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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Application of Crimson California Pipeline L.P. (PLC-26) for Authority to Increase Rates for Its Crude Oil Pipeline Services. (NORTHERN CALIFORNIA)	Application No. 22-07-015
And Related Matters.	Application No. 23-01-015 Application No. 23-03-001
In the Matter of the Application of Crimson California Pipeline, L.P. (PLC-26) for Authority to Increase Rates for Its Crude Oil Pipeline Services. (NORTHERN CALIFORNIA)	Application No. 23-08-018 *(consolidated)*

OPENING BRIEF OF CRIMSON CALIFORNIA PIPELINE, L.P. AND SAN PABLO BAY PIPELINE COMPANY LLC

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TABLE OF ACRONYMS

ABBREVIATION or ACRONYM	TERM
AFUDC	Allowance for Funds Used During Construction
bpd	barrels per day
CalFire	California State Fire Marshal
CMH	Crimson Midstream Holdings, LLC
CMO	Crimson Midstream Operating, LLC
CMO Credit Facility	The credit facility held by CMO, which was terminated in January 2024
COD	Cost of debt
Commission or CPUC	California Public Utilities Commission
CorEnergy or CORR	CorEnergy Infrastructure Trust, Inc.
CPIS	Carrier Property In Service
Crescent	Crescent Midstream
Crimson	Crimson California Pipeline, L.P.
Crimson Gulf	Crimson Gulf, LLC
CRC	California Resources Corporation
FERC	Federal Energy Regulatory Commission
FTE	Full-time equivalent employee
GAAP	Generally Accepted Accounting Principles
GL	General Ledger
KLM	Kettleman-Los Medanos system
LTIP	Long-Term Incentive Program
PLA	Pipeline loss allowance
P66	Phillips 66 Company
ROE	Return on equity
SJR	San Joaquin Refinery
SPB	San Pablo Bay system
VMSC	Valero Marketing and Supply Company
WACC	Weighted average cost of capital
WSJ	Western San Joaquin

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Crimson California Pipeline, L.P. ("Crimson") and San Pablo Bay Pipeline Company LLC ("SPB") (collectively, the "Carriers") hereby respectfully submit this Opening Brief in the referenced matter. The principal issue presented in this proceeding is whether Carriers' requested increases of their intrastate rates for transportation on the integrated SPB-KLM pipeline system—$2.4210/barrel for transportation on the SPB system and $2.9210/barrel for transportation on the KLM system[1]—are just and reasonable. As set forth below and supported by the record,

[1] The only exception to this relates to movements originating on the KLM system at Kettleman. CRIM-MJW-007 at 77 n.48. In A.23-03-001, Crimson requested a rate increase of $2.7747/barrel

the Carriers' requested rate increases are well justified and consistent with Commission policy and precedent.

I. BACKGROUND AND SUMMARY

A. Statement of the Case

1. Procedural Background

This proceeding concerns the following four applications:

- Application No. 22-07-015, filed by Crimson on July 19, 2022 pursuant to Section 455.3 of the California Public Utilities Code ("PU Code"), seeking authorization to increase the KLM transportation rates by 10 percent, effective September 1, 2022;

- Application No. 23-03-001, filed by Crimson on March 3, 2023 pursuant to Section 454 of the PU Code, seeking authorization to increase the KLM transportation rates by a total of 127.9 percent (inclusive of the 10 percent that is the subject of A.22-07-015);

- Application No. 23-01-015, filed by SPB on January 27, 2023 pursuant to Sections 455.3 and 454 of the PU Code, seeking authorization to increase the SPB transportation rates by 35.9 percent, with 10 percent of the requested increase becoming effective on March 1, 2023; and

- Application No. 23-08-018, filed by Crimson on August 20, 2023 pursuant to Section 455.3 of the PU Code, seeking authorization to increase the current KLM rates by 10 percent effective October 1, 2023.

Each of the noted applications was protested by either or both of the Joint Protestants.[2] On March 22, 2023, VMSC filed a motion to consolidate A.22-07-015,

for such movements. Because that requested rate increase is below $2.9210, the Carriers are only seeking a rate of $2.7747 for movements on KLM originating at Kettleman.

[2] The "Joint Protestants" are Valero Marketing and Supply Company ("VMSC") and California Resources Corporation ("CRC").

A.23-03-001, and A.23-01-015 on the grounds that the KLM and SPB pipelines function as an integrated system and the subject applications raised common issues of fact and law.[3] The Carriers did not oppose that motion, and, by the Assigned Commissioner's Scoping Memo and Ruling dated June 2, 2023, the three applications were consolidated and a procedural schedule was established. Thereafter, the Carriers filed an unopposed motion to consolidate A.23-08-018 with the other three consolidated applications, which was granted by Presiding Judge Rambo.[4] On December 7, 2023, PBF Holding Company LLC filed a motion requesting party status in this consolidated matter, which was granted.

Pursuant to the Presiding Judge's December 6, 2023 Order, an evidentiary hearing was held in the captioned matter in February 2024.

2. Overview of the Carriers

Crimson and SPB are affiliated companies that own and operate a network of crude oil pipelines in the San Joaquin Valley.[5] Crimson Midstream Operating, LLC ("CMO") owns, either directly or indirectly, 100% of Crimson and SPB.[6] CMO, in turn, is wholly owned by Crimson Midstream Holdings, LLC ("CMH").[7] CMH is

[3] Motion to Consolidate of Valero Marketing and Supply Co., Docket Nos. A.22-07-015 *et al.* (filed Mar. 22, 2023).
[4] Administrative Law Judge's Ruling Consolidating Application (A.) 23-08-018 with A.22-07-015 et al. and Granting Motion for a Protective Order, Docket Nos. A.22-074-015 *et al*. (issued Jan. 11, 2024).
[5] CRIM-RLW-006 at 5:5-7.
[6] *Id.* at 5:5-11.
[7] *Id*. at 5:11-12.

jointly owned 50.5 percent by Mr. John Grier, an individual, and 49.5 percent by CorEnergy Infrastructure Trust, Inc. ("CorEnergy"), a publicly traded company.[8] An organizational chart pertaining to Crimson and SPB is included in CRIM-RLW-007.

The SPB system consists of approximately 300 miles of active pipeline of various diameters, and it connects crude oil production fields in the San Joaquin Valley to refineries in the San Francisco Bay area.[9] The KLM system consists of approximately 50 miles of active pipeline of various diameters, and it transports crude oil from production fields, mostly in Kern County, to an interconnection with the SPB pipeline at the Cross Valley tie-in location. From that tie-in point, barrels are delivered into SPB's mainline at Carneras Station for delivery to the same refineries served by SPB's system.[10] Historically, the SPB and KLM systems offered separate but parallel transportation; however, as San Joaquin Valley production has declined, the Carriers determined it was most cost effective to physically integrate portions of the systems, which occurred in September 2020.[11] As a consequence, the KLM system effectively functions as a gathering system to

[8] *Id*. at 5:12-15.
[9] CRIM-DWJ-001 at 4:3-12.
[10] *Id.* at 4:15-5:2.
[11] *Id.* at 5:3-11.

the SPB system, with the KLM mainline being idled but remaining in public utility service.[12]

3. Stipulated Issues

Prior to the commencement of the evidentiary hearing, the parties reached a stipulation on certain elements of the cost of service. Those stipulated items, summarized in Table 1 below, are set forth in detail in the Joint Motion for Stipulation filed in the captioned proceeding on February 7, 2024 ("Joint Stipulation").

Table 1: Stipulated Cost-of-Service Items

Issue	Stipulation
Cost of Service Framework	Combined cost of service for integrated KLM-SPB system
Base Period	Calendar year 2022
Test Period	Calendar year 2023
Plains Line 2000 Outage	Parties agree to remove volume impact related to Line 2000 outage, as detailed in Joint Stipulation
KLM idled assets	Should be removed from rate base, as detail in Joint Stipulation
PLA (product loss allowance)	Revenue credit of $3,539,105
Truck rack unloading fees	Revenue credit of $324,741
CPUC Fee	Revenue credit by multiplying 0.068 x transportation + truck rack revenue
Pipeline release	Remove $1,179,512 from GL 7011 to account for non-recurring event

[12] *See id.* at 4:22-5:11.

The stipulated figures noted in Table 1 have been incorporated into Carriers' cost of service in CRIM-053, CRIM-053-A and CRIM-053-B. Because the stipulations reflect agreements among the parties, the Carriers are not addressing these items in detail in this brief.

B. Summary of Argument

The Carriers have the ultimate burden of proof in this proceeding to demonstrate by a preponderance of the evidence that they are entitled to the relief sought.[13] The Carriers have met this burden through extensive record evidence demonstrating that their request to increase the SPB rates to $2.4210/barrel and the KLM rates to $2.9210/barrel is fully justified and consistent with Commission precedent. By contrast, the Joint Protestants have not met their burden of producing evidence raising a reasonable doubt as to the Carriers' positions and that supports their counterpoint positions.

As explained herein, the Carriers' showing on all issues is supported by relevant, concrete evidence and, consistent with regulatory principles, produces a cost of service that captures the operating conditions of the Carriers that are known or expected to occur during the period in which the requested rates will be in effect.

[13] *Application of California-American Water Co.*, D.18-12-021, 2018 Cal. PUC LEXIS 628 at *12-13, Section 3.1 (2018) ("D.18-12-021").

As Mr. Waldron emphasized, the Carriers are committed to providing safe and reliable service for their customers, consistent with all applicable operational, environmental, and safety standards[14] and, therefore, have proposed a cost of service that provides a reasonable opportunity for recovery of those costs and a reasonable return, through just and reasonable rates that are based on a throughput that is realistic and reflective of existing and expected conditions, including the historical and ongoing decline in the Carriers' volumes. By proposing significant exclusions or reductions in the Carriers' actual expenses and a rate of return that has no relation to the Carriers' current financial circumstances, the Joint Protestants develop a cost of service that generates the lowest possible rates that, if adopted, would ensure that the Carriers are unable to recover even their actual costs let alone earn a reasonable return on their investment, thereby impairing the Carriers' ability to maintain compliant, safe, and reliable operations.

For example, as explained below, the Joint Protestants' witness Mr. Tolleth seeks to exclude over $4 million in expenses that were unquestionably incurred by the Carriers in the Base Period on the grounds that such expenses—much of which are employee-related expenses—were unnecessary or inefficient. However, Mr. Tolleth has no direct experience in managing or operating an oil pipeline company and he admitted that he undertook no efforts to gain any such insight from his client,

[14] *See* Tr. at 57:17-23, 211:9-22, 257:14-260:7.

VMSC, which is part of an organization that has such experience. Mr. Tolleth also relies on post-Test Period volume projections to support a throughput level that ignores the Carriers' historical and persistent volume declines, thereby divorcing Mr. Tolleth's volume recommendation with the volume conditions the Carriers' will realistically face going forward and when the requested rates will be in place.

As to Mr. Upton's proposed cost of capital, it is deeply flawed and deficient because it fails to generate a return that is commensurate with returns on investments of comparable risk—a core tenet of the U.S. Supreme Court's holdings in *Hope* and *Bluefield*.[15] His cost of capital recommendation fails to be representative of that which is reasonably available to the Carriers today because, amongst other infirmities, (1) he bases his cost-of-debt recommendation on CorEnergy's "book" value cost of debt that includes a debt instrument that was issued several years ago under completely different economic conditions, was never available to or used by the Carriers, and which has no connection to the current financing available to the Carriers, and (2) he derives or supports his return-on-equity and capital structure recommendations based on a proxy group of investment-grade companies that are exponentially larger and more financially resourceful than the Carriers.

[15] *Federal Power Com. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) ("*Hope*"); *Bluefield Water Works & Improvement Co. v. Public Service Comm'n*, 262 U.S. 679 (1923) ("*Bluefield*").

The Carriers' pipeline systems are essential infrastructure that safely and reliably delivers California-produced oil to the San Francisco Bay Area refineries. It is important that the Carriers be permitted to charge rates that provide the opportunity to recover their costs reasonably incurred to provide safe, reliable, and environmentally compliant operations and generate a return in line with investments in companies of comparable risk. Granting the Carriers' requested rate increases will achieve this important goal and is supported by the record and, therefore, is in the public interest.

II. BURDEN OF PROOF

As the parties requesting authority to increase rates, the Carriers bear the ultimate burden of proof to justify such increases. The evidentiary standard to meet this burden is by a preponderance of the evidence, which is defined in terms of probability of truth—"such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth."[16]

The counterpoint to the Carriers' burden of proof is the Joint Protestants' burden of going forward to produce evidence that raises a reasonable doubt as to the Carriers' positions. The Commission has described this burden as follows:

> [W]here other parties propose a result different from that asserted by the utility, they have the burden of going forward to produce evidence, distinct from the ultimate burden of proof. The burden of going forward to produce evidence relates to raising a reasonable doubt as to the utility's position and presenting evidence explaining the counterpoint position. Where this counterpoint causes the Commission to entertain a reasonable doubt regarding the utility's position, and the utility does not overcome this doubt, the utility has not met its ultimate burden of proof.[17]

The determination of whether an applicant has met its ultimate burden of proof should consider the record as a whole.[18]

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[16] D.18-12-021 at *13 (2018).
[17] *In the Matter of the Application of PacifiCorp*, D.20-12-004, 2020 Cal. PUC LEXIS 1013 at *8-9 (2020).
[18] *See, e.g.*, *Application of Southern Cal. Edison Co. (U338E) for Authority to Increase its Authorized Revenues for Electric Service in 2021*, D.21-08-036, 2021 Cal. PUC LEXIS 414 at *11-12 (2021).

In D.07-11-037, the Commission applied these principles,[19] finding that, where a protesting party submitted a report attacking an aspect of the utility's initial request, the utility was obligated to respond to those attacks in its rebuttal testimony to counter the points raised by the protesting party.[20] The Commission then noted that the burden of going forward with evidence to rebut the utility's rebuttal testimony rested with the protesting party, and it could meet that burden either by seeking an opportunity to submit surrebuttal testimony or by cross-examining the utility's witness at the evidentiary hearing.[21] Noting that the circumstances suggested that the protesting party chose the latter course, the Commission recognized that very little of its cross examination was devoted to the issue at hand.[22] As a result, the Commission held that the protesting party had not raised a reasonable doubt and found in favor of the utility.[23]

The California Evidence Code also provides relevant guidance. Specifically, Sections 412 and 413 provide:

> § 412. Party having power to produce better evidence.
>
> If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

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[19] *In the Matter of the Application of Golden State Water Co.*, D.07-11-037, 2007 Cal. PUC LEXIS 648 at *152-157 (2007) ("D.07-11-037").
[20] *Id*. at *152 n. 41.
[21] *Id*.
[22] *Id.*
[23] *Id*.

§ 413. Party's failure to explain or deny evidence.

> In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by [its] testimony such evidence or facts in the case against [it], or [its] willful suppression of evidence relating thereto, if such be the case.

In practice, Section 412 applies to limit the weight of a party's testimonial evidence when the party has documentation available to it but chooses instead to rely on testimony offered by a potentially biased witness.[24]

Consistent with Section 412, the Carriers have offered and relied upon documentation, including actual data and testimonial evidence that was subject to cross-examination, to support their requested relief. Furthermore, as shown below, consistent with the clear language of Section 413, the Carriers submit they have fully explained or denied, through pre-filed testimony and at hearing, all evidence against them.

[24] *Orange County Water Dist. v. Alcoa Global Fasteners, Inc*., 12 Cal. App. 5th 252 at *362-64 (Cal. App. 4th Dist., 2017).

III. ARGUMENT

A. How should the base-period, test-period framework be applied to develop just and reasonable rate levels for the Carriers?

As announced in the U.S. Supreme Court's *Hope* and *Bluefield* decisions,[25] a bedrock principle of ratemaking is that a regulated utility be afforded the right to charge rates that allow it the opportunity to recover its operating expenses and earn a reasonable return on its investment that is commensurate with returns on investments of comparable risks.[26] To establish the just and reasonable rates for transportation on the combined KLM-SPB system, the Carriers and the Joint Protestants each apply a base-period, test-period framework. Under this framework, historical (base period) data is evaluated and, if appropriate, forward-looking (test period) adjustments are made to that historical data to account for any known and reasonably measurable changes that are expected to occur in the future and during the period in which the requested rates will be in effect.

The Supreme Court of California has provided useful guidance on the application of the above framework, stating:

> The test period is chosen with the objective that it present as nearly as possible the operating conditions of the utility which are known or expected to obtain during the future months or years for which the commission proposes to fix rates. The test-period results are "adjusted" to allow for the effect of various known or reasonably anticipated

[25] *Hope* at 603; *Bluefield* at 690-93.
[26] Both parties recognize this bedrock principle of ratemaking. *See* CRIM-MJW-007 at 72:14-19; VMSC-CRC-LOU-0001 at 126:2-4.

> changes in gross revenues, expenses or other conditions, which did not obtain throughout the test period but which are reasonably expected to prevail during the future period for which rates are to be fixed, so that the test-period results of operations as determined by the commission will be as nearly representative of future conditions as possible.[27]

The court's guidance in *Pacific Tel.* therefore makes clear that forecasts of expected future conditions should be considered in developing a utility's cost of service. Indeed, the fundamental goal is to develop a cost of service and rates that "as nearly as possible" reflect the operating conditions of the utility during "future months or years," such that the "test period results … will be as nearly representative of future conditions as possible."[28] The Carriers' approach to developing a Test Period cost of service adheres to that objective.

The base-period, test-period framework applied by the Carriers aligns with the framework that was applied and substantively accepted by the Commission in D.20-11-026.[29] The Carriers' expert witness, Dr. Webb, began his cost-of-service analysis by examining Base Period data.[30] Working alongside company personnel, Dr. Webb first determined whether any of the Base Period costs were non-recurring in nature, such that he should make an adjustment to the data.[31] Next, Dr. Webb

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[27] *Pacific Tel. & Tel. Co. v. PUC*, 62 Cal. 2d 634, 645 (1965) ("*Pacific Tel*.") (emphasis added).
[28] *Id*. at 645.
[29] *See In the Matter of the Crimson California Pipeline L.P. (PLC-26) for Authority to Increase Rates for Its Crude Oil Pipeline Services*, D.20-11-026, 2020 Cal. PUC LEXIS 966 at *10-18 (2020) ("D.20-11-026").
[30] CRIM-MJW-007 at 12:9-14.
[31] *Id.* at 13:12-14:9 (including a discussion of the recommended Base Period adjustments).

assessed whether any changes from the Base Period were expected to occur during the Test Period, such that it would be appropriate to make a Test Period adjustment.[32] To qualify for a Test Period adjustment, Dr. Webb testified that the proposed change would need to: (1) be known and measurable with reasonable certainty and (2) be expected to occur in the immediate future, in this case during the Test Period.[33] At the time the Carriers submitted their direct testimony on September 5, 2023, actual data for the first six months of the Test Period (January to June 2023) were available, and the Carriers had developed internal forecasts for the expenses expected to be incurred during the last six months of the Test Period (July to December 2023).[34] Based on examination of that actual and forecast data for the Test Period, Dr. Webb proposed several initial Test Period adjustments in his direct testimony.[35] Aligned with the objective stated in *Pacific Tel.*, the purpose of those Test Period adjustments was to ensure that the cost of service and rates reflected "as nearly as possible" the Carriers' expected operating conditions during the future months and years in which the requested rates would be in place.

