only other cluster of residences along the proposed route is where it bisects Quiet Cove and Moon Lake Estates communities.

While Consumers Energy noted in support of its proposed route that the deviations it plans from the current line save the need to demolish 28 homes, there are almost 150 residents living within these two communities who could be substantially

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<sup>129</sup> See Hagloch, Tr 129, 142-143; Wolven, Tr 113.

<sup>130</sup> Mr. Hagloch acknowledged as much in cross-examination testimony at Tr 179.

<sup>131</sup> See, e.g., Hagloch, Tr 177.

<sup>132</sup> See 49 CFR 192.5 for the definition of a Class 3 area.

<sup>133</sup> See 49 CFR 192.903 for the definition of a high concentration area; see Wolven, Tr 114.

impacted by the proposed pipeline. In his direct testimony, in describing the proposed route, Mr. Hagloch testified: "Pipeline reroutes of the current Line 100A have been designed to reroute around areas where the current pipeline runs through more densely populated areas."<sup>134</sup> The record, however, does not support this assertion. Consumers Energy did not discuss the route through these communities in its direct testimony, merely noting that the pipeline construction "will take place on Michigan Department of Natural Resources ("DNR") land, subdivisions, mobile home parks, and other residential properties."<sup>135</sup> In a portion of his cross-examination, Mr. Hagloch was asked about the consideration given to this area in discussions preliminary to the company's filing:

Q: And currently the proposed route will traverse in proximity to the Quiet Cove Mobile Home Park owned by Mr. and Mrs. Hummell and through the Moon Lake Mobile Home Park owned by some other property owner, true?

A: Correct

Q: Now, as the design team, Mr. Hagloch, can you please explain what communication, what discussion, what examination, if any, the team undertook with regard to this proposed alignment route that's reflected on page 42 of 57 as it relates to the impact on these residences?

A: We have – all I can say is we have alignment reviews, we've completed a 30-percent and 60-percent design reviews, and for this route, you know, we utilized the existing easements and selected the route that we felt had the least impact on other landowners. There's – The issue here is you have landowners and you have lakes on both sides, there's just no other way around –

Q: O.K.

A: --without, you know, without costing substantial money to the project.

Q: O.K. Sir, my question was what discussions did the team and what considerations did the team have with regard to what's depicted here. You've mentioned the basis upon which the route was premised, and I

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<sup>134</sup> See Tr 126.

<sup>135</sup> See Hagloch, Tr 126.

understand that and that's in the record, but I really want to know, did the design team ever in your memory, because you're part of the team, ever discuss this route and these properties in the context of, whoa, we got all these residents, this is a Class 3 area, was there any discussion by the design team prior to the 60-percent and 30-percent route?

*A: I can't remember any discussion.*<sup>136</sup>

While Consumers Energy cites cost as a limiting factor, the record shows it gave no consideration to the impact of its proposed pipeline on the residents of either community. Since the company did not evaluate any alternative routes that would have mitigated the number of residences within the potential impact radius of the new line, it has failed to support its contention that there are no feasible alternatives. Consumers Energy asserted that the only option would be to route the pipeline around Moon Lake or Colby Lake, which it immediately dismisses, but it presented no actual evaluation of the alternative.<sup>137</sup> As discussed below, an option that may reduce the risk to Quiet Cove and some Moon Lake Estates residents is Ms. Hummell's proposed route, which Consumers Energy also did not evaluate.

The Hummells are also concerned about their ability to have heavy equipment and manufactured homes moved within the park safely, and with risks of fire and other perils given the presence of the pipeline, and with the impact of the pipeline construction and operation on community utility infrastructure. After explaining that the current line was in place before Moon Lake Estates was built, Ms. Hummell explained her concerns regarding the proposed route through Moon Lake Estates in light of existing infrastructure:

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<sup>136</sup> See Tr 179-180 (emphasis added).

<sup>137</sup> See Hagloch, Tr 179. Note that Consumers Energy's reroute at Sleepy Hollow added an additional 1.5 miles to the route. See O'Connor, Tr 223. Also see Exhibit A-7, Figure 2-2.

Today if you're going to drill horizontally, bore or dig a 36-inch proposed line across the middle of the Moon Lake Community . . . the potential and the odds of hitting something is real. Calling Miss dig is not going to help you with locating most of the mentioned things. Miss dig will mark Consumers gas lines, TDS phone lines, Consumers electric lines & cable wow lines. They don't mark privately owned water lines[,] sewer, sewer line manhole cleanouts, gravity flow lines, old lines, old rain field area, old sewage plant area, wells, most of the underground infrastructure is old and been there since the park was built. This would increase the prob[ability] of something failing & having to be dug up and repaired or replaced, since all the many lines cross the proposed gas main on 5 rows of mobile home units. It is scary & dangerous working over and around a 36-inch gas main. It would increase the risk.

While Consumers Energy asserted in discovery responses that pipeline construction at road crossings is "able to withstand typical loads at these crossing," that Consumers Energy "may also coordinate with third parties operating heavy construction equipment to ensure the work is completed in a manner that ensures the integrity of the pipeline," and that any third party would be required to call MISS DIG before any excavation, Consumers Energy did not directly address the Hummells' concern that the proposed pipeline route will interfere with safe maintenance of community utility services.<sup>138</sup>

The Hummells also argue that in the event of a pipeline rupture, safe egress from the park may be cut off: "The proposed alignment route and present valve site location . . . also significantly impacts public safety and the residents of the adjacent mobile home parks in that it would cut off, or at least significantly compromise the only escape road (Colby Lake Road) from the area."<sup>139</sup> Citing Consumers Energy's discovery response in Exhibit HUM-4, page 18, the Hummells argue: "Common sense dictates that a threat evaluation process would include a likely evacuation of the nearby residents and the

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<sup>138</sup> See Consumers Energy brief, pages 34-35; also see HUM-4, pages 13 and 16-17.

<sup>139</sup> See Hummell brief, page 7.

present plan as put forward by Petition would cut off the only viable escape route.”<sup>140</sup> Consumers Energy responds that the current pipeline occupies the same location across Colby Road, and that Colby Road runs both north and south to allow egress from Quiet Cove and Moon Lake Estates.<sup>141</sup> A review of Sheets 42 and 43 of Exhibit A-3 shows that Consumers Energy is correct that Colby Road runs north from these communities to connect other roads and south to Warner Road, so any resident impacted by a pipeline incident who was able to get to Colby Road would have an avenue of egress. A more complete evaluation of the opportunity for egress, however, given a pipeline incident, should be made in consideration of the potential impact radius of the pipeline, which has not been delineated on any maps filed in this case.<sup>142</sup>

This PFD also notes Mr. Wolven’s testimony that the new pipeline overall improves safety—because it is new, will be built to modern standards, at least for some period of time should have fewer anomalies than the current line.<sup>143</sup> As discussed above, there is no dispute on this record that replacement of the current line appears reasonable and in the public interest. The remaining issue is whether the chosen route appropriately protects the safety of the residents given other alternatives and the associated cost, which Consumers Energy has not evaluated on this record, and seemingly not at all. Consumers Energy raises the specter of increased costs, but as the discussion below also shows, has made no effort to quantify those costs or put them in context within the approximately half-a-billion-dollar cost estimate for this pipeline, including a contingency estimate over \$70 million.