Dr. Webb updated his cost-of-service calculations in his rebuttal testimony filed on December 29, 2023 to incorporate, where appropriate, more-recent actual

[32] *Id.* at 12:20-13:1.
[33] *Id.* at 14:14-23.
[34] *Id.* at 16:11-15.
[35] *Id.* at 16:16-18.

data through November 2023 that was available, plus December 2023 forecast data.[36] To be clear, consideration of more-current data to assess the appropriate rates for transportation on the KLM-SPB system is not a contested matter, as the Joint Protestants have also made use of more-current data in their respective testimonies and in exhibits submitted at hearing.[37]

Though acknowledging the court's statements in *Pacific Tel*., the Joint Protestants' witness Mr. Tolleth rejected several of the Carriers' proposed Test Period adjustments on the grounds that they were based on "unsupported projections and/or unverifiable assumptions"[38] and therefore cannot be considered to be "known and measurable." As an initial point, Mr. Tolleth's basic position that projections or assumptions cannot form the basis of a "known and measurable" change is entirely at odds with the court's reasoning in *Pacific Tel.*, where the court recognized that a Test Period cost of service should include "expected" or "reasonably anticipated" costs—*i.e.*, cost projections or estimates. Moreover, Mr. Tolleth fails to apply a coherent or consistent Test Period standard. For example, Mr. Tolleth criticizes several of the Carriers' Test Period operating expense adjustments because they were based, even in part, on forward-looking projections yet he recommends a

[36] CRIM-MJW-022 at 155:10-15; CRIM-MJW-033; CRIM-MJW-052.
[37] *See, e.g.*, VMSC-CRC-MRT-0001 (developing a cost of service based on more recent data through September 2023); VMSC-CRC-0050 (includes volume data through December 2023 and nominations data for November 2023 to February 2024).
[38] VMSC-CRC-MRT-0001 at 15:3-5.

volume figure that is based on a projection of post-Test Period movements that, all else equal, would support lower rates.[39]

As demonstrated herein, the Carriers appropriately and consistently applied the base-period, test-period framework to develop a cost of service and rates that meet the fundamental requirements of *Hope* and *Bluefield* and the standard set forth in *Pacific Tel*. By contrast, the Joint Protestants inappropriately exclude entire cost categories and cherry-pick data which positions, if accepted, would result in rates that would not afford the Carriers even an opportunity to recover their operating expenses, let alone earn a reasonable return on their investment.

[39] *See* VMSC-CRC-MRT-0001 at 27:3-28:2, 113:3 (recognizing the new volumes that the Carriers' projected may flow on their pipelines as a result of the Rodeo refinery conversion and calculating a cost of service on the basis of that projection).

B. Operating Expenses

1. Expense Items Whose Inclusion in the Cost of Service is Disputed.

The Joint Protestants exclude a significant amount of expense from their cost-of-service calculations—expenses that the Carriers unquestionably incurred in the Base Period—on the grounds that they are inefficient, unnecessary, and/or precluded from being included in a utility's cost of service. These excluded expenses, and the flaws in the Joint Protestants' position, are addressed in detail in the following subsections.

However, from a broader perspective, it is important to recognize that the Joint Protestants' exclusion of these actual costs has a significant and material impact on the cost of service and resulting rates. Mr. Tolleth confirmed at hearing that even based on his own cost-of-service calculations presented in his reply testimony, as updated to incorporate stipulated cost items, show that the Carriers cost of service exceeds revenues (based on pre-increased rates) by 12.6%—*i.e.*, the Carriers are under-recovering their cost of service by 12.6%.[40] Had Mr. Tolleth not excluded those actual expenses—*i.e.*, LTIP expense, employee-related expenses that were "absorbed" by the Carriers following the Crescent spin-off, and expenses allocated to the Carriers from CorEnergy—his own calculations would have shown that the

[40] VMSC-CRC-MRT-0085-A at "Figure 31"; Tr. at 875:1-11.

Carriers had a revenue deficiency (or cost under-recovery) of 22.39 percent, thereby supporting much larger rate increases than the ones Mr. Tolleth supports in his testimony.[41]

i. What is the appropriate treatment of LTIP expense?

The Carriers recommend including a total of $208,109 of expense in the cost of service related to the Long-Term Incentive Program ("LTIP").[42] That figure is based on the Carriers' actual LTIP expense incurred in the Base Period, plus a Test Period adjustment of $11,779 to account for the 6% pay increase that was applied in March 2023. Mr. Tolleth excludes LTIP expense from the cost of service altogether, claiming that Commission precedent bars recovery of any such expense because it provides no ratepayer benefits.[43] As discussed below, Mr. Tolleth's position is not supported by Commission precedent and contravenes the facts.

Mr. Tolleth refers generally to four Commission decisions to support his position that LTIP expense should be excluded from the cost of service.[44] None of

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[41] CRIM-052 at 2; CRIM-053 at "B"; Tr. at 879:6-880:20.

[42] *See* CRIM-MJW-053-B at "OpEx by GL" (General Ledger ("GL") 7036, 8028, and 8030). The Carriers booked a total of $114,025 in GL 7036 and 8028 in the Base Period, plus CorEnergy allocated LTIP expense of $82,304 to the Carriers that was booked to GL 8030. Summing these figures results in a total Base Period figure of $196,329, which was then increased by 6% to reflect a Test Period amount of $208,109.

[43] VMSC-CRC-MRT-0001 at 44:5-46:10.

[44] *Id.* 44-45 nn.106-112 (citing *Application of San Diego Gas & Electric Co for Authority to Increase Rates*, D.13-05-010, 2013 Cal. PUC LEXIS 227 at 883-84 (2013) ("D.13-05-010"); *Application of Southern Cal. Edison Co. for Authority to Increase its Authorized Revenues*, D.15-11-021, 2015 Cal. PUC LEXIS 688 at 256-57, 265-66 (2015) ("D.15-11-021"); *Application of San Diego Gas & Electric Co. for Authority to Update its Electric and Gas Revenue*, D.19-09-051, Application 17-10-007 et al. at 518 (2019) ("D.19-09-051"); *Application of Southern Cal. Edison*

those orders involved an oil pipeline, however, but rather all concerned gas or electric utilities, a fact Mr. Tolleth acknowledged at hearing.[45] While some of the same basic regulatory principles—such as those announced in *Hope* and *Bluefield*—apply to all regulated utilities, the circumstances of gas and electric utilities differ in many fundamental ways from oil pipelines, which is why oil pipelines are subject to a different set of regulations as compared to gas and electric utilities.[46] For example, gas and electric utilities provide service directly to individual consumers, and therefore fairly require a higher duty of care for the Commission to protect those consumer interests. Conversely, oil pipelines do not directly serve end-use consumers but instead serve other (and in this case much larger) oil companies like VMSC. Another significant difference concerns the magnitude of the respective enterprises, as well as their costs. For example, the incentive compensation that was at issue in the Commission decisions cited by Mr. Tolleth ranged from approximately $5-$18 million.[47] The LTIP amount at issue in this proceeding—approximately $200,000—is modest in comparison. During cross examination, Mr.

Co. for Authority to Increase its Authorized Revenues, D.19-05-020, 2019 Cal. PUC LEXIS 226 at 188 (2019) ("D.19-05-020")).

[45] Tr. at 891:6-8.

[46] *E.g.*, Sections 455.3 and 454 of the PU Code apply specifically to oil pipelines, and the Commission's General Order 96-B specifically refers to oil pipelines separately from other types of regulated utilities. *See, e.g.*, General Order 96-B at Industry Rule 8 (Rate Changed by Oil Pipeline) and General Rule 1.1(limiting applicability of industry rules, like Rule 8, that only apply to pipeline corporations).

[47] D.15-11-021 at *373-74; D.19-09-051 at 517-18; D.19-05-020 at *281-83.

Tolleth confirmed that he had not evaluated the amounts at issue in the cases he cited as compared to the Carriers' LTIP expense amount.[48] Given the substantial differences in (1) the incentive compensation at issue in the cases cited by Mr. Tolleth relative to the Carriers' LTIP amount and (2) the circumstances of gas and electric utilities compared to oil pipelines, it is unreasonable to assume, as Mr. Tolleth does, that any policy disallowing the recovery of incentive compensation as applied to gas and electric utilities equally applies to an oil pipeline.

Moreover, the cases cited by Mr. Tolleth do not stand for the proposition that incentive program costs are *per se* prohibited from being included in a utility's cost of service, a fact Mr. Tolleth acknowledged in a discovery response.[49] Rather, the Commission has held that long-term incentive compensation can be recovered through rates if it furthers ratepayer interests.[50] Attracting, retaining, and motivating employees are examples of ratepayer benefits that the Commission has recognized.[51] However, the Commission has noted that it will consider whether stock-based compensation is tied to financial performance in determining whether there are any ratepayer benefits.[52] As Mr. Waldron made clear, the LTIP is designed to help retain

[48] Tr. at 891:9-15.
[49] CRIM-MJW-035 at 3 (response to CRIMSON-JP-2.15(d)).
[50] *See* D.15-11-021 at *357-60.
[51] *Id*. at *357.
[52] D.13-05-010 at *1203.

quality employees and is not tied to financial performance, and therefore is appropriately included in the cost of service.

By way of background, the LTIP was established in 2022 as part of a broader incentive program consisting of both a short-term incentive ("STI") and the LTIP.[53] The STI incentivizes short-term performance goals based on company performance and individual employee contributions,[54] while the LTIP incentivizes long-term performance by rewarding individuals that remain with the company for the full three-year vesting period.[55] Indeed, an employee that qualifies for the LTIP will lose the un-vested portion of the compensation if he or she leaves the company before the expiration of the three-year vesting period.[56] While the LTIP was intended to be awarded in the form of company stock, which it was in the Base Period, in the Test Period it was awarded in unvested cash because CorEnergy's stock price was too low to issue stock in a reasonable amount.[57]

As to Mr. Tolleth's position that the Carriers' LTIP program and the associated costs do not benefit ratepayers, Mr. Waldron explained that the LTIP program does benefit ratepayers in several ways, including ensuring that the Carriers are able to retain employees that are well trained in the Carriers' operations and

[53] CRIM-RLW-009 at 20:21, 21:11-20.
[54] *Id*. at 21:13-20.
[55] *Id*. at 22:8-11.
[56] *Id*. at 22:7-11.
[57] *Id*. at 22:1-3.

therefore help ensure the continuance of safe and reliable transportation service.[58] That retention also contributes to the overall success of the company. For example, Mr. Waldron explained that, when the Carriers' managers build relationships with employees of the California State Fire Marshall ("CalFire"), the state agency responsible for overseeing the Carriers' integrity and maintenance-related activities, they are able to more quickly and efficiently resolve matters that may arise, such as adherence with compliance orders or restarting the pipeline after an outage.[59] Ratepayers benefit from that coordination through reduced downtime and expenses.[60] Similarly, in the context of integrity expenditures, the long-term component of the incentive program helps counter any short-term mind-set of reducing maintenance expenditures as a way to increase the STI component of financial performance.[61] The LTIP prioritizes recognition that underspending on integrity maintenance could have long-term consequences for the integrity of the pipelines, such as increased downtime and possible leaks, which would be detrimental to ratepayers that depend upon the pipelines.

The Joint Protestants did not challenge Mr. Waldron's statements as to the ratepayer benefits enjoyed by retention of the Carriers' employees. As such, the

[58] *See id*. at 22:12-23:11.
[59] *Id.* at 22:15-21.
[60] *Id*. at 22:15-21.
[61] *Id*. at 22:23-23:7.

Presiding Judge and the Commission should find that the Carriers have appropriately included LTIP expense in the cost of service and reject Mr. Tolleth's position to the contrary.

ii. What is the appropriate treatment of the shared services expenses "absorbed" by CMO and allocated to the Carriers following the Crescent spin-off?

Mr. Tolleth excludes $1,827,466 of employee-related costs incurred by CMO and allocated to the Carriers during the Base Period on the grounds that the Carriers failed to sufficiently justify how these costs contributed to the Carriers' provision of safe and reliable service to their customers.[62] Though Mr. Tolleth does not use the term "imprudent" in his testimony, his position can only be fairly characterized as a prudence challenge: that the Carriers and their parent company, CMO, behaved in an imprudent fashion in spinning off certain pipeline assets in 2021 that resulted in an increase in the amount of employee-related costs being allocated to the Carriers in the Base Period without any associated ratepayer benefit and, therefore, such costs should not be borne by ratepayers. As demonstrated below, Mr. Tolleth failed to meet the standard necessary to make a prudence challenge, so his position warrants rejection.

[62] VMSC-CRC-MRT-0001 at 42:19-28.

Prior to February 2021, CMO owned pipeline assets located on the U.S. Gulf Coast in addition to its pipeline assets located in California.[63] However, in conjunction with CorEnergy's partial acquisition of CMO in February 2021, the Crimson Gulf assets were separated from and spun out of CMO and began operating separately as Crescent Midstream ("Crescent").[64] As Mr. Waldron explained, employee-related expenses are allocated to each CMO-owned pipeline system based on percentages derived from application of the Massachusetts Formula, which uses total assets, gross margins, and operating employees for each system.[65] Prior to February 2021, employee-related shared support costs were allocated from CMO to five pipeline systems: (1) Crimson's SoCal system, (2) SPB's system, (3) Crimson's KLM system, (4) Cardinal Pipeline, L.P.'s proprietary system, and (5) Crimson Gulf's system.[66] Contemporaneous with the CorEnergy transaction in February 2021, CMO entered into a 12-month transition services agreement with Crescent, pursuant to which CMO employees continued to provide support services to Crescent, primarily in the functions of finance, accounting, human resources, information technology, and control center.[67] At the end of that 12-month transition period in February 2022, Crescent ceased being allocated any employee-related

[63] The Gulf Coast assets were owned and operated by a wholly owned subsidiary of CMO, Crimson Gulf, LLC ("Crimson Gulf"). CRIM-RLW-009 at 4:12-14.
[64] CRIM-RLW-009 at 4:12-20.
[65] *Id*. at 5:1-6.
[66] *Id*. at 5:6-11.
[67] *Id.* at 5:12-15.

expenses from CMO and instead all such expenses at the CMO level were allocated to the remaining CMO-owned pipelines—SoCal, Cardinal, KLM and SPB.[68] As a result, those pipelines experienced an increase in the amount of employee-related shared support costs they were allocated in the Base Period relative to 2021. That increased amount has been generally referred to as the costs that CMO and its subsidiaries "absorbed" following the Crescent spin-off and completion of the transition period.

As to Mr. Tolleth position of excluding $1,827,466 of the "absorbed" Base Period costs because they are purportedly "inefficient" and "improper,"[69] Mr. Tolleth's position fails the basic test that federal and state regulators, including this Commission, have consistently applied to assess the prudence of management actions. Specifically, Mr. Tolleth failed to offer any evidence raising a "serious doubt" as to the reasonableness of those "absorbed" costs, such that the Commission should further engage in a reasonableness review of such costs before allowing them to be included in the cost of service.

As Dr. Webb explained, under basic ratemaking principles, actual costs are presumed reasonable unless and until a serious doubt, supported by evidence, is raised about whether a prudent manager would have incurred similar costs.[70] Dr.

[68] CRIM-RLW-009 at 5:15-19.
[69] VMSC-CRC-MRT-0001 at 40:1-43:7.
[70] CRIM-MJW-022 at 17:14-19.

Webb referred to Professor Kahn's seminal textbook, *The Economics of Regulation: Principles and Institutions*, as support for this regulatory principle:

> Effective regulation of operating expenses and capital outlays would require a detailed, day-by-day, transaction-by-transaction, and decision-by-decision review of every aspect of the company's operation. Commissions could do so only if they were prepared completely to duplicate the role of management itself … It is difficult to see how any company could function under two separate, coequal managements … Therefore, when the controlling decisions are made, they are made in the first instance by private management itself. Regulation can do little more than review the major decisions after the fact, permitting here and disallowing there. In these circumstances they have been unable as a general practice to substitute their judgements for those of management; and often when they have tried, the courts have denied them the authority to do so, except in cases of obvious and gross mismanagement.[71]

In other words, to avoid having a regulatory agency substitute its own judgment for that of a utility's management, thereby creating substantial inefficiencies, actual costs are presumed prudent and allowed to be included in a regulated utility's cost of service absent a showing of "obvious and gross mismanagement." That showing must also be based on information that was available to the utility at the time of its decision, not based on after-the-fact information. The Joint Protestants did not challenge Dr. Webb's testimony describing the prudence standard during cross examination.

[71] CRIM-MJW-022 at 10:16-11:6 (*quoting* Kahn, Alfred E., *The Economics of Regulation: Principles and Institution*, 1988 Massachusetts Institute of Technology).

This Commission has adopted the core tenets of the above-stated regulatory principles, finding: (1) management's actions must be evaluated against a standard of reasonableness, based on what management knew or should have known at the time the decision to act was made, and (2) the decision or action cannot be evaluated through the lens of hindsight, based on how the decision turned out.[72] The Commission has also stated that "[t]he reasonable and prudent act is not limited to the optimum act, but includes a spectrum of possible acts consistent with the utility system need, the interest of ratepayers, and the requirements of governmental agencies of competent jurisdiction."[73]

There is no dispute here that the "absorbed" costs represent actual costs that CMO incurred in the Base Period and that were allocated to the Carriers in the normal course of business as part of the Massachusetts Formula allocation. There is also no dispute that the "absorbed" costs are the type of costs that are included in a regulated utility's cost of service. Rather, Mr. Tolleth focuses almost exclusively on the simple fact that there was an increase in the amount of employee-related expenses being allocated to the Carriers in the Base Period as a result of CMO no longer providing support to the Crescent pipelines to support his position that such costs should be deemed improper in relation to the Carriers' provision of

[72] *Investigation into the Natural Gas Procurement Practices of the Southwest Gas Co.*, D.02-08-064, CPUC Investigation No. 01-06-047 at *6-9 (issued Aug. 22, 2002).
[73] *Id*. at *9.

transportation service. That there was an increase in expenses does not, alone, demonstrate unreasonable practices or unreasonable expense levels. Importantly, Mr. Tolleth offered no evidence demonstrating or suggesting that CMO was somehow overpaying its employees post-Crescent spin-off, such that it was allocating an unreasonable or unnecessary amount of employee-related costs to the Carriers. He offered no evidence demonstrating or even suggesting that CMO could operate with fewer employees after it no longer supported the Crescent business. He offered no evidence that CMO has acted unreasonably in its hiring practices. In fact, while acknowledging the hundreds of data requests the Carriers received and responded to during the course of this proceeding, all of which Mr. Tolleth had access to, Mr. Tolleth was unable to point to a single document where the Carriers admitted, indicated, or even suggested that the "absorbed" employee-related costs were "unnecessary" or "inefficient."[74] The Joint Protestants therefore fail to raise any "serious doubt" as to the reasonableness of the "absorbed" costs, meaning they should be presumed reasonable and be included in the cost of service.

While the Carriers submit that the inquiry can end there, should the Presiding Judge and the Commission find that a "serious doubt" was raised, there is extensive record evidence rebutting Mr. Tolleth's position that the "absorbed" costs have provided no ratepayer benefits. In his reply testimony, Mr. Tolleth assumes that the

[74] Tr. at 910:6-19.

job responsibilities of the employees that remained at CMO after the Crescent spin-off "would have shrunk," and, because their salaries and other payroll costs did not likewise shrink, it meant that an imprudent or inefficient amount of costs was being allocated to the Carriers in 2022 once CMO no longer supported the Crescent business.[75] Mr. Tolleth's speculative assertion lacks merit. First, at hearing Mr. Tolleth confirmed that the basis of his statement was the fact that, prior to the Crescent spin-off, CMO employees supported both the Gulf Coast and California assets, while, after the Crescent spin-off, they supported only the California assets, and that must necessarily mean that their job responsibilities had "shrunk."[76] However, Mr. Tolleth has never been employed by an oil pipeline company, and therefore he has no direct experience in operating or managing an oil pipeline company or its operations.[77] Mr. Tolleth also admitted at hearing that he had not discussed this issue with his own client, VMSC, which is part of a company that does operate oil pipelines.[78] As such, Mr. Tolleth's testimony that the job responsibilities of CMO employees "would have shrunk" after they no longer supported the Crescent business is not backed by any first-hand or real-world experience.

[75] VMSC-CRC-MRT-0001 at 48:14-26.
[76] Tr. at 896:18-897:15.
[77] *Id.* at 893:14-23.
[78] *Id*. at 895:5-15.

Second, Mr. Tolleth's position is at odds with the reality of how CMO operates. As Mr. Waldron explained in detail in his rebuttal testimony, CMO is one of the smallest pipeline companies in the United States from an EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) perspective and, as a result, operates at near-minimum employee headcount levels in many departments.[79] The fact that CMO operates at near-minimum employee headcount levels means that it was unable to simply reduce its employee headcount after the Crescent spin-off and continue to provide safe and reliable service.[80]

A clear example demonstrating this point relates to control center operations. At hearing, Mr. Tolleth acknowledged the importance of control center activities.[81] Indeed, it is the control center that is responsible for the safe operation of all the Carriers' assets. Mr. Waldron discussed in his rebuttal testimony that there are specific regulations governing the number of control center employees that a company must employ to safely run its control center.[82] Prior to the Crescent spin-off, CMO maintained two consoles at its control center, and each console required a minimum of five controllers to maintain a 24/7 operating schedule.[83] As such, CMO was required to have at least 10 controllers, plus it employed a control center

[79] CRIM-RLW-009 at 7:8-14.
[80] *Id*.
[81] Tr. at 932:2-6 (acknowledging that control center support is an "essential service").
[82] CRIM-RLW-009 at 7:14-8:17.
[83] *Id*. at 7:20-8:8.

manager, a supervisor, and a specialist. After the Crescent spin-off, CMO's control center continued to require two consoles, meaning CMO had to maintain the same number of control center employees that it employed prior to the Crescent spin-off.[84] The Joint Protestants did not dispute this point in testimony or at hearing. In fact, during cross-examination, Mr. Tolleth acknowledged the existence of control center regulations, but admitted that he had not reviewed them or considered them in the preparation of his testimony.[85] Nevertheless, Mr. Tolleth testifies that an indication of the impropriety of the "absorbed" costs was the 27-percent increase in the amount of control center costs being allocated to the Carriers and the other California pipelines in the Base Period relative to 2021. Yet that increase is not an indication of impropriety and does not undermine the reasonableness of the Carriers' control center costs. Rather, it is simply the arithmetic result where CMO was required to employ the same number of control center employees before and after the Crescent spin-off to maintain compliance with regulatory requirements, and those required control center costs were being allocated, post-Crescent spin-off, across fewer pipelines. With this context, an increase in the amount of control center costs being allocated to each pipeline system, including the Carriers' systems, is entirely reasonable. Moreover, if the Carriers did not have the requisite number of control

[84] *Id.* at 8:8-14.
[85] Tr. at 952:2-22.

center employees, then they would have to cease transportation operations. From this perspective, maintaining the requisite number of control center employees, even if it caused an increase in allocations to the Carriers after the Crescent spin-off, is undoubtedly a benefit to ratepayers.

Mr. Waldron also described how the workload of the IT group has changed since 2021, most notably due to the increased cyber security initiatives being imposed on oil pipelines, including the Carriers, by the U.S. Transportation Security Administration ("TSA") following the May 2021 cyber-attack on Colonial Pipeline Company that caused the shutdown of the largest refined products pipeline system in the U.S.[86] Ensuring compliance with TSA requirements to protect against a cyber-attack certainly is a benefit to ratepayers. Nevertheless, though acknowledging the TSA's cyber security initiatives, Mr. Tolleth admitted at hearing that he had not considered them when developing his testimony or alleging that the "absorbed" IT-related costs were unnecessary or inefficient.[87] In light of these increasing requirements and the same allocation arithmetic noted above, Mr. Tolleth's mathematical showing that the allocation of employee-related costs associated with the IT department to the Carriers and the other California systems increased by 40 percent in the Base Period relative to 2021[88] does not suggest that the level of IT

[86] CRIM-RLW-009 at 10:5-11:2.
[87] Tr. at 954:5-956:1.
[88] VMSC-CRC-MRT-0001 at 51, Figure 14.

costs allocated to the Carriers in the Base Period were imprudent or unreasonable. Rather, the evidence demonstrates that the Carriers' IT group experienced a necessary and reasonable increase in workload as a result of certain TSA requirements. Mr. Waldron also discussed how the workloads of the accounting group and the engineering group have changed and increased since the Crescent spin-off.[89] The Joint Protestants did not challenge this testimony at hearing.

Mr. Tolleth also refers to the level of executive compensation being allocated to the Carriers and the other California systems in the Base Period, noting that there was a net increase of 0.3 full-time-equivalent employees ("FTEs") at the CMO executive level in the Base Period.[90] That net increase of 0.3 FTEs is driven by the fact that two CMO employees—the CEO and the CFO—allocated all or a majority of their time to the California pipeline systems after the Crescent spin-off, while they allocated approximately 60 percent or less of their time to the California pipeline systems before the spin-off.[91] During cross-examination, Mr. Tolleth agreed that it was reasonable for CMO to have a CEO and a CFO and that it was not his position that either the CEO or CFO should have taken a pay cut following the Crescent spin-off.[92] He also offered no evidence that either the CEO's or CFO's job

[89] CRIM-RLW-009 at 11:3-12:6.
[90] VMSC-CRC-MRT-0001 at 53:4-6.
[91] *Id*. at 49:1-53:13 & n.128.
[92] Tr. at 959:13-23, 961:9-20.

responsibilities had shrunk following the Crescent spin-off. So, again, Mr. Tolleth fails to support his position with any evidence that an unreasonable or unnecessary amount of executive level employee costs are being allocated to the Carriers.

Faced with the above realities during cross examination, Mr. Tolleth reverted to emphasizing his position that, even if a reduction of the employee-related expenses after the Crescent spin-off was not possible, it would mean that there were dis-economies of scale associated with the Crescent spin-off and the Carriers failed to demonstrate why it was reasonable for CMO to engage in that spin-off transaction and destroy those synergies.[93] This position is nonsensical. The fact that there have been dis-economies of scale due to a divestiture of assets says nothing about the reasonableness or prudence of that divestiture, and there is no reason to assume, as Mr. Tolleth does, that increased allocations following a sale should be deemed imprudent or disallowed from a utility's cost of service. Furthermore, taken to its logical conclusion, Mr. Tolleth's position, if accepted, would give ratepayers veto rights over internal company decision-making. His position implies that, if a company were considering undergoing some internal reorganization or selling certain assets, and the result of that decision could increase certain cost levels, the utility would first need to check with its ratepayers on whether they agreed with such decision before proceeding, or otherwise face the real prospect of not being able to

[93] *Id.* at 916:7-17.

recover legitimate operating expense through rates. The Carriers are aware of no Commission decision or regulatory principle that would support such an outcome.

In summary, the only "evidence" the Joint Protestants offer to support their exclusion of the "absorbed" costs is the unremarkable fact that the amount of employee-related costs allocated to the Carriers increased following the spin-off of the Crescent business and the removal of the Gulf Coast assets from the Massachusetts Formula allocation. That "evidence" does not present a valid basis for excluding any "absorbed" expenses from the Carriers' cost of service. It is unrefuted that the "absorbed" costs are costs that CMO actually incurred and allocated to the Carriers, and they were incurred to support Carriers' regulated pipeline operations. As such, they should be included in the Carriers' cost of service.

iii. What is the appropriate treatment of allocated CorEnergy expenses that Carriers propose to include in their cost of service?

The Joint Protestants recommended excluding $2,941,751 of CorEnergy costs that were allocated to the Carriers in the Base Period—which represent the majority of the CorEnergy costs that were actually allocated to the Carriers.[94] The Joint Protestants also reject the Carriers' Test Period adjustment of $2,889,480 that accounts for the increased allocations from CorEnergy that are expected going

[94] VMSC-CRC-MRT-0001 at 62:1-10 & Figure 17.

forward following the sale of CorEnergy's MoGas and Omega assets.[95] As discussed below, the Joint Protestants' positions lack merit.

1. Exclusion of CorEnergy allocations from the Base Period

Mr. Tolleth recommends excluding the majority of CorEnergy costs that were allocated to the Carriers on the grounds that the Carriers' "ratepayers receive no direct benefit in connection with CorEnergy's incurrence of these costs."[96] The basis for Mr. Tolleth's position is that (1) the Carriers successfully operated their pipeline systems before CorEnergy purchased a minority ownership interest in them, (2) since CorEnergy acquired a stake in the Carriers' business, there has been an increase in costs allocated to the Carriers from CorEnergy that has not been accompanied by a decrease in CMO-incurred costs being allocated to the Carriers, and (3) there appears to be an overlap or redundancy in the job activities of CMO and CorEnergy employees, such that CorEnergy employees are not contributing to the Carriers' provision of safe and reliable transportation service.[97] Mr. Tolleth also presents a cost comparison before and after CorEnergy's partial acquisition to show that there has been an increase in the costs allocated to the Carriers.[98]

[95] *Id.* at 89:9-91:15.
[96] *Id*. at 57:6-19.
[97] *Id*. at 57:20-61:23.
[98] VMSC-CRC-MRT-0001 at 59, Figure 16.

As was the case with Mr. Tolleth's challenge of the "absorbed" employee-related costs discussed in the section above, Mr. Tolleth's challenge here amounts to a prudence challenge. However, Mr. Tolleth failed to raise any "serious doubt" concerning the reasonableness of the CorEnergy allocated costs. Rather, he notes only that the Carriers were allocated additional costs following CorEnergy's partial acquisition of CMH in February 2021 and that it appeared that there was an overlap in job responsibilities between CMO and CorEnergy employees. However, as noted above, the mere fact that there has been an increase in costs does not, in and of itself, raise any "serious doubt" as to the reasonableness of such costs. Therefore, the Joint Protestants fail to meet the requisite burden to mount a prudence challenge.

Even if they were found to have raised a "serious doubt" as to the CorEnergy costs allocated to the Carriers, the record evidence and admissions by the Joint Protestants' own witness Mr. Upton demonstrate that CorEnergy has provided benefits to the Carriers and therefore the costs allocated from CorEnergy to the Carriers should appropriately be included in the cost of service. As Mr. Waldron explained in testimony and at hearing, the only reason that the Carriers have remained in service is because of CorEnergy.[99] Given the Carriers' poor financial performance, their parent company, CMO, was facing the very real threat of not being able to pay off its credit facility originally scheduled to mature in March 2023

[99] CRIM-RLW-009 at 13:21-15:22; Tr. at 35:21-36:18.

and subsequently amended to mature in May 2024.[100] In fact, absent CorEnergy's financial support, CMO would not have been able to amend the maturity date of the CMO Credit Facility, which would have likely resulted in CMO entering bankruptcy in 2023. To extend the maturity date of the CMO Credit Facility, CorEnergy elected to sell its natural gas assets—MoGas and Omega—and agreed to use the proceeds of that sale to pay off the CMO Credit Facility.[101] The Joint Protestants did not challenge any of these facts at hearing. The evidence further shows that the MoGas and Omega sale was completed in January 2024—one month after the end of the Test Period—and a portion of the proceeds of that sale was used to pay off the CMO Credit Facility.[102] As such, there can be no credible argument that CorEnergy has not benefited the Carriers' ratepayers; without CorEnergy, the ratepayers would not have received the benefit of any transportation service from the Carriers because they would be insolvent. Even the Joint Protestants' witness Mr. Upton conceded this point during cross-examination, acknowledging the financial benefits received by the Carriers due to CorEnergy's minority ownership interest.[103] It is unreasonable and illogical for the Joint Protestants to recognize (or otherwise not challenge) the financial benefits the Carriers have enjoyed through CorEnergy's minority

[100] CRIM-RLW-009 at 14:7-21.
[101] *Id*.
[102] VMSC-CRC-0033.
[103] Tr. at 595:10-25.

ownership interest, but then assert that essentially none of the costs incurred by CorEnergy should be included in the Carriers' cost of service.

Mr. Tolleth's position that there appeared to be an overlap of activities performed by CMO and CorEnergy employees, such that CorEnergy has not contributed to the Carriers' operations, is undermined by Mr. Waldron's testimony that, in addition to the capital benefits discussed above, CorEnergy's benefit to the Carriers' operations can be seen in many areas, including legal support, finance support, and accounting functions.[104] Concerning legal support, Mr. Waldron noted that historically CMO had not employed any personnel with legal training and therefore relied exclusively on outside legal advice and support.[105] However, following CorEnergy's partial acquisition, CorEnergy's general counsel has provided support on a number of CMO matters, which has reduced CMO's legal bills and consequently reduced the allocation of legal expenses to the Carriers' operations.[106] The Joint Protestants did not challenge Mr. Waldron's testimony in this regard at hearing.

Concerning financial and accounting support, Mr. Waldron noted that CorEnergy employee Mr. Jeff Teevan, the Vice President of Finance, provides

[104] CRIM-RLW-009 at 13:5-15:22.
[105] *Id*. at 15:4-8.
[106] *Id.* at 15:9-14.

finance support to the Carriers' operations.[107] Mr. Teevan assists with managing the relationship between the CMO Credit Facility lenders as well as preparing compliance materials required by the CMO Credit Facility loan agreement.[108] He is also responsible for managing CorEnergy's and CMO's investor and public relations, as well as various other finance-related efforts.[109] These activities are certainly a benefit to the Carriers' operations, as they ensure the Carriers' continued ability to provide safe and reliable transportation service. Mr. Waldron then noted that Mr. Teevan works closely with CMO's Vice President of Finance, Mr. Steve Kuhmichel, whose primary responsibilities are to manage the treasury, budgeting, and corporate financial models.[110] Thus, despite the fact that Mr. Kuhmichel and Mr. Teevan share the same job title, their job activities are not overlapping but rather are complementary in furthering the Carriers' operations. Mr. Waldron then provided several examples where CorEnergy and CMO employees may share similar job titles or job descriptions but do not engage in duplicative or redundant work.[111] Mr. Waldron's testimony thus makes clear that there is not an overlap of activities between CorEnergy and CMO employees, even if they share similar job titles.

[107] *Id*.
[108] *Id*. at 15:14-22.
[109] *Id*.
[110] *Id.* at 16:1-17:18.
[111] *Id.* at 17:19-18:7.

Mr. Waldron also responded to Mr. Tolleth's statement that one of the most "egregious" examples of a CorEnergy cost that provides no benefit to the Carriers' ratepayers concerns the costs associated with the President of MoGas, Mr. Kreul. To be clear, the vast majority (96 percent) of the payroll-related costs associated with Mr. Kreul does not touch the Carriers' cost of service.[112] Nevertheless, Mr. Waldron explained at hearing and in testimony the significant benefits that Mr. Kreul provides.[113] For example, Mr. Waldron noted that Mr. Kreul has over 40 years of experience in pipeline operations, and therefore has provided assistance to CMO and the Carriers in reviewing engineering budgets, consulting on integrity plans, and advising on certain regulatory matters.[114] Mr. Kreul also played a vital role in the sale of the MoGas and Omega assets, which, as noted above, has provided substantial benefit to the Carriers' operations.[115]

As the above demonstrates, there are clear benefits that the Carriers and their ratepayers have received through CorEnergy's partial ownership interest. The Joint Protestants' speculative statements to the contrary do not provide a reasoned basis to exclude the costs allocated to the Carriers from CorEnergy from the cost of service.

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[112] *Id*.
[113] CRIM-RLW-009 at 18:7-11; Tr. at 282:6-20.
[114] CRIM-RLW-009 at 18:7-11.
[115] *Id*.

2. Exclusion of the Test Period adjustment for CorEnergy allocated costs

The Carriers proposed a Test Period adjustment of $2,889,480[116] to account for increased costs allocated from CorEnergy to the Carriers following the sale of the MoGas and Omega assets, which was completed in January 2024.

Corporate overhead costs incurred at the CorEnergy level are allocated to all the CMO-owned pipeline subsidiaries, as well as to the MoGas and Omega entities, in a manner similar to how CMO allocates costs to its subsidiaries, except CorEnergy allocations are spread across the CMO-owned pipeline systems, plus the MoGas and Omega systems.[117] However, following the sale of the MoGas and Omega assets, none of the CorEnergy-related costs will be allocated to MoGas and Omega but instead 100 percent will be allocated to the CMO-owned pipeline systems. As such, the Carriers reasonably determined that the costs that were previously being allocated to MoGas and Omega should be reallocated to the Carriers and the other California pipeline systems through a Test Period adjustment.

Mr. Tolleth argues that this Test Period adjustment should be rejected, largely for the same reasons discussed in Section III.B.1.ii above. He argues that costs incurred by CorEnergy do not appear to provide tangible benefits to the Carriers'

[116] CRIM-053 at Statement B (Adjustment 6). The Carriers note that there was a typographical error in the Joint Summary of the Disputed Issues submitted by the parties on March 11, 2024. Specifically, the Joint Summary indicated that the Carriers were recommending a test period adjustment of $2,889,450, while the correct amount is $2,889,480.
[117] CRIM-DWJ-001 at 11:5-10; CRIM-RLW-006 at 19:9-18.

ratepayers, and therefore should be excluded from the cost of service.[118] For the reasons explained above, this argument lacks merit and should be rejected.

Mr. Tolleth next argues that, even if the Commission were to agree that cost allocations from CorEnergy are reasonably included in the Carriers' cost of service, it does not make sense that CorEnergy would need to incur the same level of expenses after divesting MoGas and Omega.[119] In essence, Mr. Tolleth is making the same argument that he makes above regarding "absorbed" costs—that is, post-divestiture, CorEnergy employees' job responsibilities will shrink and therefore a lesser amount should be incurred at the CorEnergy level and allocated to the Carriers. However, Mr. Tolleth offers no evidence to support this point, other than speculative assumptions that it would be "inefficient" for CorEnergy to maintain the same level of workforce after the MoGas/Omega sale.

Finally, Mr. Tolleth argues that the Carriers' Test Period adjustment should be rejected because it cannot be considered "known and measurable," as the sale had not yet been finalized.[120] While it is true that the specific closing date of the MoGas/Omega sale was not known precisely at the time Mr. Tolleth submitted his reply testimony, the Carriers made clear in their testimony that efforts had been undertaken during the Test Period to close the transaction, that it was expected to

[118] VMSC-CRC-MRT-0001 at 90:1-8.
[119] *Id*. at 89:22-91:6.
[120] *Id*. at 91:7-15.

close near the end of the Test Period, and that it was only the involvement of the Federal Trade Commission that delayed the closing date of the transaction.[121] It is notable that, at hearing, Mr. Tolleth acknowledged that events that may occur outside of the Test Period may still be appropriate to consider in the cost-of-service analysis if there is evidence that the circumstances have "manifested" themselves during the Test Period.[122] That is clearly the case with the MoGas/Omega sale. Yet, Mr. Tolleth disregards this fact in the context of a Test Period adjustment that would support, all else being equal, higher rates. The record evidence also shows that the MoGas/Omega sale closed in January 2024,[123] and therefore is "known and measurable." As Mr. Waldron testified, at least in the near term, CMO does not expect any significant reduction in the level of overhead cost it will incur following the sale of the MoGas and Omega assets.[124] As such, the Carriers' Test Period adjustment to account for increased CorEnergy allocations to the Carriers going forward is reasonable and appropriate.

iv. What is the appropriate treatment of lobbying expenses on the part of CorEnergy and/or CMO that have been allocated to the Carriers?