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<sup>140</sup> See Hummell brief, page 8.

<sup>141</sup> See Consumers Energy reply, pages 8-9.

<sup>142</sup> See Hagloch, Tr 195.

<sup>143</sup> See Tr 114-115; also see Hagloch, Tr 142-143.

**b. The proposed route threatens to impair the active septic system at Quiet Cove, both from the proximity of the pipeline and the ensuing limitation on the ability of Quiet Cove to work on the system for maintenance and repairs.**

The Hummells presented two significant documents addressing the septic system in Exhibit HUM-1, pages 3 and 5. The letter from Shiawassee County Health Department agrees that the proposed pipeline route does not traverse the existing septic system, but states: “[I]t is the opinion of this office that no work should be done in this area and that the exact location of the septic lines be identified so the system is not disturbed in anyway. It is also strongly recommended that no equipment associated with the installation of a pipeline be placed on the septic system.” After addressing the reserve septic area, discussed below, the County Health Department states: “It is the opinion of this office that the proposed natural gas transmission line should be rerouted away from the existing septic system and the reserve septic area.” The engineer who designed the current wastewater treatment and septic system for Quiet Cove also expressed a significant concern about the potential damage to the current septic field from construction equipment, and further advised the Hummells regarding the proposed route: “The map shows a proposed easement/property acquisition right up to the edge of the existing soil dispersal system. Most codes require setbacks from property lines, and this would immediately create a non-conforming system after the fact.”

Consumers Energy disputes the Hummells’ concern regarding the current septic system, contending the utility will protect the system as shown in Exhibit HUM-4, page 8, and Exhibit A-14. In his rebuttal testimony, Mr. Hagloch presented Exhibit A-14 to

show the potential for Consumers Energy to fence off the southwest corner of the current septic field where the proposed pipeline easement crosses. He testified:

As with the entire proposed route, the proposed route across the Hummells' property was selected to provide the least overall impact to landowners and the environment, considering the cost of construction. The proposed pipeline route on the Hummells' property would not adversely affect the existing septic system. During construction, the travel lane would be outside of the septic field. Please see attached Exhibit A-14 (JMH-6), which shows the travel lane avoiding the southwest corner of the existing septic system.<sup>144</sup>

At least in conjunction with the company's potential alternative route, discussed below, Mr. Hagloch testified that it would have a drain field consultant monitoring the drain field area before, during, and after construction "to mitigate any potential harm."<sup>145</sup> He reiterated that the company is "open to working with the Hummells and considering other options to mitigate the Hummells' concerns and the impact of the proposed pipeline on their property."<sup>146</sup>

Mr. Hagloch did not fully address the Hummells' concerns; he did not address the setback requirement and he did not address the extent to which any activities associated with the pipeline could be accomplished without intruding on the current septic system.

Ms. Hummell continued to express dissatisfaction with this response. She stated:

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<sup>144</sup> See Tr 140-141. This PFD rejects any suggestion in Mr. Hagloch's testimony that the company intentionally planned to avoid the septic system as not credible, given that Mr. Hagloch could not remember any discussion of these communities among the team designing the proposed route, the company's direct testimony does not mention it, neither Mr. Hagloch nor Mr. Wolven visited the property prior to filing their testimony in this matter, and as discussed below, the proposed route ignores the reserve drain field, which is clearly discernible from the sanitary sewer specifications as shown in Exhibit HUM-2, page 3.

<sup>145</sup> See Tr 141.

<sup>146</sup> See Tr 142.

There is absolutely no way Consumers can guarantee the proposed route 36-inch gas line location would not affect Quiet Cove's sewage system . . . The Proposed line runs so close to the SW corner that it practically touches one [of] the drain field line testing ports. If Consumers were allowed to put their proposed 36-inch line in this location it would kill our sewage system. It would make it very hard for us to maintain, repair, or test the system. We would not be able to keep it operable for our residents. We would have no work area to work on it on the South side: We can't just run over the existing drain field. It would crush it and destroy it.<sup>147</sup>

While it is clear Consumers Energy does not intend to impair the existing septic system, putting aside the potential alternate route it is considering as discussed below, it has not made an adequate evaluation or identified adequate protections to ensure the existing system will be fully protected during both construction and operation of the pipeline. Both the County and the engineer recommended that the pipeline be rerouted to avoid both the current and reserve sewer areas. Waiting until the route is approved before retaining a drain consultant to protect the field does not seem adequately precautionary. Consumers Energy has also not addressed the setback issue of concern to the Hummells.

In its initial brief, Consumers Energy expresses skepticism regarding a setback requirement for the septic system, but asserts that it will “comply with all zoning requirements.” It does not explain whether it would or could reduce the size of its easement south of the current septic field to provide a setback or to facilitate repairs to the current system. In its reply brief, Consumers Energy argues that it has shown that the pipeline will not adversely impact the septic system.<sup>148</sup> This PFD finds that Consumers Energy has not made this showing.

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<sup>147</sup> See Tr 356.

<sup>148</sup> See Consumers Energy reply, pages 9-12.



**c. The proposed route would traverse and to all practical extent ruin the reserve septic area set aside for Quiet Cove.**

The record shows the proposed route clearly traverses the reserve septic area for Quiet Cove. The firm that designed Quiet Cove's wastewater treatment and dispersal system stated in a letter to the Hummells that "if and when a malfunction of the [current] septic system occurs requiring expansion of the soil absorption component (the drainfield), the area directly south of the existing field may needed as a replacement area to expand the current field."<sup>149</sup> The letter from the Shiawassee Drain Commissioner states:

The area south of the existing septic system has been designed by the owners of the mobile home park as the reserve septic area. This area has been set [aside] to be used for the replacement of the [existing] septic system. The proposed route of the new transmission line will likely cross this designated reserve area. The proposed right of way adjacent to the transmission line will further limit the area needed to construct a septic system when the time arises.<sup>150</sup>

Ms. Hummell testified that the proposed line crosses the reserve septic field:

If our sewer system fails, it would basically shut us down. [We] are very limited to the property that we can use for another sewage system. You usually need undisturbed soil, non compacted soil, not low land, not an area that is reserved for right of way.<sup>151</sup>

Exhibit HUM-2, page 3, shows the reserve replacement area for the septic system south and west of the current system.

Mr. Hagloch testified: "[T]he currently proposed pipeline route travels through the reserve septic field location."<sup>152</sup> Consumers Energy admits the impairment of the reserve septic system in proposing a potential—not yet fully evaluated—route further to

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<sup>149</sup> See Exhibit HUM-1, page 5.

<sup>150</sup> See Exhibit HUM-1, page 3.

<sup>151</sup> See Tr 354

<sup>152</sup> See Tr 141.

the west and south of the proposed route through the reserve septic field, although it nonetheless asks the Commission to approve its proposed route as filed.

This PFD finds that Consumers Energy's proposed route traverses and would essentially ruin the reserve septic field required for the continued viability of the Quiet Cove community.

**d. The proposed route and valve site location would also traverse the community expansion area the Hummells have already prepared for new homes in the community.**

The Hummells also objected to the proposed route, including the proposed valve site, because it would also interfere with the expansion area for Quiet Cove. Ms. Hummell testified:

Our property is zoned for manufactured housing. This is our planned use. We have plans to use this property for additional sites to Quiet Cove Park. [We] have an approval from zoning to do this addition of sites on our property. [We] also already have designed [and run] our present drinking water and sewer system lines to extend to these additional sites. [We] have three 2-inch water mains lines . . . from our well houses crossing our existing community. These water lines are ready to connect to the new sites.

We already put in [o]ne site. It is ready for a new home sale except for the cement pad. The water and sewer risers are there. The power and gas are there on this site.

Consumers Energy [t]aking this property from us for their site valve area is going to make it difficult if not impossible to continue with our business and business plans. Consumers Energy's propose valve site plan ruins the 5 acres of vacant land we have left. We need this property to stay with the growth of the size of new manufactured and to continue our sewage system for our community.<sup>153</sup>

Consumers Energy does not dispute the validity of these assertions, and does not address them or compare the impact on Quiet Cove and the Hummells to the impact of alternative proposals. Consumers Energy does claim it is required to space valves

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<sup>153</sup> See Tr 360.

along the pipeline at 4 mile intervals, but as discussed below as finding f, it has not established that this is true.

Consumers Energy also claims that “takings” issues are outside the scope of this case. Citing the Commission’s May 24, 2012 order in Case No. U-16838, page 5, Consumers Energy contends that “the Commission has recognized that those issues are not within the scope of proceedings before the Commission.”<sup>154</sup> In this regard, Consumers Energy is taking the Commission’s order out of context. In that case, what was at issue related to the constitutionality and lawfulness of the utility relying on the eminent domain provisions to acquire property rights. Here, the Hummells are merely identifying issues related to the cost of the pipeline project and the relative impact of the proposed route on their property and the residents of Quiet Cove; it is Consumers Energy that has asserted repeatedly throughout this proceeding that its proposed route “has the least overall impact to landowners . . . considering the cost of construction,”<sup>155</sup> and “reasonably considers the overall impact to landowners.”<sup>156</sup> Unquestionably, an interference with planned park expansion is an impact to the landowners, and apparently an impact to landowners and to the pipeline cost that Consumers Energy has declined to consider.

**e. Consumers Energy has identified an alternative route, shown in Exhibit A-15, intended to avoid damage to the septic system and reserve septic field, but it has not completed an investigation to determine whether this route is feasible.**

In response to Ms. Hummell’s and Mr. Spence’s testimony, Consumers Energy argues that it “may” be able to construct the pipeline on an alternate path through Quiet

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<sup>154</sup> See Consumers Energy’s brief, page 36, reply, page 9.

<sup>155</sup> See Consumers Energy brief, page 23.

<sup>156</sup> See Consumers Energy brief, page 35.

Cove that will avoid the sewerage system and the reserve sewerage system. Mr. Hagloch presented this proposal in his rebuttal, as shown in Exhibit A-15, after acknowledging that the proposed pipeline route travels through the reserve septic field:

To address this concern, the Company is evaluating shifting the route to the west and adjusting the I-69 bore workspace to accommodate the reserve septic field as shown on Exhibit A-15 (JMH-7). This option will require further evaluation and communication with the Hummells because the pipeline easement width may overlap the southwest corner of the reserve septic area.<sup>157</sup>

Exhibit A-15 is labeled "Hummell property proposed route under evaluation." In its briefs, Consumers Energy likewise does not commit to this route.<sup>158</sup> Because Consumers Energy has not adequately evaluated this alternative, the company has not adequately considered less harmful alternatives than its proposed route, and it is premature to approve the route it has proposed.

**f. Consumers Energy has not established the necessity of placing a valve site in the vicinity of Quiet Cove.**

It is important to note the controversy over the placement of the valve site and the staging of construction equipment for the highway crossing. Consumers Energy asserts that it needs a 75 x 75 fenced area for a pipeline valve. It is shown on Exhibit A-3, Sheets 2 and 42, as the Warner Valve Site, and is also depicted on page 4 of Exhibit HUM-3, and page 8 of Exhibit HUM-4. While the company has a potential revised route for the pipeline in Exhibit A-15, it does not show an alternate location for the 75' x 75' fenced valve site area. The Hummells challenge the placement of the

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<sup>157</sup> See Tr 141.

<sup>158</sup> See Consumers Energy brief, page 32 ("To address this concern, the Company *may be able to* shift the pipeline route to the west and adjust the I-69 bore workspace to accommodate the reserve septic field.")(emphasis added);also see Consumers Energy reply, page 10.

valve site, arguing it threatens their reserve septic field and the expansion area for the park as discussed above.

Consumers Energy argues that its proposed Warner Road valve site is reasonable. Indeed, in its brief, citing discovery responses the company provided to the Hummells, Consumers Energy argues that the valve site location it proposes is “optimal”:

The Warner Road Valve Site is currently designed as a fenced area that is 75 x 75 feet. Exhibit HUM-4, page 8. Consumers Energy selected the location of the Warner Road Valve Site on the Hummells’ property as the optimal location between Laingsburg and Sherwood to provide Class 3 spacing for the entire pipeline. HUM-4, page 6. Each point on the pipeline must be within four miles of a valve for a Class 3 location. Id. If the Warner Road location is not selected, a portion of the pipe would have increased valve site spacing and would only qualify as Class 2. Consumers Energy also selected the location because of the accessibility off I-69 and placement is behind a communication building in an area cleared of trees. Id. Thus, the selected placement of the Warner Road Valve Site is reasonable and will support the safe operation of the MidMichigan Pipeline.<sup>159</sup>

In arguing that it is required to have a valve every 4 miles in Class 3 locations, Consumers Energy cites its own discovery response to the Hummells, Exhibit HUM-4, page 6. In the referenced discovery response, Mr. Hagloch cites “MGSS 192.179” for the requirement that “Each point on the pipeline in a Class 3 location must be within 4 miles (6.4 kilometers) of a valve.” Mr. Hagloch appears to be referring to 49 CFR 192.179, adopted by reference in the Michigan Gas Safety Standards, R 460.20606. This regulation, however, on its face, contains the same basic wording as Mr. Hagloch’s discovery response, and thus appears to require only 8-mile valve spacing. That is, within an 8-mile stretch of pipeline, every point on that pipeline is within 4 miles of an endpoint, as a matter of elementary geometry. 49 CFR 192.179(a) states:

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<sup>159</sup> See Consumers Energy brief, pages 36-37.