The Carriers appropriately included in the cost of service all operating

[121] CRIM-DWJ-001 at 11:11-13; CRIM-MJW-022 at 62:21-23; CRIM-RLW-009 at 33:9-11.
[122] Tr. at 806:15-808:20.
[123] VMSC-CRC-0033.
[124] CRIM-RLW-009 at 19:12-20.

expenses related to their provision of safe and reliable transportation service, including lobbying expenses. The Joint Protestants did not challenge the inclusion of lobbying expenses in their reply testimony. Rather, this issue was raised for the first time during the cross examination of Mr. Waldron. During that cross examination, Mr. Waldron explained the benefits to the Carriers associated with such lobbying expenses. Specifically, that a lobbyist had been retained to assist CorEnergy and CMO in finding a path forward following the denial of CorEnergy's transfer of control application.[125] Given the lack of any testimony, the basis of the Joint Protestants' recommended exclusion of lobbying expenses is unclear. As such, the Carriers will respond to the Joint Protestants in their closing brief once the reasoning for the Joint Protestants' exclusion of this cost item is apparent.

2. What is the appropriate amount of asset maintenance expense?

The Carriers recommend including $5,054,855 in asset maintenance expense in the cost of service.[126]

The Carriers initially recommended $4,438,086 of asset maintenance expense in their direct testimony. That amount was inclusive of a Test Period adjustment of $869,502 based on the Carriers' actual asset maintenance expense during the first six months of the Test Period and projections of expenses for the last six months of

[125] Tr. at 275:15-276:6.

[126] This figure does not include any expenses that are the subject of the Carriers' accounting practice change, which is discussed in Section III.B.8 below.

the Test Period.[127] The projected expense was based on project-by-project and month-by-month forecasts, as shown in CRIM-DWJ-006. The recommended $4,438,086 amount also included a normalized level of tank cleaning costs. Specifically, the Carriers' proposed to remove $1,200,000 of actual tank cleaning costs they incurred in the Base Period on the grounds that it was not representative of a yearly, going-forward cost level and replaced it with a normalized amount of $400,000 that was based on the Carriers' historical experience with tank cleaning activities,[128] as well as the Carriers' expectation of the frequency of tank cleanings going forward and the associated costs those projects would entail.

In rebuttal testimony, the Carriers updated their asset maintenance expense recommendation to incorporate the most up-to-date data available—*i.e.*, actual data through November 2023 plus December 2023 forecast data, resulting in the current recommended amount of $5,054,855 (inclusive of a net downward adjustment of $800,000 to account for a normalized level of tank cleaning expense). While the Carriers are only seeking to recover $5,054,855 of asset maintenance expense, actual data for the entire Test Period, which was available after the Carriers submitted their rebuttal testimony but before the evidentiary hearing, shows that the Carriers actually incurred $5,989,809 in asset maintenance expense.[129]

[127] CRIM-DWJ-001 at 9:3-7, 10:16-20; CRIM-DWJ-005 at 10:20-23.
[128] VMSC-CRC-MRT-0052 at 3-4 (Carriers' response to data request VMSC-CRIMSON-8.36).
[129] CRIM-057 at "OpEx by GL" (GL 7000).

In his reply testimony, Mr. Tolleth rejected the Carriers' Test Period recommendations for asset maintenance expense altogether and instead includes $4,262,445 of asset maintenance expense in his cost of service based on the historical average of asset maintenance expense the Carriers incurred during the period January 2020 to September 2023.[130] Mr. Tolleth reasons that, because the Carriers' asset maintenance expense is cyclical and not ratable, it is reasonable to normalize asset maintenance expense over a multiple-year period.[131] However, Mr. Tolleth's reliance on an average of historical data to set the Carriers' going forward asset maintenance expense is misplaced because that historical data is not representative of going-forward expected expense levels. It is notable that, in the context of certain Base Period expenses like salaries and wages, Mr. Tolleth concluded that increasing the Base Period expense level by 6% was reasonable because inflation in the Base Period was high.[132] However, for his asset maintenance expense recommendation, Mr. Tolleth disregards entirely any effect of inflation. This is significant because when costs are rising, the obvious effect of not considering inflation will bias downward any calculation of a multi-year average expense level.

Moreover, Mr. Jackson explained in his rebuttal testimony that Mr. Tolleth's use of historical averages to estimate going-forward asset maintenance expenses is

[130] VMSC-CRC-MRT-0001 at 65:17-66:3 & Figure 19.
[131] *Id*. at 65:7-21.
[132] *See id*. at 85:2-6.

flawed because it ignores the fact that the Carriers have experienced increased regulatory activity and oversight resulting in higher asset maintenance expenses.[133] Actual data supports Mr. Jackson's testimony.

The record shows that the Carriers incurred $4,368,584 of asset maintenance expense in the Base Period.[134] Actual data for the first 11 months of the Test Period shows that the Carriers incurred $5,058,189 of asset maintenance expense, which is approximately 16% higher than what the Carriers incurred during the full 12-month Base Period—indicative of increasing asset maintenance expense due to greater regulatory activity and oversight. $5,058,189 is also approximately 19% higher than Mr. Tolleth's entire Test Period recommendation. In addition, at the evidentiary hearing, Mr. Jackson confirmed that the level of asset maintenance expense in the years 2020, 2021, and 2022 is not consistent with the Carriers' going forward expectations.[135] Rather, 2023 represented a step-change increase in the Carriers' asset maintenance expense, which the Carriers expect to continue going forward.[136]

In sum, the Joint Protestants' reliance on historical data dating back to 2020 to develop their recommended asset maintenance expense ignores the substantial evidence of increasing asset maintenance expense. It also contravenes actual data.

[133] CRIM-DWJ-005 at 12:1-21.
[134] CRIM-MJW-053-B at "OpEx by GL" (GL 7000).
[135] Tr. at 403:1-7.
[136] *Id.* at 402:14-25.

Adoption of the Joint Protestants' position would therefore ensure that the Carriers are not given the opportunity to recover their asset maintenance expense, a necessary and critical expense that the Carriers incur to ensure safe and reliable transportation service.

3. What is the appropriate amount of fuel and power expense?

The Carriers recommend including $12,010,512 in fuel and power expense in the cost of service, which is based on the actual amount of fuel and power expense booked during the 12-month period ending November 2023, as adjusted to account for the stipulation related to the Plains Line 2000 shutdown and the annualized incremental volumes expected to be transported on the Carriers' system as a result of the conversion of Phillips 66 Company's ("P66") Rodeo refinery to producing renewable diesel.[137]

The Carriers initially recommended $12,915,877 of fuel and power expense in their direct testimony based on the actual expense booked for the first half of the Test Period and projected expense for the second half of the Test Period.[138] The Carriers' fuel and power recommendation was inclusive of an upward Test Period adjustment of $3,146,518 to account for the expected increase in electricity prices in California.[139] That expected increase was supported by a study prepared by a third-

[137] CRIM-MJW-053-B at "OpEx by GL" (FERC Account 330).
[138] CRIM-DWJ-005 at 15:20-16:11.
[139] CRIM-DWJ-001 at 11:1-2.

party consultant.[140] Mr. Tolleth rejected the Carriers' fuel and power expense recommendation, claiming that the Carriers' projected electricity costs for July to December 2023 were not adequately supported.[141] Instead, Mr. Tolleth recommended a fuel and power expense of $10,148,553 that was based on historical cash expenditures for the period October 2022 to September 2023, as normalized to reflect the Plains Line 2000 outage.[142] As such, Mr. Tolleth appears to implicitly reject use of the Carriers' booked GL amounts that consider accruals of estimated fuel and power expense, which the Carriers record due to the lag in time in receiving gas and electricity invoices.

While Mr. Tolleth did not contest that electricity prices in California were increasing in the Test Period, by relying solely on historical data and cash payments, Mr. Tolleth's recommendation fails to account fully for rising electricity prices in California and divorces the relationship between the period for which the expenses were incurred and the services rendered therefor. As a result, his recommendation is not representative of the fuel and power expense the Carriers expect to incur going forward.

Though disagreeing with Mr. Tolleth's characterization of the Carriers' Test Period recommendation for fuel and power expense, Mr. Jackson acknowledged in

[140] CRIM-DWJ-005 at 17:9-13.
[141] VMSC-CRC-MRT-0001 at 80:18-81:2.
[142] *Id*. at 80:16-81:13, 83:4-84:1.

his rebuttal testimony that the expected increase in fuel and power expense for the second half of the Test Period had not materialized as projected.[143] However, Mr. Jackson explained that actual booked data for the first 11 months of the Test Period (January 2023 to November 2023) showed that the Carriers had incurred $11,060,462 in fuel and power expense[144]—nearly a million dollars greater than Mr. Tolleth's recommended expense for the entire Test Period. Incorporating updated expense data for the Test Period, the Carriers adjusted their Test Period fuel and power expense recommendation to $12,010,512, which was a decrease from what was presented in the Carriers' direct testimony.

While the Carriers only seek to recover $12,010,512 in the cost of service, expense data for the complete Test Period shows that the Carriers actually booked $12,017,285 in fuel and power expense.[145] As such, the Carriers' recommended fuel and power expense is well supported by actual record data.

4. What is the appropriate amount of regulatory compliance expense?

The appropriate amount of regulatory compliance expense to include in the cost of service is $1,533,126. This figure is based on the Carriers' actual Base Period expense amount of $794,344, plus a Test Period adjustment of $738,783 to account

[143] CRIM-DWJ-005 at 18:8-9.
[144] *Id*. at 18:3.
[145] CRIM-057 at "OpEx by GL" (FERC Account 330).

for expense levels that the Carriers forecasted for the Test Period and going forward.[146]

Regulatory compliance expense comprises those expenses that the Carriers incur to maintain compliance with local, state, and federal regulations.[147] As Mr. Jackson testified, examples of such expenses include the annual fees assessed by CalFire and by the U.S. Department of Transportation, as well as expenses associated with third-party analyses and evaluations that were conducted by the Carriers to comply with such regulatory requirements.[148] Regulatory compliance expense is therefore necessary and unavoidable in the provision of regulated oil pipeline transportation service. To determine the appropriate Test Period amount, Mr. Jackson examined actual expense data for the first half of the Test Period (January to June 2023) and forecast expense levels for the second half of the Test Period (July to December 2023). In other words, Mr. Jackson relied on the most current data available to him to support his Test Period recommendation. Given that the Carriers had already incurred $772,979 of regulatory compliance expense during the first half of the Test Period—an amount nearly equal to what the Carriers had incurred during the full 12-month Base Period—it was clear that a Test Period

[146] *See* CRIM-MJW-053-B at "OpEx by GL" (FERC Account 320, GL 7034); CRIM-DWJ-005 at 13:2-10.
[147] CRIM-DWJ-005 at 14:8-12.
[148] CRIM-DWJ-005 at 14:8-12.

adjustment was necessary and appropriate to ensure that the cost of service aligned with the principles of *Pacific Tel.*

Mr. Tolleth challenges a portion of the Carriers' proposed Test Period adjustment ($468,839),[149] claiming that it was not representative of "a reasonable and recurring level" and lacked "appropriate justification."[150] Mr. Tolleth instead recommended a Test Period adjustment of $269,944, which captured only the impact of the increased CalFire annual fees that became effective in July 2022.[151] As such, Mr. Tolleth recommends including $1,064,288 of regulatory compliance expense in the cost of service.

A critical flaw in Mr. Tolleth's recommendation is that it is contrary to actual data. Mr. Tolleth does not question the veracity of the GL data that the Carriers provided in this proceeding, and in fact that data serves as the basis for much of Mr. Tolleth's cost-of-service calculations. At the time Mr. Tolleth submitted his reply testimony in November 2023, actual data for the first nine months of the Test Period—through September 2023—was available.[152] The actual amount of regulatory compliance expense the Carriers incurred during just that nine-month period was $1,095,038, an amount that exceeds the amount recommended by Mr.

[149] This figure represents the difference between the Carriers' Test Period adjustment of $738,783 and Mr. Tolleth's Test Period adjustment of $269,944.
[150] VMSC-CRC-MRT-0001 at 78:16-23.
[151] *Id*. at 76:5-79:13.
[152] CRIM-DWJ-005 at 14:13-15:6.

Tolleth.[153] Mr. Tolleth fails to explain why his recommendation should be used in place of actual and undisputed cost data provided by the Carriers.

Mr. Jackson also noted that, as of the December 2023 submission of the Carriers' rebuttal testimony, actual data for the first 11 months of the Test Period was available and showed that the Carriers had incurred $1,275,381 in regulatory compliance expense through November 2023.[154] Actual operating expense data for the full Test Period data shows the Carriers incurred a total of $1,392,977 of regulatory compliance expense in the full Test Period.[155] While Mr. Tolleth generally criticizes the forecast data that the Carriers provided to support their Test Period adjustment for regulatory compliance expense, claiming such data amounted to only a "hard coded" figure that lacked "detail" on how that figure was developed,[156] the Carriers submit that actual data demonstrates the credibility and reliability of the Carriers' forecasts and undermines Mr. Tolleth's criticisms. Though it is true that actual regulatory compliance expenses for the Test Period ended up being a small degree lower than what had been forecast, other expenses such as asset maintenance expense had the opposite outcome. That there is some degree of variance between forecast data and actual data is neither surprising nor

[153] *Id*.
[154] *Id.* at 15:12-18.
[155] CRIM-057 at "OpEx by GL."
[156] VMSC-CRC-MRT-0001 at 78:3-15.

indicative that the Carriers' forecast data is either unreliable or insufficient to justify the Carriers' proposed cost of service.

5. What is the appropriate amount of salaries and wages expense?

The parties agree in principle that a Test Period adjustment of 6% should be applied to certain accounts, including salaries and wages expense reported in Accounts 300 and 500 and related expenses reported in Accounts 520, 550, and 580. The 6% adjustment is consistent with the pay increase that the Carriers applied effective March 2023.[157] However, because Mr. Tolleth's Base Period figures are different that the Carriers' figures, as Mr. Tolleth recommends either completely removing or greatly reducing certain Base Period expense, as discussed in Sections III.B.1.i and III.B.1.ii above, there are differences in resulting impact of the 6% increase. Mr. Tolleth also recommends applying the 6% increase to one GL account, GL 7043, that the Carriers do not increase.[158] For ease of reference, Table 2 below summarizes each party's recommendation after applying the 6% adjustment to the applicable GL accounts (based on each party's last round of testimony):

[157] CRIM-DWJ-001 at 10:12-15.
[158] VMSC-CRC-MRT-0001 at 85:7-14.

Table 2: Impact of 6% Pay Increase

GL# and Description	Carriers' Application of 6% Increase	Carriers' Test Period Recommendation	JP Application of 6% pay Increase	JP Test Period Recommendation
FERC Account 300 Salaries and Wages				
7036 - Stock Comp Expense (LTIP)	Yes	$47,504	No[159]	Removed
7037 - Salaries & Wages	Yes	$6,554,604[160]	Yes	$5,934,527
7038 - Overtime	Yes	$622,774	Yes	$507,474
7039 - Bonus	Yes	$623,116	Yes	$572,286
FERC Account 320 Outside Services				
7043 - Contract Labor	No	$33,088	Yes	$35,074
FERC Account 500 Salaries and Wages				
8020 - Salaries	Yes	$2,811,067	Yes	$2,047,027
8021 - Salaries (Overtime)	Yes	$2,998	Yes	$1,462
8022 - Bonus	Yes	$1,000,009	Yes	$797,446
FERC Account 520 Outside Services				
8030 - Salaries and Benefits Allocations (CorEnergy)	Yes	$1,389,095	No	Removed
FERC Account 550 Employee Benefits				
7042 - Employer 401K Contribution	Yes	$353,106	Yes	$320,584
7044 - Employee Benefits Other	Yes	$75,031	Yes	$71,477
8025 - Employer 401K Contribution	Yes	$155,128	Yes	$121,806

[159] While Mr. Tolleth claims to apply the same 6% to each of the accounts that Dr. Webb applied the adjustment to (VMSC-CRC-MRT-0001 at 85:7-14), this is not technically accurate because Mr. Tolleth zeroed out the Base Period figures in GL 7036, 8028, and 8030 to remove "unnecessary" costs as discussed in Section III.B.1 above. Therefore, no 6% increase was applied to those GL accounts.

[160] This figure is exclusive of the Carriers' recommendation for a downward adjustment ($772,734) to account for the Carriers' outsourced control center services, which is discussed fully in Section III.B.6 below.

8026 - Employee Benefits Other	Yes	$70,381	Yes	$68,470
8028 - Stock Comp Expense (LTIP)	Yes	$73,362	No	Removed
FERC Account 580 Pipeline Taxes				
7040 - Employer Payroll Taxes	Yes	$567,641	Yes	$513,061
8023 - Employer Payroll Taxes	Yes	$244,824	Yes	$187,946
TOTAL		$14,564,906		$10,738,551

Regarding GL 7043, the Carriers did not apply the 6% increase to that account because it was not subject to the 6% increase that became effective in March 2023.[161] However, the difference between the Joint Protestants' and the Carriers' position regarding GL 7043 is relatively small at $1,985.[162]

6. What is the appropriate amount of control center expense?

The Carriers recommend a total downward Test Period adjustment of $58,825 to account for a reduced level of control center expenses following the outsourcing of its control center activities.[163] This $58,825 figure is based on (1) the total costs that the Carriers expect to be allocated in accordance with the contract with the vendor that will be performing the control center activities ($713,909),[164] minus (2) the Carriers' estimated savings ($772,734) to be achieved through outsourcing its control center activities, which is calculated based on the salaries and wages

[161] CRIM-MJW-022 at 61:5-11.
[162] The Carriers incurred $27,897 in GL 7043 (Contract Labor) in the Base Period. $27,897 x 6% = $1,673.82. *See* VMSC-CRC-MRT-0016 at "OpEx by GL" (GL 7043).
[163] CRIM-MJW-022 at 62:11-12.
[164] A copy of the third-party vendor contract is included in VMSC-CRC-MRT-0061.

expense that the Carriers will no longer incur for control center employees.[165] While the parties agree in principle that the cost of service should account for the Carriers' control center outsourcing by netting the costs for the control center services less the savings achieved, they disagree as to the total cost savings that should be reflected in the cost of service.

In direct testimony, the Carriers recommended only an upward Test Period adjustment of $713,909 to account for the costs associated with the outsourcing of its control center activities. However, in rebuttal testimony, the Carriers conceded that the full savings achieved from the control center outsourcing had not been properly accounted for in the cost of service.[166] Thus, the Carriers modified their cost-of-service recommendation related to control center outsourcing to reflect both a Test Period upward adjustment of $713,909 for control center outsourcing and a Test Period downward adjustment of $772,734 to account for the salaries that were paid to the control center personnel that were released from employment as a result of the control center outsourcing.[167]

By contrast, Mr. Tolleth recommends a single downward Test Period adjustment of $440,090 for control center outsourcing to account for the costs of the service and any associated savings based on an estimate that the Carriers had

[165] CRIM-MJW-022 at 62:6-14.
[166] *Id*. at 62:7-12; CRIM-DWJ-005 at 19:1-9.
[167] CRIM-MJW-022 at 62:6-14; CRIM-DWJ-007.

presented in a board presentation dated May 2022.[168] Specifically, that figure was derived from an *ex ante* estimate developed approximately a year before the outsourced control center services commenced in May 2023, which estimated that the Carriers and their affiliates expected a total of $700,000 savings as a result of the control center outsourcing.[169] From that May 2022 estimate, Mr. Tolleth applied the Carriers' 2023 third-quarter allocation percentages, which are used to calculate their allocation of shared services expenses, to reach his estimated savings of $440,090.[170] Mr. Tolleth's recommendation, however, is based on outdated estimates and does not reflect the most current information on the costs that the Carriers experienced in the Test Period. While the Carriers acknowledge the May 2022 estimate that forms the basis of Mr. Tolleth's recommendation, more recent actual data demonstrates that the May 2022 estimate overstated the level of savings that would be achieved.