(a) Each transmission line, other than offshore segments, must have sectionalizing block valves spaced as follows, unless in a particular case the Administrator finds that alternative spacing would provide an equivalent level of safety:

(1) Each point on the pipeline in a Class 4 location must be within 2 ½ miles (4 kilometers) of a valve.

(2) Each point on the pipeline in a Class 3 location must be within 4 miles (6.4 kilometers) of a valve.

(3) Each point on the pipeline in a Class 2 location must be within 7 ½ miles (12 kilometers) of a valve.

(4) Each point on the pipeline in a Class 1 location must be within 10 miles (16 kilometers) of a valve.

Thus, it appears that the language Consumers Energy relies on, which it accurately quotes, does not support its claim. Additionally, as the Hummells argue, Consumers Energy has other valve spacings more than 4 miles apart, using the scale presented on pages 1 and 2 of Exhibit A-3.<sup>160</sup>

Consumers Energy also argues the accessibility of the spot off I-69, and behind a communications building on cleared land are advantages to the selected spot, but again, it has not justified the need for the valve site at that location in light of the interference with Quiet Cove operations. Note that the Hummells also dispute the convenience of the access from I-69.<sup>161</sup>

Thus, while Consumers Energy claims there is no evidence the placement of the valve site will result in the loss of Quiet Cove as a community, this PFD concludes Consumers Energy has not adequately evaluated the impact of the valve site on the reserve septic field, the potential impact on both the septic field and reserve field even with the company's alternate route due to the overlap of the pipeline easement or right-

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<sup>160</sup> See Hummell reply, pages 5-6.

<sup>161</sup> See Hummell reply, page 5.

of-way. Clearly the destruction or impairment of the reserve septic system threatens the viability of the entire community. Consumers Energy has not established that this is necessary to obtain the benefits of the replacement pipeline.

**g. This alternate route in Exhibit A-15 also appears to pose a threat to the reserve septic field.**

In addition to the uncertainty whether Consumers Energy will consider the alternative route in Exhibit A-15 feasible, the company's proposal does not appear to adequately address the preservation of the reserve sewerage system. The Hummells continue to express concern regarding the reserve septic field.

Consumers Energy has not explained how the line can be constructed on the perimeter of the reserve area, with an easement clearly extending into the reserve area, in such a way as to permit the reserve septic system to be constructed when needed. Ms. Hummell testified construction activities cannot take place on the reserve area. In cross-examination, Mr. Hagloch acknowledged that he allowed only a 60-foot width for the reserve septic area, understanding that the septic area itself required at least 55 feet.<sup>162</sup> He also acknowledged in laying out his proposal that the easement could pose a problem, testifying: "This option will require further evaluation and communication with the Hummells because the pipeline easement may overlap the southwest corner of the reserve septic area."<sup>163</sup>

**h. Consumers Energy failed to adequately evaluate the alternate route proposed by the Hummells in Exhibit HUM-3, and called into question the company's ability to work in good faith with the Hummells to resolve their concerns regarding the impact of the proposed line and valve site across their property.**

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<sup>162</sup> See Tr 175-176.

<sup>163</sup> See Tr 141.

Mr. Hagloch presented his interpretation of the Hummells' proposed route in Exhibit A-16. Initially, he indicated he "overlaid" her route on the KMZ file, but subsequently acknowledged he did not superimpose a drawing of hers, but subsequently testified it was his "best guess;"<sup>164</sup> he also cited a lack of sufficient information to verify what she had in mind.<sup>165</sup> Using his translation of the Hummells' proposed route in A-16, he depicted a line through several homes, crossing I-69 an angle clearly not perpendicular to the roadway. He testified:

Ms. Hummell's proposed route would require two homes and outbuildings to be acquired and demolished north of the manufactured home park. In addition, Ms. Hummell's proposed route does not consider the impact to the five properties to the south of the manufactured home park, with two of these homes and an outbuilding most likely requiring demolition. Furthermore, to travel eastward back to the proposed route, the Company would be required to cross I-69 at a significant angle, when a perpendicular or close to perpendicular, crossing is preferred by the Michigan Department of Transportation, and demolish one home and outbuilding south of I-69 that would then be in the pipeline route. Since the company's proposed pipeline route is on the east side of the existing pipeline, there would be additional costs and risks to cross over and then back to the existing Line 100A pipeline that would still be in operation.<sup>166</sup>

In her rebuttal testimony, Ms. Hummell objected to Mr. Hagloch's interpretation of her proposed route, testifying that her proposed route did not run through all of the property owners' houses and out buildings on section 15 and 22 in Woodhull Township as Mr. Hagloch claimed.<sup>167</sup> She testified that her route traversed the Henry and Margaret Pratt property that she described as a large parcel with no houses on it. She identified the east side of Melrose Avenue north of Moon Lake Estates as her recommendation, asserting that the house at the corner of Melrose and Moon Lake

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<sup>164</sup> See Tr 204.

<sup>165</sup> See Tr 207-208.

<sup>166</sup> See Tr 142.

<sup>167</sup> See Tr 364.



Drive is already in the utility's right of way. She also noted that elsewhere along its proposed route, Consumers Energy has the new pipeline crossing over the current line.<sup>168</sup> Similarly, in their brief, the Hummells argue:

It is respectfully asserted that the alternate route suggested by Mrs. Hummell was not truly accurately or appropriately evaluated or assessed by Consumers. Rather, the alternative route by Mrs. Hummell was not properly or accurately vetted by Mr. Hagloch. It was shown that Mr. Hagloch did not truly or accurately use the alignment corridor suggested by Mrs. Hummell, but rather used a different starting point and angle(s) thereby manipulating her proposed alignment and wrongfully concluding that the route suggested by Mrs. Hummell would impact other residences, which is simply not accurate, if the alignment truly offered by Mrs. Hummell had been properly examined and analyzed by the Petitioner.<sup>169</sup>