7. What is the appropriate amount of rate case litigation expense?

The Carriers seek recovery of their rate case litigation expenses through Dr. Webb's normalized allowance of $1,250,000.[171] The Joint Protestants oppose this recovery, offering arguments that are without merit and, indeed, are paradoxical. The Joint Protestants facially oppose recovery, asserting that recovery of such

[168] VMSC-CRC-MRT-0001 at 87:6-88:1.
[169] VMSC-CRC-MRT-0062 at 4.
[170] VMSC-CRC-MRT-0001 at 87:17-88:1.
[171] CRIM-MJW-007 at 18:8-18.

expenses incentivizes "perverse" behavior,[172] yet the Joint Protestants themselves chose to widen the scope of their challenges on this point in their pre-filed testimony and to ignore clear, contrary precedent, serving to further increase the litigation burden and expense for the Carriers. In challenging the Carriers' recovery of these expenses, the Joint Protestants have ignored the Commission's clear ruling in D.20-11-026 permitting recovery of such expenses:

> Crimson's defense of the litigation expenses that it has incurred, is that those expenses were "driven by the intensity with which the joint shippers chose to pursue their challenges to Crimson's rate increase, filing over 600 discovery requests and opting to challenge a wide array of cost-of-service elements…" Crimson's argument is persuasive. While the shippers are entitled to protect their interests with a vigorous challenge of those aspects of Crimson's application with which they disagree, Crimson is obviously entitled to defend its interests.[173]

Indeed, the Joint Protestants challenge the general principle that such costs are eligible for recovery by utilities.[174]

Though the Joint Protestants contest Dr. Webb's point that this proceeding involves two pipelines and resulting complexities, the basis for recovery of these expenses is clear. It is the Joint Protestants who chose to pursue extensive,

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[172] VMSC-CRC-MRT-0001 at 71:18-72:14.
[173] D.20-11-026 at *13-14.
[174] *See Driscoll v. Edison Light & Power Co.*, 307 U.S. 104, 120-21 (1939) (upholding utility's recovery of rate case expenses, finding "[e]ven where the rates in effect are excessive, on a proceeding by a commission to determine reasonableness, we are of the view that the utility should be allowed its fair and proper expenses for presenting its side to the commission.").

aggressive discovery—serving over 900 discovery requests on the Carriers,[175] 50 percent more than the 600 requests the Commission found to be "persuasive" of an intensive litigation in D.20-11-026. Thus, the reality is that the Joint Protestants are themselves a primary factor in the scale of litigation activity and expense in this proceeding. Moreover, the Joint Protestants have ignored inconvenient facts, such as the fact that KLM and SPB are held in two separate companies and maintain separate accounting books and records and that those facts magnified the burdens of the extensive discovery sought by the Joint Protestants as they elected to mount aggressive challenges to nearly every cost element.[176] Indeed, as Dr. Webb testified, the Joint Protestants' aggressive challenge dwarfs the A.16-03-009 proceeding—where four shipper witnesses submitted 154 pages of pre-filed testimony and 54 exhibits versus the Joint Protestants' 258 pages of testimony and 140 exhibits here.[177] These concrete facts undermine the Joint Protestants' effort to downplay the impact of their litigation activities and to foreclose the Carriers from a reasonable opportunity to recover their legitimate expenses.

Further tangible support can be found in Mr. Tolleth's reliance upon the $2.87 million spent by Crimson in litigating the A.16-03-009 SoCal proceeding.[178] Merely

[175] CRIM-MJW-022 at 55:3-5 (Dr. Webb noted that the shippers had served more than 910 requests as of the December 29, 2023).
[176] CRIM-MJW-022 at 54:15-55:19.
[177] *Id*. at 55:13-19.
[178] VMSC-CRC-MRT-0001 at 73:4.

applying general inflation[179] since January 2017 yields about $3.67 million, which, if spread over that proceeding's 4.5-year effective period (as determined by Mr. Tolleth), yields about $816,000 per year—far higher than Mr. Tolleth's recommended $565,000 even before taking account of any upward adjustment for the greater scale, intensity, and complexity of this proceeding. Affording even a modest adjustment to recognize the complexity and scale of this proceeding as compared to the A.16-03-009 case further underlines the soundness of Dr. Webb's recommendation.

Further, the Carriers incurred approximately $1.58 million in legal expense during the Test Period,[180] a majority of which is rate case litigation expense, as is validated by the fact that over the first nine months of the Test Period (January to September 2023), the Carriers incurred rate case litigation expense (including legal and consulting fees) of $1,082,683, as reflected in VMSC-CRC-MRT-0051 and VMSC-CRC-MRT-0052. Unquestionably, Mr. Tolleth's recommended amount would foreclose recovery of these actual incurred costs.

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[179] Bureau of Labor Statistics, CPI Inflation Calculator (last accessed Mar. 15, 2024): https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=2873296&year1=201701&year2=202402. Pursuant to Comm. Rule 13.10, the Carriers request that judicial notice be taken of this inflation resource maintained by the federal government and the referenced measure, which are "capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Cal. Evid. Code, § 452(h).

[180] *See* CRIM-057 at "OpEx by GL" (GL 8008).

Finally, as was addressed during the hearing,[181] the Carriers reasonably expect that it will be necessary to pursue annual rate increase filings in order to keep pace with their increasing costs and declining volumes and that, likewise, it is reasonable to expect shipper protests and ensuing litigation. The Carriers submit that it is reasonable and necessary to account for these factors in determining the rate case litigation expense to include in rates.

8. Should the Carriers be entitled to a Test Period adjustment to account for the change in accounting practice regarding capitalization versus expensing of integrity-related projects?

The Carriers seek an upward Test Period adjustment to Account 320 (Outside Services) of $4,161,125 to account for a change in the Carriers' accounting practices regarding the treatment of integrity-related project expenditures—specifically, to shift from the historical practice of capitalizing such expenditures and begin expensing them going forward.[182] That figure was developed based on the actual costs of the integrity-related projects that would be affected by the capitalization practice change going forward and based on the most recent data available at the time of the Carriers' rebuttal testimony (November 2023).[183]

As explained in Mr. Waldron's direct testimony, the Carriers elected to change their accounting practice regarding the treatment of integrity-related

[181] Tr. at 52:12-18, 467:3-7.
[182] CRIM-DWJ-001 at 11:18-20; CRIM-RLW-009 at 25:1-30:7; CRIM-053-A at "B" (Adjustment 9).
[183] CRIM-MJW-022 at 66:12-18; CRIM-MJW-053-B at "CapEx" (row 36).

expenditures after evaluating the expected useful life of the Carriers' pipeline assets in light of Governor Newsom's net zero plan for California that was published in November 2022 and supported by the California Air Resources Board ("CARB").[184] In considering that the plan's ultimate goal is to reduce crude oil usage by 94% by 2045, the Carriers concluded that it was reasonable to not expect the pipelines to operate beyond 2045 and indeed to plan on the basis that the pipelines would cease operations earlier.[185] Therefore, under generally accepted accounting principles ("GAAP"), the Carriers determined that it was no longer appropriate to capitalize integrity maintenance expenditures because they would not realistically extend the pipelines' useful life.

In his reply testimony, Mr. Tolleth rejected the Carriers' Test Period adjustment based on his view that the Carriers' reliance on CARB's 2022 Scoping Plan was not reasonable, as the CARB Plan is "highly speculative and contingent on political, technological, and market outcomes that are far from certain to occur."[186] As a result, Mr. Tolleth disputes the finite life of the Carriers' pipelines and concludes that the integrity repairs affected by the Carriers' policy change should be

[184] CRIM-RLW-006 at 22:8-23:4.
[185] *Id.* at 22:21-23:1.
[186] VMSC-CRC-MRT-0001 at 93:13-15.

capitalized because, in his opinion, they either improve the functionality, quality, or useful life of the pipelines.[187]

As noted above in Section III.B.1.ii, Mr. Tolleth has no first-hand experience in the operation or maintenance of a crude oil pipeline. As such, his testimony is not supported by any real-world experience. Moreover, in his rebuttal testimony as well as testimony given during the hearing, Mr. Waldron affirmed that, since the Carriers are regulated California utilities, it is reasonable and necessary to operate the Carriers' assets on the expectation that California is committed to and will achieve its goals.[188] In addition, Mr. Waldron explained that the integrity repairs affected by the Carriers' change in accounting practices do not extend the useful life of the pipelines because crude oil production economics and declining volumes will cause the pipelines to no longer operate far before the CARB plan's ultimate goal is achieved.[189]

Mr. Waldron then explained that the type of integrity-related maintenance projects affected by the accounting change does not improve the functionality of the assets, rendering capitalization inappropriate. First, a pipeline's minimum flow rate will limit its ability to provide service.[190] Indeed, as volumes drop and, in response,

[187] *Id.* at 93:15-18.
[188] CRIM-RLW-009 at 30:16-20.
[189] *Id*. at 25:18-20.
[190] *Id.* at 26:4-9.

the pipeline approaches its minimum flow rate, various issues can arise, including water separation, heat loss, and difficulties in integrity testing and maintenance pigging,[191] reaching the point where the pipeline can no longer operate. At pages 26:11 to 28:11 of CRIM-RLW-009, Mr. Waldron substantiated in significant detail how these issues arise and affect a pipeline's operations. Due to these various effects, Mr. Waldron explained that it is clear that California's carbon reduction initiatives to decrease crude oil production and usage in California—the single market that the Carriers' pipelines serve—render the pipelines' useful lives finite and that the end of those lives will be reached far before California reaches its ultimate goals in the coming decades.[192] Given this reality, it is clear that the type of integrity maintenance affected by the accounting practice change no longer extends the useful life of the Carriers' pipelines and therefore such costs should appropriately be expensed under GAAP.[193]

Second, Mr. Waldron explained that crude oil production economics can also affect the useful life of the Carriers' pipelines. Specifically, Mr. Waldron explained that, as throughput on the Carriers' systems continues to decline, the transportation tariffs could increase to a level where the tariff paid exceeds producers' crude oil

[191] *Id.*
[192] *Id*. at 25:13-20.
[193] *Id*. at 25:20-23.

margin,[194] rendering crude oil production uneconomic and thereby eliminating demand for crude oil transportation on the Carriers' system. As a result, it is likely that crude oil production economics could cause the Carriers' pipelines to cease operating even before low flow rate operational challenges would cause the pipelines to cease operations.

Third, contrary to Mr. Tolleth's claims, Mr. Waldron explained that the integrity-related maintenance projects and associated expenditures do not increase the functionality of the pipeline. Specifically, the subject integrity-related maintenance activities most commonly concern the use of a smart pig or in-line inspection tool in order to identify any mechanical issues that need to be addressed in accordance with regulatory requirements.[195] To the extent an issue is identified, such as wall loss, the Carriers would replace the piece of metal affected by the issue. Such maintenance does not, however, improve the functionality of the pipeline but rather the pipe continues to function similar to the way it did before the maintenance activity. Mr. Waldron explained that, if anything, the functionality of the pipeline is decreased because a welded seam has been introduced.[196]

[194] *Id*. at 29:1-4.
[195] Tr. at 124:16-125:10.
[196] *Id.* at 125:5-7.

9. What is the total level of operating expense that should be included in Carriers' cost of service?

As shown in CRIM-MJW-053-A (at Statement B), the Carriers submit that the appropriate overall level of operating expense to include in the cost of service, excluding depreciation, is $54,698,381. This amount is largely based on the actual operating expenses that Crimson incurred during the first 11 months of the Test Period, plus forecast data for the last month of the Test Period. As explained in the sections above, the record supports that each of the Carriers' proposed Base and Test Period adjustments is appropriate and necessary to ensure that the rates the Carriers are permitted to charge for transportation on KLM and SPB will allow it to recover the amount of operating expenses that the Carriers reasonably expect to incur going forward and during the period in which the requested rates would be in effect.

C. Rate Base, Depreciation and Amortization Expense

1. When should the idled KLM assets be removed from rate base to calculate the cost of service?

As explained below, the idled KLM assets should be removed from the Carriers' rate base calculation as of the Test Period.

After the physical integration of the KLM and SPB pipelines in 2020, certain portions of the KLM pipeline—notably the KLM mainline—ceased to be currently needed for oil transportation service and were idled and purged pending any future operational need. As Dr. Webb noted, however, all of the KLM pipeline assets remained dedicated to public utility service and subject to the authority of the Commission.[197] On that basis, in his direct testimony, Dr. Webb recommended that all of the KLM system assets, including the idled assets, should be included in rate base.[198] In contrast, on the basis that the assets were not currently in active service, Mr. Tolleth excludes these assets from the Carriers' rate base for the entirety of the Base and Test Periods,[199] relying upon his interpretation of the "used and useful" standard.

Mr. Tolleth's application of the "used and useful" standard is contrary to established practice with regard to public utility assets. The fact that the KLM assets

[197] CRIM-MJW-022 at 68:4-9.
[198] *See* CRIM-MJW-007 at 20:4-21:9; CRIM-MJW-009 at Statement E; CRIM-MJW-022 at 68:2-9.
[199] VMSC-CRC-MRT-0001 at 102:11-103:5.

in question were not in immediate use did not alter the fact that they were dedicated to, and remained available for, public utility service if the need arose—meaning they are used and useful. Commission precedent, including the orders cited by Mr. Tolleth, supports this principle.

Mr. Tolleth relies upon two Commission decisions to support his application of the used and useful standard. The first decision he relies upon, D.12-06-040,[200] involved California-American Water Company ("Cal-Am"), a public water utility.[201] The Commission held that the San Clemente Dam, owned and operated by Cal-Am, was used and useful for ratemaking purposes despite it not being actively used for water diversion or water supply purposes in the nearly ten years preceding the decision due to safety concerns associated with its active use.[202] In finding that the dam remained used and useful, the Commission noted that the utility had maintained its water permits for the dam, such that it remained available as a source of water supply and could be used in emergency circumstances, thereby providing direct and ongoing benefits to customers.[203] The second decision relied upon by Mr. Tolleth is D.18-12-021, also a Cal-Am case. There the Commission held that in some instances assets that are strictly back-up assets for emergency

[200] *Id*. at 98:13-15.
[201] *Application of California-American Water Co. for Authorization to Implement the Carmel River reroute*, D.12-06-040, 2012 Cal. PUC LEXIS 311 (2012) ("D.12-06-040").
[202] *Id.* at *19-24.
[203] *Id.*

circumstances may not be used and useful for ratemaking purposes.[204] Based upon findings that the utility had characterized one of the back-up assets as "obsolescent" and the other asset had been inactive due to contamination,[205] the Commission held that neither asset was used and useful. However, a critical distinction of the facts of D.18-12-021 to this case is that Crimson has never described the inactive portion of the KLMs system as "obsolete" or otherwise not capable of use by shippers should circumstances warrant.

Subsequent to the filing of his direct testimony, Dr. Webb became aware that more definitive plans had been developed and pursued that involved converting the KLM idled assets to use in transporting carbon dioxide for sequestration purposes, with a memorandum of understanding having been executed during the Test Period.[206] Though Dr. Webb testified that idled KLM assets still qualified for rate base treatment under the used and useful standard up to the point these assets are repurposed, he adopted the more conservative approach of removing them from rate base.[207] So, the removal of the KLM idled assets from the Carriers rate base was no longer a contested issue, but there remains the issue of *when* such assets should be removed from rate base. With the advent of this change having occurred during the

[204] D.18-12-021, 2018 Cal. PUC LEXIS 628 at *250-56 (Findings of Fact Nos. 209-10).
[205] *Id.* at *253.
[206] CRIM-MJW-022 at 68:11-14.
[207] *Id*. at 68:14-19.

Test Period, Dr. Webb reasonably concluded that it was conservative to reflect removal of the assets from rate base in the Test Period.

2. What is the appropriate depreciated original cost value of Carrier Property In Service as of the Base and Test Periods?

The Carriers submit that the appropriate depreciated original cost value of Carrier Property In Service ("CPIS"), calculated in accordance with the principles set forth in this Section C of the brief, is $136,939,676 as of the Base Period and $116,224,263 as of the Test Period.[208]

3. What is the appropriate method to calculate AFUDC and what are the appropriate accumulated AFUDC balances to include in the rate base?

A major rate base difference between the parties involves the treatment of the Allowance for Funds Used During Construction ("AFUDC"). As Dr. Webb explains, AFUDC "compensates the regulated utility for the time value of money invested in construction projects that have not yet been completed and placed in service."[209] The Commission has recognized this principle as a basic component of oil pipeline ratemaking:

> The AFUDC represents the forecasted financing costs (both debt and equity) that are used to finance utility plant construction, i.e., construction work in progress (CWIP). The AFUDC generally cannot be recovered until the facility becomes operative. During plant construction, the AFUDC is accumulated in the CWIP. When the facility becomes operative, i.e., used and useful, the AFUDC is then capitalized. The utilities are then allowed to recover the capitalized

[208] CRIM-MJW-053-A at Statement E (Line 1 minus Line 4).
[209] CRIM-MJW-007 at 11 n.6; Tr. at 492:11-20.

> AFUDC in rates through depreciation charges over the useful life of the asset, and a return is earned on the undepreciated portion of the AFUDC.[210]

All parties agree that the Carriers are entitled to some level of AFUDC. The dispute revolves around the timing of when the calculation should begin. Dr. Webb included AFUDC from the time the subject assets entered public utility service, whereas Mr. Tolleth began accruing and amortizing AFUDC from acquisition of the assets by a CMO entity.[211] Specifically, as to the KLM system, Dr. Webb began with the CPIS amount recorded for the assets as of 1983, consistent with how the assets were recorded on the books of Chevron. As to the SPB system, SPB was declared to be a public utility in 2005 and therefore Dr. Webb began with the rate base figure approved by the Commission in D.11-05-026, which coincided with when the Commission declared SPB to be a public utility.[212] For both entities, he calculated AFUDC as a rate base component that was separate from physical assets. By contrast, Mr. Tolleth performed the same calculation beginning at the time when the applicable Carrier—Crimson or SPB—purchased the assets.

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[210] D.13-05-010 at *1430-31. The FERC has likewise recognized this principle since it adopted the original cost methodology in Opinion No. 154-B, 31 FERC ¶ 61,377 at 61,835 n.38 (1985). *See, e.g.*, *Kuparuk Transp. Co.*, 45 FERC ¶ 63,006 at 65,050-51 (1988) ("*Kuparuk*") ("Upon the beginning of service, the capitalized AFUDC is included in rate base and recovered through periodic depreciation charges; the unrecovered amounts earn a return along with other elements of rate base.").

[211] CRIM-MJW-022 at 69:3-6; VMSC-CRC-MRT-0001 at 108:9-13.

[212] CRIM-MJW-007 at 20:4-21.

Ultimately, Mr. Tolleth does not appear to have a principled basis for excluding AFUDC associated with the period when the KLM and SPB assets were in public utility service but owned by an entity other than CMO. During cross examination, Mr. Tolleth acknowledged that AFUDC should not be extinguished when a new entity such as Crimson acquires an existing public utility.[213] During redirect, Mr. Tolleth attempted to explain this apparent inconsistency by claiming that there was no verifiable evidence that the prior owners had included AFUDC in their rate base.[214] However, as Dr. Webb explained, it is simply illogical to assume that the prior owner (Chevron or Shell) would exclude from rate calculations recovery of a cost element to which it was entitled.[215] In re-direct examination, Mr. Tolleth appeared to agree with Dr. Webb, explaining that assets under construction were being included in the rate base calculations of Chevron in various filings presented to the Commission.[216] Finally, as noted above, the Commission and the FERC have made clear that, as assets are placed into service, the associated AFUDC is capitalized into rate base, a description that is consistent with Dr. Webb's testimony and approach to addressing AFUDC.[217] In accordance with Dr. Webb's

[213] Tr. at 870:15-18.
[214] *Id*. at 1024:16-24.
[215] *Id*. at 511:20-512:2.
[216] *Id*. at 1026:8-1029:2.
[217] *See* D.13-05-010 at *1436-40; *Kuparuk* at 65,050-51.

calculation, the appropriate amount of AFUDC balances to include in rate base is $11,032,440 for the Base Period and $10,646,478 for the Test Period.[218]

4. What are the appropriate Base and Test Period rate base amounts to be used in the return component of the cost of service?