There are key differences between the route Ms. Hummell presented in two drawings in Exhibit HUM-3, pages 4 and 6, and the route that Mr. Hagloch presented in Exhibit A-16. Notably, as can be seen from a comparison of Exhibit HUM-3, page 4 and Exhibit A-16, Mr. Hagloch's depiction of the Hummell route in his Exhibit A-16 crosses I-69 significantly to the east of Ms. Hummell's route as shown in Exhibit HUM-3, and at a more significant angle. Thus, Exhibit HUM-3, page 4, shows her route bisecting the near-triangle-shape to the west of Colby Lake Road and south of I-69, while Exhibit A-16 shows his proposed route significantly to the east, crossing Colby Lake Road where it crosses I-69 and crossing Beard Road significantly to the east of Colby Lake Road, bisecting the trapezoidal shape to the east of Colby Lake Road and south of I-69. To the north of that I-69 crossing, where Ms. Hummell's route passes to the west of Moon Lake Estates, Mr. Hagloch shows the pipeline generally south-southeast from Moon Lake Drive, while Ms. Hummell's route shows the pipeline generally south-southwest from Moon Lake Drive before heading southeast to cross I-69. Page 4 of Exhibit HUM-

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<sup>168</sup> See Tr 364.

<sup>169</sup> See Hummell brief, page 9.

3 also shows her route to the north of Moon Lake Estates, beginning slightly east of Melrose Avenue before moving to the west as described above. This PFD finds Ms. Hummell's testimony persuasive that Mr. Hagloch did not fairly evaluate the route she suggested.

While Consumers Energy asserts that it is willing to work with landowners to mitigate the impact to their property, the record shows that the company did not make an effort to comprehensively or carefully consider whether a route to the west of Quiet Cove and predominantly to the west of Moon Lake would be feasible.

## 2. The Wieschowski property

This section considers whether Consumers Energy gave adequate consideration to the impact of the pipeline route on Mr. Wieschowski's property. There is little record evidence regarding Consumers Energy's proposed deviation from a route running along the east line of Mr. Wieschowski's property to the route bisecting his property as shown in Exhibit A-3, Sheet 12 (page 14) and Exhibit A-13. Mr. Wieschowski objects to the proposed route.

Mr. Hagloch did not specifically address this parcel in his direct testimony. In his rebuttal testimony, he testified that Consumers Energy moved the proposed line to the east of current line as shown in order to avoid the need to demolish three homes.<sup>170</sup> He subsequently acknowledged that the homes had been built on the utility's easement after the current pipeline was installed.<sup>171</sup> While one of Mr. Wieschowski's proposals was that Consumers Energy install the new line in the same location as the current line, a proposal generally consistent with Mr. Spence's recommendations as quoted above,

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<sup>170</sup> See Tr 135.

<sup>171</sup> See Tr 158.

Consumers Energy objects because it does not want to shut down the current line to accommodate construction. He also proposed that Consumers Energy route the pipeline to the west of the existing line. Consumers Energy seems to object because it would require crossing the existing line at the Stockbridge Valve Site, although the company's proposed route in other locations also crosses over the existing line.

Under cross-examination, Mr. Hagloch testified, however, that Consumers Energy was evaluating three alternative options relating to this portion of the pipeline.<sup>172</sup> In its initial brief, Consumers Energy seems to allude to this testimony in stating:

As previously discussed, the Company will continue to work with Mr. Wieschowski to find common ground for pipeline location on his property. *If negotiations are not fruitful, however,* the Company requests that the Commission determine that the Company's proposed pipeline route across Mr. Wieschowski's property is reasonable and approved.<sup>173</sup>

In its reply brief, however, with no additional record evidence presented, Consumers Energy argues:

There has been no evidence presented by Mr. Wieschowski from any engineer, or expert who could support the environmental impacts of his proposals, or any other professional supporting that the Company's route is not reasonable or that his suggested route is. Because of this lack of evidence, Mr. Wieschowski's objection to the Company's proposed reroute on his property should be rejected and the Company's proposal should be deemed reasonable.<sup>174</sup>

While responding to Mr. Spence's testimony that Consumers Energy should work with landowners to identify alternatives to mitigate the impact to their properties, Mr. Hagloch had testified:

The Company intends to meet with the landowners and work with them to establish a route which addresses their concerns. The Company will communicate with these intervening landowners throughout project

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<sup>172</sup> See Tr 159-160; also see Tr 154 specifically regarding a route to the west.

<sup>173</sup> See Consumers Energy brief, page 38.

<sup>174</sup> See Consumers Energy reply, page 17.

development, construction, and restoration to address concerns as they arise. The Company can provide Staff with progress reports regarding these meetings if requested. It is worth noting that adjustments to the route on the properties of these intervening landowners will likely result in additional project costs that were not included in the cost estimate at Exhibit A-5 (JMH-3). For example, Staff suggests that the Company consider directionally boring large sections to minimize the surface impact. The cost for a route adjustment that requires directional boring begins at approximately \$1 million to \$1.5 million per bore.”<sup>175</sup>

Yet in its reply brief, Consumers Energy argues:

[A]lthough Mr. Wieschowski, on one hand, argues that there are no wetlands on this property . . . , he then seeks to have the Company conduct Horizontal Directional Drilling (“HDD”) to accommodate wetlands on this property. . . . However, Mr. Wieschowski presented no evidence regarding the feasibility, cost implications, or impacts on other landowners in using an HDD on his property, and does not allege that the HDD method would avoid the landowner impacts south of his property. The HDD method also involves substantial costs beginning at approximately \$1 million to \$1.5 million per bore. 3 TR 136. *Any suggestion that the Company be required to HDD on Mr. Wieschowski’s property must be denied.*”<sup>176</sup>

Consistent with the discussion in subsection 1 above, this PFD recommends that the Commission require Consumers Energy to prepare and file an evaluation of alternative routes for the section of the pipeline depicted on Sheet 12 of Exhibit A-3, currently running through Mr. Wieschowski’s property, with specific testimony explaining which route or routes have the least impact on landowners and the environment, which route Consumers Energy believes best serves the public convenience and necessity, and what the corresponding costs are of each route. The company should also provide a more detailed evaluation of the option of constructing a portion of the new line within

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<sup>175</sup> See Tr 136. As also described above, Mr. Hagloch goes on to explain why he does not believe the pipeline can be constructed in the same space as the existing line, or closer to the existing line.

<sup>176</sup> See Consumers Energy reply brief, pages 16-17. Note that the \$1 to \$1.5 million price tag for a route deviation does not seem obviously out of the question as Consumers Energy now contends, since it estimates the cost of each of the three homes that would otherwise be demolished at \$250,000, and the pipeline project as a whole is projected to cost \$550 million, with a contingency about of over \$70 million.

the footprint of the current line, given Mr. Spence's testimony and Staff's contention that this option should also be considered.

C. Pipeline construction and operation

Although for the reasons discussed above, this PFD recommends the Commission deny the application as premature, encouraging the company to refile an application after adequate exploration and consideration of alternatives to the proposed routes across the Hummell and Wieschowski properties, it is appropriate to address other outstanding issues. This section addresses Staff's additional recommendations, while section D addresses Staff and ABATE concerns with cost recovery associated with the new pipeline.

1. Points of agreement

After concluding that the specifications in Exhibit A-4 meet or exceed the Michigan Gas Safety Standards,<sup>177</sup> Mr. Spence recommended that Consumers Energy utilize PSL 2 pipe in the construction of the pipeline, obtain GPS coordinates of all girth weld locations, and conduct an inspection within one year of the in-service date of the pipeline. He further described the inspection as employing "a geometry tool capable of detecting dents or other anomalous conditions that may have arisen during construction," with dents to be remediated in accordance with the versions of 49 CFR Part 192 Subpart O and ASME B31.8S in effect when the pipeline is completed.<sup>178</sup>

Consumers Energy agreed to these criteria. In his rebuttal testimony, Mr. Hagloch testified that Consumers Energy plans to use PSL2 pipe, will ascertain GPS locations of all girth welds, and will agree to perform an in-line inspection with a

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<sup>177</sup> See Tr 313.

<sup>178</sup> See Tr 316.

geometry tool capable of detecting dents or other anomalous conditions within a year of the in-service date.<sup>179</sup> He also noted the \$125,000 estimated cost for this survey was not included in the cost estimate provided in this case.<sup>180</sup>

A review of the briefs shows the parties remain in agreement. This PFD therefore finds that these criteria should be adopted if the pipeline is approved.

Mr. Spence also recommended that within three months of the in-service date of the pipeline, Consumers Energy perform an above-ground electrical survey to attempt to identify any defects in the pipeline coating that could lead to corrosion, and remediate any anomalies detected within one year.<sup>181</sup> He further recommended that within six months of this electrical survey, the company install additional corrosion control test stations as necessary to comply with 49 CFR 192.469.

Mr. Hagloch testified that Consumers Energy agrees with this recommendation except as to the timing, asserting that the electrical survey should not be performed in winter frost conditions.<sup>182</sup> He testified that a six-month window would be adequate for the company to perform the survey in frost-free conditions.<sup>183</sup> He also noted the \$50,000 cost for this survey had not been included in the company's cost estimate.<sup>184</sup>

In its brief, Staff accepts the six-month window based on this testimony.<sup>185</sup> This PFD therefore finds the electrical survey should be performed as described by Mr. Spence, within six months of the in-service date of the pipeline, if it is approved.

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<sup>179</sup> See Tr 138-139.

<sup>180</sup> See Tr 139.

<sup>181</sup> See Tr 316.

<sup>182</sup> See Tr 140.

<sup>183</sup> See Tr 140.

<sup>184</sup> See Tr 140.

<sup>185</sup> See Staff brief, pages 25-26.

Staff also recommended that the company work with landowners to “mitigate disruptions to farming activities during construction and remediation of the pipeline,” with a good faith effort to complete restoration activities “as soon as reasonably possible but no later than ten months from the completion of pipeline construction and backfilling.”<sup>186</sup> Mr. Hagloch testified that the company would conduct these restoration activities, but “due to soil settlement, weather conditions, and grass and vegetation growth,” may not be able to complete them within the 10-month time period, proposing instead a limit of the end of the year following construction.<sup>187</sup> Staff did not object to the company’s modified timeline. This PFD concludes that the modification is reasonable.

Regarding the potential environmental impacts of the pipeline, Staff initially expressed a concern that the company had excluded wetlands from its environmental impact analysis because eight locations along the proposed route that are identified as wetlands in the National Wetlands Inventory database were not shown as wetlands in the geospatial wetland data Consumers Energy provided to Staff.<sup>188</sup> In her rebuttal, Ms. O’Connor addressed Staff’s concern, asserting that the omissions were inadvertent and that the wetland impacts associated with those locations had been considered.<sup>189</sup> In its brief, Staff accepts Ms. O’Connor’s rebuttal testimony and asserts that it is comfortable with the company’s review of the wetland impacts associated with the pipeline.<sup>190</sup>

Staff also raised a concern regarding the company’s consideration of the potential impact of the pipeline on cultural, historical, and archaeological resources. Mr. Spence explained Staff’s concern with the quality of the online data relied on by

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<sup>186</sup> See Spence, Tr 309.

<sup>187</sup> See Tr 138.

<sup>188</sup> See Tr 322, 326.

<sup>189</sup> See Tr 238.

<sup>190</sup> See Staff brief, pages 30-31.

Consumers Energy, citing a meeting with the State Historical Preservation Office (SHPO), as well as Exhibit S-7. Mr. Spence recommended that Consumers Energy consult with SHPO to review cultural, archaeological, and historic documentation related to the proposed route, rather than rely on the Michigan State Housing Development Authority's Historic Sites Online and the National Park Service's National Historic Landmarks Program.<sup>191</sup>

In her rebuttal, Ms. O'Connor asserted that the company is not legally required to review such documentation.<sup>192</sup> She also explained that because much of the route follows the existing pipeline or has been farmland, she considers the risk of encountering such resources to be low.<sup>193</sup> She testified, however, that the company was recently made aware of one possible archaeological site along the route, and is conducting a site review.<sup>194</sup> She testified that Consumers Energy has an Unanticipated Discoveries Plan to address such resources if they are identified during construction.<sup>195</sup> As an example of the implementation of the plan, she testified that it was followed when human remains were discovered at a manufactured gas plant site in the process of environmental cleanup.<sup>196</sup>

In its brief, Staff accepts the company's reliance on its Unanticipated Discoveries Plan, and recommends that the company comply with this plan and consult with SHPO "should archaeological historical, or cultural resources be discovered during construction."<sup>197</sup>

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<sup>191</sup> See Tr 321; also see Exhibit S-8.

<sup>192</sup> See Tr 235.

<sup>193</sup> See Tr 233, 235-236.

<sup>194</sup> See Tr 233.

<sup>195</sup> See Tr 233-234, 237.

<sup>196</sup> See Tr 234.

<sup>197</sup> See Staff brief, page 28.