The Carriers submit that, calculated in accordance with the principles set forth in this Section III.C of the brief, the appropriate rate base amount as of the end of the Base Period is $149,088,614 and as of the end of the Test Period is $137,887,236.[219]

5. What are the appropriate amounts of depreciation expense and amortization of AFUDC to be included in the Test Period cost of service?

Most of the differences between the parties' recommended depreciation expense and amortization of AFUDC are caused by differences in rate base and AFUDC balance discussed above. However, there are minor calculation differences. As explained in his rebuttal testimony, Dr. Webb followed well-established practices in calculating depreciation (and the mathematically related amortization of AFUDC), including using the mid-year convention for dating the placement of assets into service and adhering to the "group method" of calculating depreciation, which Dr. Webb has applied in support of previous KLM and SPB rate filings approved by

[218] CRIM-MJW-053-A at Statement E.
[219] *Id*.

the Commission.[220] Mr. Tolleth, in contrast, diverges from these practices by starting his calculation of depreciation from the specific month an asset was placed into service and by ignoring the group method and instead calculating depreciation by individual asset.

As to using an asset's specific in-service date, Mr. Tolleth's approach is not erroneous, but, as Dr. Webb testified,[221] it adds significant and needless complication—specific in-service dates may not in all instances be available—while having a trivial impact on the depreciation amount, a point admitted by Mr. Tolleth.[222] Regarding use of the group method versus individual asset depreciation, as Dr. Webb reviewed, the group method is required by the FERC's regulation and, in his experience, has been consistently applied in pipeline rate proceedings before this Commission.[223] Indeed, Mr. Tolleth accepted and applied the group method in determining his recommended rate base in the recent Crimson Southern California pipeline proceeding.

In sum, Mr. Tolleth has offered no reasoned basis for diverging from the established practices followed by Dr. Webb in calculating depreciation expense or

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[220] CRIM-MJW-007 at 21:1-23:14; CRIM-MJW-022 at 70-71 (citing *In the Matter of the Application of San Pablo Bay Pipeline Co. LLC for Authority to Increase Rates*, D.22-10-026, 2022 Cal. PUC LEXIS 443 (2022) and *In the Matter of the Crimson California Pipeline L.P. for Authority to Increase Rates*, D.22-12-035, 2022 Cal. PUC LEXIS 561 (2022)).
[221] CRIM-MJW-022 at 70:17-19.
[222] VMSC-CRC-MRT-0001 at 108:2-3.
[223] CRIM-MJW-022 at 70:20-22.

amortization of AFUDC, practices which Mr. Tolleth himself has previously followed before the Commission.

As shown in CRIM-MJW-053-A, the total amount of depreciation expense that should be included in the Carriers' cost of service is $9,077,847[224] and the total amount of amortization of AFUDC should be $410,243.[225]

[224] CRIM-MJW-053-A at Workpaper 1 (Line 9).
[225] *Id*. at Statement F2 (Lines 4 + 10).

D. What is the appropriate cost of capital to be applied to the rate base?

The cost of capital is that portion of a regulated utility's cost of service that is intended to reflect the costs of obtaining the capital necessary to provide its jurisdictional services. The standard measure is the weighted average cost of capital ("WACC"), which is the weighted average of the utility's return on equity ("ROE") and the cost of debt ("COD"). The weighting is determined by the ratio of equity and debt in a company's capital structure. As a result, the three key components of the WACC are (1) capital structure, (2) COD, and (3) ROE.

The Carriers have adhered to the requirements of *Hope* and *Bluefield* by developing a WACC that would provide investors with an opportunity to earn a return on their investment that is commensurate with returns on investments of comparable risks. The Joint Protestants, by contrast, violate the core tenets of those decisions by proposing cost-of-capital elements that are entirely divorced from what investors would require to be willing to invest in the Carriers.

1. What is the appropriate capital structure?

The Carriers recommend a capital structure of 60% equity and 40% debt. In setting the appropriate capital structure for a regulated utility, the Commission has stated:

> There is no set rule or formula … In determining capital structures, the Commission generally considers a number of factors. These often include: the frequency of rate case reviews; the nature of capital

> investments; operating, business and financial risks; liquidity and borrowing capability; credit rating impacts; interest rates; the ability to attract capital; cost of debt; and the interplay with ROE.[226]

As this quote makes clear, key factors to consider in setting a utility's capital structure are the various risks it faces.

The parties agree that neither Crimson nor SPB are publicly traded or issue their own debt,[227] and therefore both recommend adoption of a hypothetical capital structure. The primary basis for Dr. Webb's 60/40 capital structure was the recent Commission decision, D.20-11-026, where the Commission accepted a 60/40 capital structure for Crimson.[228] Because there was no evidence indicating that the risks the Carriers face in their California operations had lessened since the issuance of those orders, it would not make sense to apply a less equity-rich capital structure that, all else being equal, would result in a lower rate of return. In fact, the record demonstrates that, if anything, the risks facing the Carriers' California operations have significantly increased in recent times.

For example, Dr. Webb presented a chart in his direct testimony showing that San Joaquin Valley onshore production (the production transported on the Carriers' system) has been steadily decreasing since the mid-1980s.[229] There have been recent

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[226] *ARCO Prods. Co.*, *et al*., D.12-03-026, 2012 Cal. PUC LEXIS 135 at *45 (2012) ("D.12-03-026").
[227] CRIM-MJW-007 at 27:17; VMSC-CRC-LOU-0001 at 25:22-23.
[228] CRIM-MJW-007 at 28:1-13, 30:7-31:2; D.20-11-026 at *19-20.
[229] CRIM-MJW-007 at 63, Chart 1.

mandates to ban California sales of new gasoline-powered cars by 2035 and Governor Newsom's net zero plan, as supported by the California Air Resources Board, sets a goal of reducing crude oil usage in California by 94% by 2045.[230] There have also been several refinery closures or conversions in the San Francisco Bay area that directly impact the demand for the Carriers' crude oil services—including Marathon's closure of its Martinez refinery and P66's conversion of its Rodeo refinery to renewable diesel.[231] Permits for new wells and well reworks have also declined sharply in California in recent quarters.[232]

As further support for his capital structure recommendation, Dr. Webb noted the several other Commission decisions involving oil pipelines where the Commission accepted a capital structure of 60% equity and 40% debt. Specifically, the Commission accepted the 60/40 capital structure for pipelines operated by Chevron, Phillips 66 Pipeline, and SFPP.[233] Those three companies are all integrated in some of the largest oil companies in the world and that have assets across the U.S. If a 60/40 capital structure is appropriate for those much larger and more diversified companies, then it is certainly supportive of a 60/40 capital structure for the Carriers.

[230] CRIM-MJW-007 at 64:1-10; CRIM-RLW-009 at 25:9-18.
[231] CRIM-MJW-007 at 64:11-65:3.
[232] *Id*. at 65, Figure 2.
[233] *Id*. at 31:5-16 (referencing D.11-05-045, D.08-06-042, D.20-12-037).

Mr. Upton rejects Dr. Webb's recommendation, asserting that it is too heavily weighted toward equity and that Dr. Webb failed to perform any analysis to support his recommendation.[234] As an initial point, Mr. Upton is wrong that Dr. Webb performed no analysis to support his capital structure recommendation. As discussed above, Dr. Webb analyzed relevant Commission precedent and determined that there were no facts that supported a less equity-rich capital structure than what the Commission had previously accepted. By contrast, Mr. Upton performed no analysis demonstrating that the Carriers face less risk today as compared to when the above-referenced decisions were issued to support his position that a less equity-rich capital structure is more appropriate.[235]

Mr. Upton's attempt to underplay the Commission precedent relied upon by Dr. Webb is also unavailing. First, Mr. Upton claims that it is inappropriate to rely on D.20-11-026 because there have been several changes to the Carriers' ownership structure since the issuance of that order.[236] He also notes that D.20-11-026 does not "explicitly address" whether a 60/40 capital structure is reflective of the risks facing the Carriers.[237] As to the latter point, Mr. Upton's position is at odds with the Commission's statement in D.12-03-026—quoted above and also quoted in Mr.

[234] VMSC-CRC-LOU-0001 at 61:10-62:19.
[235] Tr. at 603:9-614:21.
[236] VMSC-CRC-LOU-0001 at 64:12-14.
[237] *Id*.

Upton's testimony[238]—that risks are among the factors that the Commission considers in setting a utility's capital structure. It is unreasonable to assume that this Commission accepted a 60/40 capital structure for the Carriers in D.20-11-026 that ignored that principle. As to the former point, Mr. Upton fails to explain how the Carriers' ownership changes that have occurred between D.20-11-026 and the present have had any impact on the Carriers' risks, such that a less equity-rich capital structure is more appropriate.

As to the other Commission decisions not involving Crimson, Mr. Upton largely claims that such decisions are not useful because the 60/40 capital structure accepted by the Commission was not a contested issue.[239] It is the Carriers' experience that even uncontested matters are fully evaluated and considered by the Commission. For example, Crimson's rate filing that led to D.22-10-009 was ultimately uncontested, but the Commission nevertheless sought additional information from Crimson to support its requested rate increase.[240] As another example, the motion to transfer control of the Carriers to CorEnergy was unopposed, yet it was still rejected.[241] Mr. Upton's bald assumption that any utility request that

[238] *Id*. at 25:2-10.
[239] *Id*. at 65:12-67:5.
[240] CRIM-MJW-022 at 114:5-9.
[241] *Id*. at 114:3-5.

is uncontested is necessarily rubber-stamped by the Commission is therefore unfounded.

Finally, Mr. Upton claims that Dr. Webb's capital structure is flawed because it does not reconcile with the capital structures of the members of Dr. Webb's historical and sub-investment proxy groups.[242] Dr. Webb fully refuted those claims. He first noted that, with the exception of NuStar, all companies in his historical proxy group have investment-grade credit ratings, and so the debt and equity percentages used to derive their capital structures are not comparable to the Carriers.[243] Even Mr. Upton acknowledged the differences between investment-grade companies and non-investment grade companies.[244] As to the sub-investment grade companies, Mr. Upton failed to recognize that many of those companies were highly leveraged, which (negatively) impacts their credit rating.[245] As such, the debt and equity ratios of the sub-investment grade companies are not comparable to the Carriers. For these reasons, it would be inappropriate to rely on the median capital structure of either proxy group to set the Carriers' capital structure.

Turning to his recommended capital structure of 55% equity and 45% debt, Mr. Upton first calculates the capital structures of CorEnergy and his proxy group

[242] VMSC-CRC-LOU-0001 at 72:1-74:21.
[243] *See* CRIM-MJW-022 at 119:22-120:6.
[244] Tr. at 555:3-23.
[245] CRIM-MJW-022 at 122:2-6.

of large oil pipeline companies as of June 30, 2023.[246] Mr. Upton finds that CorEnergy's capital structure was 51.6% equity and the median capital structure of his proxy group was 47.1% equity.[247] However, Mr. Upton ultimately recommends a 55% equity capital structure for the Carriers because it purportedly recognizes the "additional risks" that the Carriers face in operating in California.[248] Notably, during cross examination, Mr. Upton acknowledged that he had made "no attempt to quantify" that additional risk;[249] nevertheless, he claims his more equity-rich capital structure appropriately accounts for those "additional risks." The record shows the opposite.

It was established at hearing that if Mr. Upton had employed a 50/50 capital structure consistent with the capital structure of CorEnergy and the median capital structure of his proxy group, keeping his same COD (7.55%) and ROE (9.98%) recommendations, the modified calculation would have produced a WACC of 8.82%.[250] That figure is 12 basis points lower than WACC of 8.94% that Mr. Upton recommends.[251] While Mr. Upton claimed that a 12 basis point difference could be a "material" difference,[252] he also conceded that 12 basis points was far below the

[246] VSMC-CRC-LOU-0001 at 32:1-33:4.
[247] *Id*. at 32:6-33:4.
[248] *Id*. at 13:2-4.
[249] Tr. at 685:20-686:6.
[250] *Id*. at 616:13-23.
[251] *Id*. at 616:24-617:7.
[252] *Id*. at 618:4-10.

standard deviation[253] of his calculated debt, equity and WACC.[254] So, despite Mr. Upton's statements at hearing, the data shows a negligible or non-material difference to Mr. Upton's calculated WACC had he used a 50/50 capital structure instead of a 55/45 capital structure. Therefore, his position that his more equity-rich capital structure accounts for the "additional risks" that the Carriers face lacks support.

2. What is the appropriate cost of debt?

The parties agree that (1) the COD represents a key element in the calculation of the WACC and (2) the Carriers do not issue their own debt, but they disagree as to how to estimate the COD for the Carriers. Dr. Webb recommends a COD of 11%[255] and Mr. Upton recommends a COD of 7.66%.[256] As this section of the brief will demonstrate, Dr. Webb's recommendation is consistent with Commission precedent as well as the financial reality of the Carriers and their parent company, CMO, while Mr. Upton's recommendation ignores both precedent and financial reality.

Dr. Webb began his analysis with reference to D.20-11-026, where the Commission accepted his COD recommendation for Crimson's SoCal system. As Dr. Webb explains,

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[253] As stated in Mr. Upton's testimony, "standard deviation measures the dispersion of a set of data relative to the average. If a particular data point is more than two standard deviations from the mean, it is often considered an outlier." VMSC-CRC-LOU-0001 at 82 n.141.
[254] Tr. at 623:20-624:8; CRIM-017.
[255] CRIM-MJW-007 at 32:1-5, 36:1-5.
[256] VMSC-CRC-LOU-0001 at 34:14.

> [I]n D.20-11-026, the Commission recognized that Crimson (and its parent company CMO) did not issue any long-term debt that was appropriate for utility ratemaking purposes and consequently accepted use of an imputed COD for Crimson based on the yields of single B bonds over a recent period.[257]

The long-term debt that the Commission was referencing in D.20-11-026 as not being appropriate for utility ratemaking was a prior iteration of the CMO Credit Facility that remained in place through the Test Period.[258] Because the same facts existed in the context of this proceeding—*i.e.*, the only debt instrument available to the Carriers during the Test Period was the CMO Credit Facility—Dr. Webb determined it was necessary to continue to impute a COD for the Carriers. As a consequence, and consistent with the methodology accepted by the Commission in D.20-11-026, he imputed a COD based on the yield associated with bonds of a similar risk to what the Carriers could issue if they had access to the bond market.

In D.20-11-026, Dr. Webb, relying on the testimony of Mr. Waldron, developed his recommended COD figure based on the yield associated with single B bonds. In the instant case, Mr. Waldon testifies that "if CMO were to obtain a credit rating, it certainly would be rated no higher than single B and likely would be rated CCC or lower."[259] Mr. Waldron, the CFO of CMH as well as a former

[257] CRIM-MJW-007 at 25:12-15.
[258] *See* D.20-11-026 *36 (accepting Dr. Webb's COD recommendation); VMSC-CRC-0055 at 15 (including Dr. Webb's direct testimony in A.16-03-009 and discussing that the CMO credit facility had restrictive covenants that made it unsuitable to use for ratemaking purposes).
[259] CRIM-RLW-006 at 9:20-21.

investment banker, based his assessment on his real-world experience and his conversations with lenders in both a general context and in the context of the CMO Credit Facility.[260]

Regarding the use of bond ratings to develop a utility's COD, it is important to recognize that bond ratings convey important information about risk. A bond rating of AAA implies trivial default risk. Even lower bond ratings like AA or BBB, both of which are investment grade, also imply a sufficiently low default risk to attract institutional investors.[261] However, the bond ratings that CMO might obtain, single B or CCC, imply significant risk and will require far higher interest rates than investment-grade bonds.[262] Most large oil pipeline companies issue investment-grade bonds.[263] As such, the methodology that Dr. Webb employs and that the Commission accepted in D.20-11-026 inherently recognizes the reality that the Carriers face far more risk than the typical oil pipeline company.

Dr. Webb demonstrated that the yield on single B bonds during the Test Period was approximately 8.5% and the yield on CCC bonds was 13.5%.[264] Based on Mr. Waldron's testimony on the rating that the Carriers would likely receive if they were to be rated, Dr. Webb reasonably calculated a COD that was at the midpoint between

[260] CRIM-RLW-006 at 10:2-11.
[261] CRIM-MJW-007 at 6:4-12.
[262] *Id*. at 6:13-15.
[263] *Id*.
[264] *Id*. at 36:1-7; CRIM-MJW-022 at 77:10-78:4.

the yield of these two bond types.[265] In fact, Dr. Webb noted that his recommendation was conservative because a strong argument existed that the Carriers' true COD could be 13 percent or higher.[266]

Dr. Webb also undertook a separate analysis to validate Mr. Waldron's testimony regarding what the Carriers' bond rating would be if they were to be rated by using a tool published by Moody's that describes the general methodology used to rate the debt of midstream energy companies.[267] That tool, referred to generally as the "Moody's Scorecard" and attached to Dr. Webb's direct testimony as CRIM-MJW-010, provided a systematic way to analyze the risks that lenders to CMO, the Carriers' parent company, would face on their debt. It contains both quantitative and qualitative measures. Applying these measures, as shown in CRIM-MJW-012, Dr. Webb concluded that any bonds issued by the Carriers would be rated Caa (by Moody's) or CCC (by S&P).[268] Dr. Webb's analysis therefore fully supported Mr. Waldron's testimony.

Mr. Upton criticizes both Mr. Waldron's and Dr. Webb's position regarding the Carriers' COD. He claims that Mr. Waldron's statements regarding the Carriers' credit rating were based on "unverifiable, non-transparent beliefs and 'discussions'

[265] CRIM-MJW-007 at 36:3-5.
[266] *Id*. at 36:5-7.
[267] *Id*. at 33:18-35:15.
[268] *Id*. at 35:8-15.

with lenders."[269] This argument warrants little attention, as there is no basis to discount the credibility or veracity of Mr. Waldron's statements made under oath. Mr. Upton then criticizes Dr. Webb's analysis applying the Moody's Scorecard, claiming it contains "multiple flaws."[270] It is worth noting that, though Mr. Upton criticizes Dr. Webb's analysis, Mr. Upton admitted at hearing that he conducted no analysis himself concerning what bond rating the Carriers would receive if they were to issue bonds.[271] Furthermore, while Mr. Upton broadly claims that Dr. Webb's analysis contained "multiple flaws," the only specific challenge he raises concerns Dr. Webb's application of the qualitative "Business Profile" factor of the Moody's Scorecard.[272]

Mr. Upton claims that Dr. Webb's opinion regarding CMO's Business Profile is superficial and ignores the fact that Moody's identifies crude oil pipelines as "among the top three *least risky* companies from a business risk perspective."[273] Mr. Upton then claims that changing the "Business Profile" component from Caa (as Dr. Webb applied) to Ba would alone significantly increase CMO's overall credit rating.[274] Mr. Upton is wrong. As Dr. Webb explained, Mr. Upton's conclusion is based on a fundamental mathematical error, as his calculation failed to properly

[269] VMSC-CRC-LOU-0001 at 75:17-18.
[270] *Id*. at 77:2.
[271] Tr. at 554:16-22.
[272] VMSC-CRC-LOU-0001 at 76:15-79:12.
[273] *Id*. at 77:9-78:12.
[274] *Id*. at 79:7-12 (emphasis in original).

account for the fact that one of the Moody's Scorecard factors—the issuance of dividends—was inapplicable because CMO does not issue dividends.[275]

Dr. Webb elaborated on this point during re-direct examination, noting that Mr. Upton had effectively given a better than AAA rating to the dividend component of the Moody's Scorecard in his response to Dr. Webb's analysis, which makes no sense.[276] To address the fact that CMO does not issue dividends, Dr. Webb took a conservative approach of removing that factor and re-weighting the other factors under the Moody's Scorecard.[277] This approach was conservative because the other two options, either concluding that the lack of dividends made CMO "unratable" or giving the dividend element the worst credit rating available, would both generate an even lower bond rating.[278] This point is material because the outcome of the Moody's Scorecard analysis would not change irrespective of whether CMO's Business Profile assessment is Ba or Caa, so long as the calculation is appropriately reweighted.