## 2. Deviations from proposed route

As noted above, Staff recommended that Consumers Energy work with landowners once its application is approved, but limit changes to the approved route to “minor deviations,” which Mr. Spence explained as “any alteration in location which does not involve the impact of additional landowners.”<sup>198</sup>

In addition to his recommendations regarding the pipeline route through the intervening landowners’ property, as discussed above, Mr. Spence recommended that Commission approval of the pipeline expressly permit “minor deviations.” He noted Mr. Hagloch’s testimony that the company’s proposed route would be “subject to such changes in location as may become necessary upon actual construction.”<sup>199</sup> He recommended that location changes be limited to “minor deviations” that do not involve an impact to additional landowners.<sup>200</sup>

Consumers Energy argues that greater flexibility is needed to address “unknown issues.” Mr. Hagloch testified:

During the design and construction of a pipeline, unknown issues can be discovered that will require a reroute, such as a burial site, septic field, or an underground obstacle which could impact a horizontal directional drill. The Company should be able to negotiate with landowners as necessary to obtain the safest, most cost-effective route with the least impact on the environment. Staff’s recommendation to only permit deviations where they do not impact additional landowners where easements have not been secured [seems] to be too restrictive, especially in areas with small parcels of land. If the Commission determines that [a] defined limitation of route deviations is necessary, the Company suggests that location changes within 2,000 feet of the proposed route should be sufficient for the Company to address unknown issues that may arise.<sup>201</sup>

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<sup>198</sup> See Tr 307.

<sup>199</sup> See Spence, Tr 306, Hagloch, Tr 125.

<sup>200</sup> See Tr 307.

<sup>201</sup> See Tr 137.

Consumers Energy repeats this explanation in its briefs.<sup>202</sup>

Staff argues that the flexibility requested is too broad:

Staff is aware that unknown issues may arise, however it is Staff's opinion that any reroutes that would impact landowners who were not noticed would disadvantage them. Due diligence is required when designing and proposing a pipeline route. Staff recommends that if a reroute is necessary that impacts unnoticed landowners, that CEC be required to refile the application to permit those landowners the opportunity to intervene.<sup>203</sup>

In its reply brief, Staff further notes: "A 36" pipeline is a major impact upon property, especially so on small tracts. If a route is permitted to be altered it could affect property whose owners were not notified and had no opportunity to participate in this case."<sup>204</sup>

Fundamentally, the breadth of discretion the company seeks appears inconsistent with the statutory requirement in Act 9 that the company receive approval of a "map, route, and type of construction."<sup>205</sup> The company did not cite any prior decisions where such broad authority was granted to deviate from an approved route. The 2000-foot variation requested on either side of the proposed route creates a corridor three-quarters of a mile wide. To put this in some context, the proposed pipeline route runs generally north-south through the pages of Exhibit A-3; based on the 1" equals 500' scale on those pages, a variation of 2000' to the east or west would generally be off the maps or toward the edges of those pages. Rather than an approved route, the company is essentially seeking approval for a swath of territory 55 miles by as much as ¾ mile. The company has not established that it needs this degree of "flexibility." This PFD finds that Staff's approach is more reasonable.

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<sup>202</sup> See Consumers Energy brief, page 24; reply brief, pages 4-5.

<sup>203</sup> See Staff brief, pages 22-23.

<sup>204</sup> See Staff reply, page 3.

<sup>205</sup> See MCL 483.109.

As a further illustration, providing that degree of “flexibility” is likely to cause confusion in courts adjudicating eminent domain claims, as history shows. For example, in its July 29, 2013 order in Case No. U-16200, the Commission addressed a dispute that had arisen over the siting of a transmission line. In that case, explaining its conclusion that the route deviation at issue was within the scope of minor adjustments contemplated by its February 25, 2011 order approving the line, the Commission explained:

ITC’s proposed adjustment to the route is no greater than 700 feet at its widest, results in a line that is considerably shorter than the approved line on the Trust’s property. . . . The adjusted route remains on cropland, and remains on the parcel that would have hosted the approved route (but avoids the adjacent treed parcel that was affected by the approved route). Finally, the adjusted route does not cross the property of any landowner that did not receive notice of this proceeding. In sum, the adjustment facilitates the delivery of wind power and is relatively narrow; and the adjusted route remains with the same landowner, affects the same type of land, and runs over the same parcel as the approved route.<sup>206</sup>

Also see *In re Application of International Transmission Company*, 304 Mich App 561, 580 (2014), which affirmed the Commission’s jurisdiction to resolve disputes regarding the route it approved in its order. The Court of Appeals explained:

Moreover, the PSC’s July 29, 2013 order does not authorize ITC to deviate whenever and to whatever extent it wishes; it merely approves ITC’s proposed deviation in this instance. Nothing in the July 29, 2013 PSC order grants ITC authority beyond that which may be reflected in the PSC’s February 25, 2011 order, nor does its approval of the particular deviation at issue in this case constitute a determination regarding any other or future deviation, or does it preclude such a deviation from becoming the subject of future proceedings before the PSC or the circuit court.

The Commission has had other occasions to consider deviations from approved routes. In its January 23, 2014 order in Case No. U-17272, involving the construction of

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<sup>206</sup> See July 29, 2013 order, pages 16-17.

an overhead transmission line, the Commission approved a settlement agreement defining “minor adjustment” to include “deviations of no more than 150 feet from the centerline of the proposed route, which do not cross the property of any landowner or his predecessor who did not receive notice of Case No. U-17272.”<sup>207</sup>

Flexibility of the scope desired by Consumers Energy would also deprive Staff of the ability to meaningfully evaluate the environmental or other impacts of the non-minor route revision. Note that in its December 19, 2019 order in Case No. U-20198, addressing ZFS Ithaca, LLC's deviation from an approved route, the Commission reconsidered the environmental impact before approving a settlement agreement. ZFS Ithaca, LLC had deviated by up to a mile from the approved route according to Staff, as reflected in the Commission's August 8, 2019 order in that docket. The Commission found that ZFS Ithaca, LLC made “substantial deviations” from the proposed route, rather than minor deviations as authorized.

In light of the company's failure to evaluate alternatives to its proposed route across Moon Lake Estates and Quiet Cove as discussed in section B above, and its heavy reliance on its Unanticipated Discoveries Plan as discussed in subsection 1 above, it is concerning that the company's requested flexibility appears to reflect the view that a certificate of public convenience and necessity for an approved route is the starting point for negotiations with potentially affected landowners, rather than the result of a deliberative process in which the Commission weighs record evidence and determines what serves the public convenience and necessity. While Staff's recommendation does contemplate further negotiation between Consumers Energy and affected landowners, it does so to a significantly lessened extent, and requires that the

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<sup>207</sup> See January 23, 2014 order, page 1.

Commission will have the opportunity to consider impacts associated with land owned by others who have not had direct notice of this proceeding.