With regard to Mr. Upton's suggestion that Dr. Webb's analysis was superficial and that Dr. Webb ignored Moody's statements about the risk (or lack thereof) of crude oil pipelines, Dr. Webb explained in his rebuttal testimony that the

[275] CRIM-MJW-022 at 104:1-15.
[276] Tr. at 518:18-23.
[277] *Id*. at 518:2-6.
[278] *Id*. at 518:24-519:17.

generic proposition that crude oil pipelines are not risky is irrelevant to the specific circumstances of the Carriers, whom face particularly high risks, and, in fact, experienced negative cash flow throughout the Test Period.[279] Furthermore, Dr. Webb noted that while Mr. Upton identified a few positive statements regarding the Carriers' operations that CorEnergy made in its recent SEC 10-K report, he ignored entirely the numerous negative disclosures made in that same report.[280] Dr. Webb also noted that, when he filed his rebuttal testimony, CorEnergy had been informed that it would be de-listed from the NYSE, which would trigger an obligation to repay certain notes.[281] Furthermore, during cross examination, Mr. Upton acknowledged that there had been a "precipitous decline" in CMO's net income and free cash-flow,[282] clearly undermining his conclusion that CMO has a "stable business profile" because crude oil pipelines are less risky in general.

Additional evidence presented by Dr. Webb and developed at hearing provide further support for the conclusion that a COD of 11 percent is consistent with the Carriers' current financial reality. First, as Mr. Waldron notes, the only debt to which the Carriers had access during the Test Period was the CMO Credit Facility, which contains numerous restrictive covenants and other features that lower the

[279] CRIM-MJW-022 at 105:1-19.
[280] *Id*. at 105:20-107:20.
[281] *Id*. at 106:7-9, 107:12-18.
[282] Tr. at 741:1-742:18.

interest rate as compared to more traditional debt instruments.[283] Despite this fact, the interest rate under the CMO Credit Facility as of the end of the Test Period was 10.20%—a figure consistent with Dr. Webb's COD recommendation.[284] Second, upon the completion of the sale of the MoGas and Omega assets, CorEnergy anticipated paying off the CMO Credit Facility and loaning money to CMO at an interest rate of 11.00%.[285] Finally, at the evidentiary hearing it was shown that another sub-investment oil company, Summit Midstream, which has a credit rating of Single B had recently issued debt at a 12% interest rate.[286] In short, there is ample evidence that a COD reflecting the Carriers' current financial risk would be at least 11.00%.

Rather than appreciating this reality, Mr. Upton ignored it by recommending a COD of 7.66%. He arrived at this figure by considering the "book" COD of CorEnergy as of June 30, 2023, which considered the weighted average of the CMO Credit Facility at an interest rate of approximately 9.71% and convertible notes issued in August 2019 with a fixed coupon rate of 5.875%.[287] Mr. Upton claimed that a COD of 7.66% based on CorEnergy's book COD was a reasonable "proxy" for the Carriers' cost of debt. Mr. Upton is wrong, and strong evidence supporting

[283] CRIM-RLW-006 at 6:4-7:5.
[284] *Id*. at 9:7-11; CRIM-MJW-022 at 73:22-74:1; CRIM-MJW-036 at 3.
[285] CRIM-RLW-006 at 11:16-13:3.
[286] CRIM-046; Tr. at 735:4-736:10.
[287] VMSC-CRC-LOU-0001 at 34:11-35:4. As noted above, the interest rate of the CMO Credit Facility had risen to 10.20% by the end of the Test Period.

this fact is Mr. Upton's own admission during cross examination that he was unsure whether the Carriers could obtain debt at an interest rate of 7.66%.[288] If Mr. Upton is unsure as to whether the Carriers could obtain debt at a 7.66% interest rate, then he is unable to demonstrate that his overall rate of return meets the requirements of *Hope* and *Bluefield*.

During cross examination, Mr. Upton confirmed that he had not compared CorEnergy's operations and financial circumstances in the Test Period to CorEnergy's circumstances in 2019 when the 5.875% convertible notes were issued.[289] However, when questioned on this issue, Mr. Upton acknowledged that the operations of CorEnergy in 2019 were different from its operations in 2022.[290] Mr. Upton also acknowledged that CorEnergy's asset portfolio was different in the two time periods, and that the market capitalization of CorEnergy in 2019 was $500 million while it had significantly dropped to $7.38 million in the Test Period.[291] In short, the financial and operating characteristics of CorEnergy at the time it issued the 5.875% convertible notes were dramatically different than CorEnergy's and the Carriers' financial and operating characteristics in the Test Period. Mr. Upton made no attempt during re-direct examination to explain why the dramatic changes in

[288] Tr. at 707:14-18.
[289] *Id*. at 713:8-12.
[290] *Id*. at 713:23-716:9.
[291] *See id*. at 716:13-16, 717:9-16.

CorEnergy's characteristics between 2019, when the 5.875% convertible notes were issued, and the Test Period did not render the convertible notes completely irrelevant to the current circumstances. In short, Mr. Upton offered no evidence supporting his basic position that CorEnergy's COD was a reasonably proxy for the Carriers' COD.

Mr. Upton also repeatedly emphasized in testimony and at hearing that the COD should be based on a "book" COD rather than a "market" COD.[292] However, when pressed during cross examination, Mr. Upton acknowledged that he had not considered the Carriers' "book" COD in developing his COD recommendation.[293] Indeed, Mr. Upton admitted: "I would acknowledge that I've looked at CorEnergy's book cost of debt as the proxy for the carriers in the regulatory ratemaking."[294] The Carriers "book" COD was 10.20% as of the end of the Test Period—which is based on the CMO Credit Facility and serves as the only debt instrument for which the Carriers have any obligation. Mr. Upton does not dispute this point, and he even acknowledged at hearing that he had not seen any evidence indicating that the Carriers had any obligation with respect to CorEnergy convertible notes.[295]

[292] *E.g.*, Tr. at 692:1-5, 708:25-710:4; VMSC-CRC-LOU-0001 at 14:7-17, 24:16-20, 46:14-22, 114:16-115:8.
[293] Tr. at 696:13-23.
[294] *Id*. at 696:23-25.
[295] *Id*. at 697:1-698:2.

Furthermore, despite referencing D.22-12-031 three times in his testimony, Mr. Upton noticeably ignores relevant statements in this decision in his discussion of the COD. In relevant part, the Commission there stated:

> Long-term debt and preferred equity costs are based on actual, or embedded, costs. Future interest rates must be anticipated to reflect projected changes in a utility's cost caused by the issuance and retirement of long-term debt and preferred equity during the year. We recognize that actual interest rates do vary and that our task is to determine "reasonable" debt cost rather than actual cost based on an arbitrary selection of a past figure. Consistent with past practice, we conclude that the latest available interest rate forecast should be used to determine embedded debt cost in cost of capital proceedings.[296]

Mr. Upton's use of an arbitrary historical debt figure, namely the CorEnergy convertible notes, commits precisely the error the Commission was warning against in D.22-12-031. Mr. Upton's use of an arbitrary past figure is particularly problematic here, as interest rates on both risk-free bonds and corporate bonds have risen in the past few years.[297] Indeed, Mr. Upton's debt recommendation of 7.66% suggests that the Carriers could obtain debt at an interest rate nearing that received on BBB bonds during the Test Period.[298]

Mr. Upton's comparisons of his and Dr. Webb's recommended COD to the COD of members of his proxy group and the COD of members of Dr. Webb's sub-

[296] *In re Application of Pacific Gas & Electric Co. for Authority to Establish its Authorized Cost of Capital*, D.22-12-031, 2022 Cal. PUC LEXIS 559 at *15 (2022) ("D.22-12-031") (emphasis added) (internal footnote omitted).
[297] CRIM-013; CRIM-015; CRIM-036; CRIM-037.
[298] *See* CRIM-036.

investment proxy group are also meaningless.[299] Mr. Upton acknowledged during cross examination that he did not assess when the debt instruments that generated the various costs of debt presented in his Table 16 were issued.[300] As such, his comparisons provide no meaningful information about whether the economic circumstances of the proxy companies are similar to or different from current economic circumstances of the Carriers. For example, Mr. Upton agreed that the majority of debt issued by Enterprise (a member of his proxy group) and by Genesis (a member of Dr. Webb's sub-investment proxy group) was between 2012 and 2020.[301] Interest rates on risk-free, investment-grade and non-investment-grade bonds during that time were substantially lower than what they were during the Test Period.[302] As such, the COD figures shown in his Table 16 cannot be used as a benchmark for assessing the reasonableness of the Carriers' COD recommendation.

In summary, Mr. Upton provides no basis to depart from the Commission's approach, and Dr. Webb's recommendation of basing the Carriers' COD on the yield of bonds with comparable risks to the Carriers, in this case a bond between single B and CCC.

[299] VMSC-CRC-LOU-0001 at 82:7-84:22.
[300] Tr. at 726:12-23.
[301] *Id*. at 723:12-21, 729:8-13.
[302] *See, e.g.*, CRIM-013; CRIM-015; CRIM-036; CRIM-037.

3. What is the appropriate return on equity?

The appropriate ROE to include in the WACC calculation is 15% as recommended by Dr. Webb, and not the 9.98% recommended by Mr. Upton.

There is no dispute that, in accordance with the ratemaking principle set forth in *Hope* and *Bluefield*, the Carriers' ROE must be sufficient to allow their investors an opportunity to earn a return commensurate with the returns they could earn on investments of similar risk, such that the Carriers are able to attract capital.[303] Yet, the record reflects that only Dr. Webb's proposed ROE complies with this principle.

In prior orders, such as D.20-11-026 and D.22-10-009 involving Crimson's SoCal system, the Commission has adhered to the requirements of *Hope* and *Bluefield* by setting the allowed ROE based on either the Discounted Cash Flow ("DCF") method or a combination of the DCF method and the Capital Asset Pricing Model ("CAPM").[304] In those cases, the principal dispute, if any, did not concern the basic methodology used to calculate the ROE but rather concerned the composition of the proxy group and other mechanical inputs in the referenced models. While this dispute remains here, it is not the main driver of the difference between Dr. Webb's ROE recommendation and the recommendation of Mr. Upton. Instead, the main driver of the difference concerns the application of different

[303] CRIM-MJW-007 at 38:20-39:14; VMSC-CRC-LOU-0001 at 14:7-15:6.
[304] CRIM-MJW-007 at 39:15-40:13.

methodologies to calculate the ROE. As Dr. Webb explains in his direct testimony and elaborates in his rebuttal testimony, the methodologies upon which Dr. Webb and the Commission have historically relied to establish the ROE are not currently producing reasonable results.[305] As such, Dr. Webb provides recommendations that differ from what he has previously recommended and the Commission has historically accepted, but that support an ROE for the Carriers that meets the capital attraction requirements of *Hope* and *Bluefield*. Mr. Upton ignores this issue, sticking exclusively to the DCF and CAPM methods based on a proxy group of large, investment-grade oil pipeline companies to establish the Carriers' ROE.

For a company with characteristics like that of the Carriers, the evidence demonstrates that "lenders would require at least an 11 percent return, and plausibly a 12 or 13 percent return."[306] In other words, a COD ranging from 11%-13%. As Dr. Webb explained, "[i]t is axiomatic in finance that equity investors require a higher degree of compensation compared to debt investors."[307] Mr. Upton also acknowledged this point, stating that "[b]ecause of the lower risk associated with debt investments, debt holders typically require a lower return than equity investors."[308] It is undisputed that, as of the end of the Test Period, the CMO Credit

[305] CRIM-MJW-007 at 42:9-14; CRIM-MJW-022 at 73:12-74:12.
[306] CRIM-MJW-007 at 42:14-15.
[307] *Id*. at 42:11-12.
[308] VMSC-CRC-LOU-0001 at 16:22-23.

Facility—the only debt instrument to which the Carriers had access—was 10.20%.[309] While Mr. Upton attempts to obscure this fact in his COD calculation by averaging the CMO Credit Facility with a historic debt instrument (the convertible notes) to which the Carriers have never had access or received any benefit, the fact remains that at the end of the Test Period, the Carriers' actual "book" COD of 10.20% exceeded Mr. Upton's recommended ROE of 9.98%.[310] As such, Mr. Upton's ROE cannot be reasonable because it violates his own acknowledgement that equity investors require a *higher* return as compared to debt investors.

Furthermore, the ROE Dr. Webb calculated based on a proxy group similar to what he has employed in prior cases, but absent any risk adder, implies an equity premium[311] of less than 100 basis points,[312] while the equity premia in prior FERC and Commission cases have been around 500 basis points.[313] It is notable that, when testifying before this Commission on behalf of a regulated utility, Mr. Tolleth

[309] *See* CRIM-MJW-022 at 73:12-74:12; CRIM-MJW-036 at 4; CRIM-RLW-006 at 8:1-10, 9:7-11.
[310] VMSC-CRC-LOU-0001 at 56:4-7.
[311] The "equity premium" refers to the amount by which the ROE exceeds the cost of debt.
[312] CRIM-MJW-007 at 42 (showing an ROE of 11.92% based on the historical proxy group). Dr. Webb updated his ROE analysis based on the historical proxy group in his rebuttal testimony, which produced an ROE of 12.31% exclusive of any risk adder, which would imply an equity premium of less than 150 basis points. CRIM-MJW-022 at 95:11-96:3.
[313] *See* CRIM-MJW-049. This exhibit shows that the median ROE based on the decisions listed therein was 12.62% and the median cost of debt was 7.54%, implying a median equity premium of 544 basis points, while the average difference between the ROE of 12.79% and cost of debt of 7.67% implies an average equity premium of 512 basis points.

similarly recognized that a small equity premium was an indication that a particular ROE calculation was not producing reasonable results.[314]

To address the fact that standard application of the DCF model and CAPM was not producing ROEs consistent with *Hope* and *Bluefield*, Dr. Webb developed his ROE recommendation by considering the following three methodologies:

- A DCF and CAPM analysis that relied on a proxy group of sub-investment grade companies more akin to the Carriers;
- An Equity Premium Model, which calculated the ROE by adding the median equity premium of 5.25% implied by prior CPUC and FERC decisions to the cost of debt of the Carriers;
- Adding the small size premium calculated by Kroll (formerly Duff and Phelps) to adjust the CAPM calculation based on the historic proxy group.

Each of these methods are described in greater detail in Dr. Webb's direct testimony, and the results of each implies an ROE in excess of 15 percent,[315] suggesting that Dr. Webb's recommended ROE of 15 percent is if anything conservative.

Dr. Webb fully recognized that each of these methodologies, standing alone, had potential infirmities and imperfections.[316] Because of those limitations, Dr. Webb supported his ROE recommendation by employing three different analytical techniques, rather than picking the one that happened to generate a desired result.[317]

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[314] CRIM-065 at 45:11-19; Tr. at 983:1-9.
[315] CRIM-MJW-007 at 46:5-49:15.
[316] *Id*. at 47:12-23; CRIM-MJW-022 at 126:6-13.
[317] CRIM-MJW-022 at 128:14-18.

In addition, Dr. Webb reviewed a report prepared for the Carriers by the investment banking firm Houlihan-Lokey, which concluded a 15.8 percent ROE and a 10 percent cost of debt for the Carriers was reasonable, implying an "end result" similar to Dr. Webb's recommendations.[318] As Dr. Webb explained in summarizing the fact that the Houlihan-Lokey analysis produced similar results as his,

> [T]he fact that different analytical techniques generate similar results provides further evidence supporting the reasonableness of my recommended WACC for the Carriers. Thus, I conclude that my recommended ROE, COD, and capital structure for the Carriers to develop the WACC are reasonable and, in fact, necessary to meet the capital attraction test required by *Hope*.[319]

Dr. Webb's approach of calculating the ROE using several different and confirmatory methodologies provides a sound and reasoned way to address the reality that the approach that has historically been used to set an oil pipeline's ROE would not produce reasonable results in the current market environment. Rather than acknowledge this reality, Mr. Upton relies on baseless criticisms of Dr. Webb's methodologies and provides unhelpful comparisons to his proxy group of investment-grade oil pipeline companies.

Beginning with his criticisms of Dr. Webb's sub-investment proxy group, Mr. Upton claims (1) it is inconsistent with the FERC's 2020 proxy group policy statement that indicates that only investment-grade companies should be included in

[318] CRIM-MJW-007 at 50:6-12.
[319] *Id*. at 50:19-23.

a proxy group, (2) certain companies should have been excluded for various reasons, and (3) the IBES growth forecasts for some of the sub-investment companies were old.[320] However, in both his direct and rebuttal testimony, Dr. Webb fully acknowledged that his sub-investment grade proxy group was not consistent with the FERC's 2020 proxy group policy statement.[321] That fact was one of the reasons Dr. Webb recommended employing several methods to support the ROE.[322] Dr. Webb also acknowledged in his direct and rebuttal testimonies that certain of the IBES growth forecasts for the sub-investment grade proxy group were old, again explaining this was a reason to use multiple methods.[323] Finally, Dr. Webb provided an updated calculation in his rebuttal testimony that excluded from the sub-investment grade proxy group those companies about which Mr. Upton had raised issues in his reply testimony and the result of the updated analysis was still well above 15 percent.[324] No aspect of Dr. Webb's additional calculation was challenged during cross examination.

With regard to his criticism of Dr. Webb's application of an equity premium, which was based on prior CPUC and FERC decisions setting the COD and ROE elements for an oil pipeline company, Mr. Upton (1) challenges certain of the data

[320] VMSC-CRC-LOU-0001 at 64:3-74:10; CRIM-MJW-022 at 125:18-126:2.
[321] *See* CRIM-MJW-022 at 127:1-11.
[322] *Id*.
[323] CRIM-MJW-007 at 47:17-48:2; CRIM-MJW-022 at 128:9-18.
[324] CRIM-MJW-022 at 128:19-130:2.

points included in Dr. Webb's analysis, (2) claims that the FERC has rejected the equity premium approach, and (3) provides graphics that purport to show there is no relationship between the COD and the ROE. Regarding Mr. Upton's issues around the data points used in Dr. Webb's analysis (shown in CRIM-MJW-018), Mr. Upton testified that Dr. Webb had included incorrect equity premium figures with respect to FERC Opinion No. 502[325] and D.11-05-045.[326] As shown in CRIM-MJW-049, Dr. Webb updated his analysis to reflect the corrections identified in Mr. Upton's testimony.[327] Dr. Webb then explained why Mr. Upton was incorrect in his interpretation of D.04-12-040.[328] Dr. Webb also explained that Mr. Upton's statement that the FERC has rejected use of the equity premium method is incomplete, as the FERC decision he cites actually contemplates using this method in appropriate circumstances.[329] Finally, Dr. Webb explained that the graphics Mr. Upton includes in his testimony are backwards, confusing the independent and dependent variables, and that much of Mr. Upton's apparent results were caused by excluding relevant data from the more distant historic past.[330] Specifically, Dr.

[325] *BP Pipeline (Alaska) Inc.*, 123 FERC ¶ 61,287 (2008) ("Opinion No. 502").
[326] *ARCO Prods. Co. et al.*, D.11-05-045, 2011 Cal. PUC LEXIS 299 (2011) ("D.11-05-045").
[327] Specifically, Mr. Upton noted that: (1) FERC Opinion No. 502 implied an equity premium of 4.09% instead of the 4.69% reflected in Dr. Webb's CRIM-MJW-018 (VMSC-CRC-LOU-0001 at 103:13-16) and (2) D.11-05-045 implied an equity premium of 5.53% instead of the 6.20% reflected in Dr. Webb's CRIM-MJW-018.
[328] CRIM-MJW-022 at 131:6-136:3.
[329] *Id*. at 132:3-11.
[330] *Id*. at 132:12-135:2, 137:14-138:9.