### 3. Other mitigation

Citing Mr. Spence's testimony at Tr 308, Staff argues that in addition to minor route deviations, Consumers Energy should consider other steps to mitigate the impact to affected landowners, including removing existing sections of the pipeline and constructing the replacement pipeline within that space, and decreasing the distance between the replacement line and the current line.<sup>208</sup> Citing Mr. Hagloch's testimony at Tr 136-137, Consumers Energy argues it cannot use the existing pipeline space for the new route because it needs to keep that line in service, and cannot construct the proposed pipeline closer to the current line because working closer to an active pipeline will present safety concerns.<sup>209</sup> Consistent with the discussion in section B above, this PFD concludes that Consumers Energy should provide an analysis of the feasibility of shutting down line 100A for a period of time to facilitate a limited use of the techniques identified by Staff, rather than dismissing them out of hand.

### D. Utility cost recovery

Mr. Spence and Ms. LaConte both addressed potential cost recovery associated with the replacement of Line 100A. Mr. Spence expressed a concern regarding recovery of undepreciated plant balances for investments Consumers Energy made in the current line, notwithstanding plans to replace it. Ms. LaConte expressed a concern with the magnitude of the cost of the pipeline and the size of the contingency amount included in the \$550 million projected cost. While Consumers Energy disagreed with

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<sup>208</sup> See Staff brief, pages 23-24, 32; Staff reply, pages 2-3.

<sup>209</sup> See Consumers Energy brief, pages 22-23; reply brief, page 3.

these recommendations, Consumers Energy, Staff, and ABATE seem to agree that this is not the case to determine cost recovery regarding either the current line or the proposed line. The cost issues are addressed in more detail below.

1. Cost Cap (ABATE argument)

While acknowledging that this is not the case to determine cost recovery, ABATE argues that the Commission should cap the pipeline projected cost at \$473 million, excluding the contingency estimate of \$77 million. Citing Ms. LaConte's testimony, ABATE argues that a cost cap will "appropriately incent the Company to minimize costs and protect customers from unwarranted cost overruns."<sup>210</sup> ABATE's brief cites a line of rate cases in which the Commission has declined to include contingency amounts in projected rate case.<sup>211</sup>

Mr. Hagloch in his rebuttal testimony explained the company's contingency estimate at follows:

The following are examples of some of the risks associated with this project which warrant contingency: (1) landowner negotiations and real estate acquisition agreements; (2) unknown structures or burial grounds in the right-of-way; (3) new tariffs that could affect the Company's ability to obtain materials or the cost of materials; (4) buried tanks or unknown contamination; (5) private landfills found in the right-of-way requiring extensive cleanup and mitigation; (6) weather and natural disasters; and (7) fluctuation of market prices for steel, materials, and labor.<sup>212</sup>

In its brief, Consumers Energy argues ABATE's proposed cap is premature and beyond the scope of the proceeding, and reiterates Mr. Hagloch's explanation of unknown costs

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<sup>210</sup> See ABATE brief, page 4, LaConte, Tr 338-339.

<sup>211</sup> See ABATE brief, pages 4-5.

<sup>212</sup> See Tr 144.

the company may face.<sup>213</sup> In its reply brief, Consumers Energy distinguishes the cases cited by ABATE as rate cases, rather than Act 9 cases.<sup>214</sup>

This PFD agrees with Consumers Energy that it is not appropriate for the Commission to impose a cost cap in this proceeding. All of the utility's expenditures for the proposed pipeline are subject to prudence review if and when the utility seeks to recover those costs. Additionally, ABATE's proposed "cap" does not appear to achieve a different result, since it recognizes that Consumers Energy should still be able to recover all costs it can demonstrate were reasonably and prudently incurred. ABATE argues:

While such a cap would incentivize Consumers to keep costs low, of course, it would not prevent Consumers from eventually recovering its overall prudent and reasonable costs. The Company would still be permitted (indeed would be required) to provide evidence supporting the reasonableness and prudence of all costs it incurs to build the Mid-Michigan Pipeline when it seeks to recover those costs in a future rate case proceeding. Thus, in the event of a cost-overrun, prior to approving rate recovery the Commission must require Consumers to prove by a preponderance of the evidence that the costs were reasonable and prudent.<sup>215</sup>

While this PFD recognizes that Consumers Energy may face unknown costs, and that it is speculative now to evaluate the reasonableness of those costs, it should also be noted that Consumers Energy has eschewed certain opportunities to gain more knowledge regarding the obstacles it may encounter in its proposed route, preferring to rely on a belief that the risk of encountering such obstacles is low. In light of ABATE's concern for the overall cost of the pipeline, this PFD recommends that the Commission caution Consumers Energy that a failure to evaluate available information in advance of

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<sup>213</sup> See Consumers Energy brief, pages 29-30.

<sup>214</sup> See Consumers Energy reply, pages 19-20.

<sup>215</sup> See ABATE brief, page 5.

construction in order to minimize the costs associated with obstacles encountered along the way, may be taken into consideration in determining the reasonableness of the company's unplanned expenditures.

2. Undepreciated plant balance for current Line 100A

Mr. Spence explained his concern with the company's decision-making following the 2015 pipeline rupture, and with the undepreciated plant balance of approximately \$53 million associated with the current line.<sup>216</sup> Staff recommends that the company cease collecting the undepreciated plant balance for the current line when it is taken out of service, with a determination to be made in a future rate case on the extent to which the company can recover that undepreciated plant balance.<sup>217</sup> While Mr. Volansky testified that Consumers Energy should be allowed to collect the remaining undepreciated plant balances associated with the current line, he did agree that a determination should be made in a future rate case after the construction of the pipeline is completed.<sup>218</sup> In its brief, Consumers Energy reiterates this viewpoint.<sup>219</sup> Staff did not address this issue in its briefs. ABATE did address this issue, and recommended that the Commission affirm that it is not approving any further recovery for the current Line 100A in this proceeding.

This PFD concludes, as the parties generally recognize, that this is not the case to determine the extent to which undepreciated Line 100A, plant balances may be recovered.

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<sup>216</sup> See Tr 315-316.

<sup>217</sup> See Tr 315-316.

<sup>218</sup> See Tr 288-289.

<sup>219</sup> See Consumers Energy brief, pages 21-22.



V.

**CONCLUSION**

For the reasons discussed above, this PFD recommends that the Commission reject Consumers Energy's application based on its failure to fully evaluate alternatives to the proposed route through the Hummells' and Mr. Wieschowski's property. This PFD further recommends that Consumers Energy have the opportunity to refile in this docket with a comprehensive evaluation of alternatives to the proposed routes through the Hummells' and through Mr. Wieschowski's property. If, after Consumers Energy's additional evaluation, the best alternative or the alternative Consumers Energy proposes involves other landowners, those landowners should be notified of the revised proposal. Any approved pipeline route may permit the minor deviations as recommended by Staff; this PFD concludes that the Commission should reject the flexibility sought by Consumers Energy to vary from an approved route by up to 2000 feet. In addition, cost approval should not be granted in this docket, nor should the Commission adopt a cost cap or address the reasonableness and prudence of prior capital investments in the current Line 100A.

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

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