Webb explained that the exclusion of historical data beyond the last 20 years was wrong because (1) it eliminates data points where the COD was persistently higher, thereby eliminating critical variation in the data set and (2) the excluded data points from the 1980s and 1990s are more aligned with current economic conditions as compared to the data points from the last 20 years, as evidenced by the Federal Funds Rate since the 1980s, which is presented on page 128, Figure 7, of CRIM-MJW-022.[331] Including that historical data shows that there is a positive relationship between interest rates and the ROE, thereby undermining Mr. Upton's central claim that there is no relationship between COD and ROE and supporting Dr. Webb's recommendation to employ the equity premium method as one way to estimate the ROE.

Finally, with regard to third methodology—Dr. Webb's application of the Kroll size premium—Mr. Upton calls into question the entire notion of a size premium to calculate an appropriate ROE.[332] He supports his critique using a scatter plot,[333] as well as with reference to academic work developed by Professor Aswath Damodaran.[334] As Dr. Webb explained in response to those criticisms, Mr. Upton's scatter plot reflects a misunderstanding of the need for a size premium, namely that

[331] CRIM-MJW-022 at 136:4-16.
[332] VMSC-CRC-LOU-0001 at 122:9-17.
[333] *Id*. at 107:3-109:1.
[334] *Id*. at 109:1-10.

standard methods for estimating the ROE systematically underestimate true cost of equity for small companies.[335] With regard to Professor Damodaran's issues with the size premium, Dr. Webb provided academic articles relying on "more sophisticated econometric techniques [that] have given further support to the existence of a size premium," thereby raising questions about the conclusions of Professor Damodaran.[336] Dr. Webb was not questioned about any of the above points at hearing.

In summary, Dr. Webb provided three economically sound, defensible, and defended techniques to estimate an ROE of 15% for the Carriers. As Dr. Webb explained, regulatory agencies are not and cannot be bound to a specific formula to calculate an ROE that, among other requirements, is necessary to allow the utility to attract capital.[337] Here, despite acknowledging that the interest cost of the CMO Credit Facility (*i.e.*, the only debt to which the Carriers had access in the Test Period) was 10.20% at the end of the Test Period and thus above his recommended ROE,[338] and that he could not state whether the Carriers could attract debt financing at his far lower recommended cost of debt of 7.66%,[339] Mr. Upton mechanistically continues to apply his historic approach to calculating ROE—*i.e.*, he recommends an ROE of

[335] CRIM-MJW-022 at 140:1-8.
[336] *Id*. at 140:9-141:11; CRIM-MJW-050; CRIM-MJW-051.
[337] CRIM-MJW-007 at 45:1-12.
[338] Tr. at 706:7-23.
[339] *Id*. at 707:12-18.

9.98% that is precisely based on the median ROE of his proxy group of large, investment-grade oil pipeline companies.

Turning to Mr. Upton's ROE recommendation, in an attempt to validate the reasonableness of his ROE recommendation of 9.98%, Mr. Upton compares his and Dr. Webb's recommendations to that of his proxy group.[340] However, his comparisons ignore the reality that all of the proxy groups are comprised of companies that are significantly larger, and differ in fundamental ways, from the Carriers, CMO, and CorEnergy. CRIM-029 highlights this point most succinctly because it shows the numerous measures by which the four members of Mr. Upton's proxy group and even two members of the sub-investment proxy group are significantly larger, in several cases by multiple orders of magnitude, than CorEnergy. For example, Mr. Upton acknowledged that Enbridge has 71 times as many employees as CorEnergy and 363 times more assets (by dollar value) than CorEnergy.[341] Similarly, Plains had 41,000 percent more revenue as compared to CorEnergy.[342] From the perspective of market capitalization, Enbridge has more than two-million percent greater market capitalization compared to CorEnergy.[343] Interestingly, when testifying on the topic of cost of capital before the Commission

[340] *See, e.g.*, VMSC-CRC-LOU-0001 at 32:1-33:4, 35:1-4, 57:1-10.
[341] Tr. at 678:9-25.
[342] *Id*. at 679:15-22.
[343] *Id*. at 680:15-22.

on behalf of a regulated water, Mr. Tolleth actually relied on a similar comparison to support his position that the small relative size of the subject water utility as compared to the larger proxy companies should be taken into account in setting a reasonable ROE.[344]

Despite claiming in his reply testimony and during cross examination that his proxy group was comparable to CorEnergy and the Carriers,[345] Mr. Upton never performed the types of comparisons that Mr. Tolleth performed on behalf of a utility or that were presented in CRIM-029. Moreover, Mr. Upton made no attempt during re-direct examination to explain why, despite the obvious and enormous differences in headcount, revenue, asset value, or market capitalization, his proxy companies were nevertheless an appropriate benchmark to use in setting the Carriers' ROE. More important, because his proxy group has obvious and dramatically different characteristics compared to CorEnergy and the Carriers, his recommended ROE fails the other key requirement of *Hope.* Specifically, because his proxy group is completely *incomparable* to the Carriers' operations, his development of an ROE based solely on the median ROE of his proxy group means that such ROE will fail to provide the Carriers' investors with a return that is commensurate with the return they could earn in companies of *comparable* risk.

[344] Tr. at 979:20-982:2; CRIM-065 at 29.
[345] VMSC-CRC-LOU-0001 at 23:19-22; Tr. at 675:4-676:9.

With regard to the mechanics of Mr. Upton's ROE calculation, there are three elements that are inconsistent with sound regulatory principles: his application of a multi-stage DCF model is based on unsupported assumptions; his use of the Bloomberg market-risk premium biases his results downward; and his proxy group selection materially departs from the analysis he recommended in another recent proceeding before the Commission, raising broader questions as to the credibility of his approach.

Dr. Webb recommends employing a two-stage DCF model for his sub-investment grade proxy group, a model that has routinely been accepted by this Commission and the FERC.[346] Mr. Upton, by contrast, recommends that this Commission move away from the two-stage approach and instead adopt his multi-stage DCF approach.[347] Mr. Upton's basic point is that the two-stage DCF approach is inherently flawed because it does not appropriately address the perpetual growth assumption. As Dr. Webb explains, this criticism is without merit as the second stage of the DCF model directly addresses the issue of perpetual growth.[348] Moreover, Dr. Webb explains that Mr. Upton's multi-stage DCF model employs a far shorter convergence period than implied in various authoritative sources such as

[346] CRIM-MJW-022 at 88:14-89:11.
[347] VMSC-CRC-LOU-0001 at 96:12-22; CRIM-MJW-044 (acknowledging that Mr. Upton is unaware of any Commission order accepting a multi-stage DCF model like that he recommends in this proceeding).
[348] CRIM-MJW-022 at 89:16-91:6.

Professor Morin's text *New Regulatory Finance*, an authority that Mr. Upton himself relies upon.[349] As such, a core assumption underlying his multi-stage DCF model lacks foundation or explanation.

With regard to his CAPM analysis, the main difference between Dr. Webb's and Mr. Upton's models concerns the calculation of the market-risk premium. Dr. Webb calculates this figure using the expected market return implied by the S&P 500.[350] Mr. Upton employs the Bloomberg market risk premium.[351] As Dr. Webb explains, his approach is consistent with calculations accepted by both this Commission and the FERC, and Mr. Upton offered no explanation as to why his approach is superior.[352] Finally, Mr. Upton does not appear to apply a coherent framework to develop a proxy group. For example, in the recent A.22-06-017 proceeding involving Crimson's SoCal rates, Mr. Upton testified that a proxy group consisting of four companies was too small.[353] In the instant case, however, he determined the opposite: that a proxy group consisting of only four companies was sufficient. Moreover, in the SoCal proceeding, Mr. Upton addressed the issue of proxy group size by relaxing his fourth screen (significant oil pipeline operations).[354] Yet here he relaxes a different screening criteria, operational independence, to reach

[349] CRIM-MJW-022 at 91:7-22.
[350] CRIM-MJW-007, Appendix A at 8-9.
[351] VMSC-CRC-LOU-0001 at 49:18-22.
[352] CRIM-MJW-022 at 93:11-95:2.
[353] Tr.at 657:6-24.
[354] *Id*. at 658:20-659:25.

a proxy group of four companies.[355] Mr. Upton testified that, while in the past "MPLX had previously raised questions about the arm's length nature of its related party transaction before clarifying its language in its subsequent SEC filings," given the removal of certain statements from its recent 10-K submission led him to conclude that it was appropriate to include MPLX in the proxy group.[356] During cross examination, however, it was shown that Mr. Upton had filed testimony before this Commission in 2021 in a proceeding involving SFPP, in which he had initially suggested that MPLX did not engage in arm's-length transactions but that was subsequently corrected to remove that discussion.[357] In the email accompanying Mr. Upton's corrected testimony, counsel for Mr. Upton's client explicitly stated "we have been informed that all transactions between MPLX and its affiliates are strictly conducted at arms' length."[358] While this evidence seriously questions the credibility of Mr. Upton's statements regarding MPLX, it more importantly suggests that Mr. Upton's approach to selecting a proxy group is not principled based but results-oriented.

4. What is the appropriate weighted average cost of capital?

The appropriate WACC for the Carriers is 13.40%, which is based on (1) a capital structure of 60% equity and 40% debt, (2) a COD of 11%, and (3) an ROE

[355] VMSC-CRC-LOU-0001 at 21:4-15.
[356] *Id*. at 23:4-6.
[357] Tr. at 673:11-16.
[358] *See* CRIM-027.

of 15%. For the reasons discussed above, the Carriers submit that the proposed inputs for the WACC calculation are fully supported by record evidence and are far superior to the unreasoned and unprincipled inputs recommended by Mr. Upton.

E. What is the appropriate amount of revenue credits to apply to the cost of service?

The parties agree as to the types of revenue credits that should be applied against the Carriers' cost of service, and in fact have stipulated to the amount of revenue credits that should be applied for PLA and truck rack unloading fees. The parties also agree that a revenue credit should be applied to account for the CPUC fee and for deliveries on the Western San Joaquin ("WSJ") and San Joaquin Refinery ("SJR") routes. The difference between the revenue credita recommended by the Carriers and that recommended by the Joint Protestants with respect to the CPUC fee and movements on the WSJ and SJR routes stems from the parties' different Test Period volume recommendations. As the Carriers believe that their Test Period volume recommendation is most appropriate, the Carriers submit that the corresponding revenue credits discussed in the below subsections are also appropriate.

1. What is the appropriate level of revenue credit to account for the Carriers' CPUC fee?

The revenue credit for the CPUC fee accounts for non-transportation revenue that the Carriers receive through application of a fee mandated by the CPUC. The CPUC fee is equal to 0.068 percent times the pipeline transportation and truck rack unloading revenue.[359] The Carriers recommend a revenue credit of $35,577 based

[359] CRIM-MJW-022 at 40:3-4.

on a Test Period transportation and truck rack revenue figure of $52,319,214, as shown in CRIM-MJW-053-A.[360]

2. What are the appropriate levels of revenue credits to account for deliveries on WSJ and SJR routes whose rates are not at issue in this proceeding?

As Dr. Webb explained in his direct testimony, due to economic and contractual constraints, the Carriers have not requested to increase the rates applicable to movements on the WSJ and SJR routes.[361] To determine the amount if revenue related to these two movements, Dr. Webb applied the current rate applicable to each movement by the Carriers' projected Test Period volumes. Based on that calculation, the Carriers recommend a revenue credit of $1,611,735.[362]

[360] CRIM-MJW-053-A at Workpaper 3 (Line 14).
[361] CRIM-MJW-007 at 69:11-16.
[362] CRIM-MJW-053-A at Workpaper 3 (Line 10).

F. What is the appropriate level of long-haul (SJV to Bay Area) transportation throughput (volume) for determining rates, and what is the associated level of transportation revenue at tariff rates pre-consolidated applications?

1. What is the appropriate throughput level to be used to determine rates?

In his direct testimony regarding volumes, Dr. Webb relied on Mr. Jackson's calculated Test Period throughput of 31,815,191 barrels, which is the sum of (1) actual volumes from January to June 2023 (15,817,676) and (2) projected volumes from July to December 2023 (15,997,514),[363] as such amounts have been adjusted to reflect the removal of volumes attributable to the Plains Line 2000 outage.[364] Dr. Webb then removed the short-haul SJR and WSJ volumes—5,970,973 barrels—to arrive at his Test Period recommendation of 25,844,217 barrels, or about 70,806 barrels per day ("bpd").[365] In his reply testimony, Mr. Tolleth supported a Test Period volume level of 26,776,353 barrels, or about 73,360 bpd, based on actual volumes for the 12-month period ending September 2023.[366] Mr. Tolleth likewise removed the short-haul volumes and adjusted for the Plains Line 2000 outage, but did so in a manner that differed from that applied by Dr. Webb. The Parties subsequently stipulated to the adjustment for the Plains Line 2000 outage.[367]

[363] CRIM-MJW-007 at 70:16-72:18 (citing CRIM-DWJ-001 at 14:4-22).
[364] CRIM-DWJ-001 at 8:10-9:2.
[365] CRIM-MJW-007 at 71:12-72:2.
[366] VMSC-CRC-MRT-0001 at 23:18-22.
[367] Joint Stipulation, No. 4.

Mr. Tolleth criticized Mr. Jackson's reliance on projections of future volumes, yet, in contrast, was comfortable relying upon the Carriers' projection of a potential volume increase (20,000 bpd) due to the P66 Rodeo refinery conversion in deriving his "Rodeo impact" presented in his Figure 33.[368] Specifically, Mr. Tolleth offered an "estimated impact" by adding a projected incremental 19,375 bpd increase to his Test Period throughput of 26,776,353, yielding 33,848,228 barrels.[369]

In his rebuttal testimony, Dr. Webb updated his Test Period volume recommendation to reflect actual volumes through November 2023 and to account for the potential impact of the Rodeo refinery conversion.[370] As noted, the conversion created the potential for some portion of the oil that had previously been delivered to P66's refinery via its proprietary pipeline to shift to being transported on the Carriers' pipelines to other destinations,[371] a potential recognized by both Mr. Jackson and Mr. Tolleth.[372] Dr. Webb adjusted both (1) for the then-projected impact of the Rodeo conversion and (2) for the long-term, continued decline in volumes on the Carriers' pipelines because the conversion impact appeared at the

[368] VMSC-CRC-MRT-0001 at 118. Mr. Tolleth cites KLM23 004913 from CorEnergy board meeting materials and its projection of volume changes of 20,000 bpd as the basis for his estimation of the Rodeo impact, VMSC-CRC-MRT-0024 at 25. However, Mr. Tolleth actually relies on a change of 19,375 bpd, as shown in his Table 2 in VMSC-CRC-MRT-0079, apparently to reflect a projected April 1, 2024 return of CRC volumes at 18G, noted on KLM23 004913.
[369] VMSC-CRC-MRT-0001 at 117:17-118:1.
[370] CRIM-MJW-022 at 30:14-16.
[371] *Id*. at 30:16-19.
[372] CRIM-DWJ-005 at 7:9-18 & n.2; VMSC-CRC-MRT-0001 at 25:14-28:2.

end of the Test Period and would therefore largely be experienced after the end of the Test Period.[373]

Dr. Webb identified two approaches to these adjustments that he viewed as reasonable alternatives.[374] As an initial approach, he took as an assumption that December 2023 volumes, excluding Rodeo-driven volumes, would continue to decline at historic rates (6.52 percent for SPB origins and 20.2 percent for KLM origins), yielding implied volumes of 26,253,988 barrels, and then added 765,730 barrels to reflect Rodeo volumes transported in November 2023 and expected in December 2023.[375] Together, these yielded Test Period volumes of 26,980,990 barrels.[376]

However, recognizing that "all parties expect some level of Rodeo volumes to remain on the Carriers system beyond the Test Period,"[377] Dr Webb laid out a second approach that would include an estimated annualized volume to add to the Test Period volumes. For this estimate, he began with the 12 months of actual long-haul volumes through November 2023—29,002,983 barrels—then removed the volumes due to the Plains Line 2000 outage barrels (2,103,603) and the October 2023 Rodeo volumes (9,829), added the annualized Rodeo impact (4,165,564), and

[373] CRIM-MJW-022 at 30:14-32:2.
[374] *Id*. at 31:1-32:3.
[375] *Id*.
[376] *Id*. at 31:9-10.
[377] *Id*. at 31:10-11.

applied the same historic decline rates to that volume (a 2,298,811-barrel reduction), for a total Test Period volume of 28,756,304 barrels.[378]

As with other ratemaking elements, the over-arching goal in determining the Test Period throughput to be applied in setting rates is to adjust Test Period results to reflect conditions that "are reasonably expected to prevail during the future period for which rates are to be fixed" and "be as nearly representative of future conditions as possible."[379] In this regard, while the parties appear reasonably aligned in concept, in application, the Joint Protestants have adopted inconsistent and unreasonable positions.

Consistent with *Pacific Tel*., Dr. Webb's recommended Test Period volumes appropriately recognize and reflect conditions that are reasonably expected to prevail during the future period in which the Carriers' rates set in this proceeding would be in effect—the ongoing, overall decline in the Carriers' volumes and the impact of the Rodeo conversion. By contrast, in his volume recommendation, Mr. Tolleth seeks to focus upon post-Test-Period activity—the impact of the Rodeo conversion—which he presumes yields an increase in volumes and finds it key that the Rodeo impact was visible in the final two months of the Test Period. On that

[378] CRIM-MJW-053-B at "Adj. Vol." The Carriers note that this volume figure, and the figures included in the calculation, differ from that presented in Dr. Webb's rebuttal testimony. *See* CRIM-MJW-022 at 31:15-32:2. That difference is due to the incorporation of the parties' stipulated treatment of the Plains Line 2000 outage.
[379] *Pacific Tel*. at 645.

basis, he finds it appropriate to reflect those increased volumes in setting rates going forward if they can be reasonably quantified.[380] Yet, in an obvious inconsistency, Mr. Tolleth rejects reflection of the long-term downward trend in the Carriers' volumes as uncertain and hard to measure,[381] though that trend was likewise evident in the Carriers' Test Period volumes, as well as in the Base Period data.

Focusing on the Rodeo conversion issue, Mr. Tolleth's inconsistency continues in his evaluation of the Carriers' nominations data. On the one hand, in his reply testimony, he finds that the increase in November 2023 nominations "provides a strong indication that increased volumes . . . are highly likely as a result of the [Rodeo] conversion . . . ."[382] Yet, January and February 2024 nominations presented a different picture—with volumes at the delivery points where the Rodeo impact was expected mostly maintaining the increases seen in November and December 2023 volumes, yet volumes at other delivery points dropping, yielding total nominated volumes for January and February 2024 that were significantly below projections, as shown in CRIM-049 and VMSC-CRC-0050. In response, Mr. Tolleth shifted to questioning the reliability of such nominations and pressed reliance on the actual volumes experienced in November and December 2023.[383]

[380] Tr. at 806:4-808:2, 826:10-13, 827:15.
[381] *See*, *e.g.*, Tr. at 1041:7-24.
[382] VMSC-CRC-MRT-0001 at 26:14-27:2.
[383] Tr. at 1038:2-5, 1039:21-22.

Mr. Tolleth's positioning is contradictory—he seeks to emphasize, as he did on re-direct,[384] volume facts that nicely fit his recommendation—the routes showing Rodeo-driven increases—while ignoring volume facts that do not—the routes showing continued declines. Moreover, Mr. Tolleth's equivocation is contradicted by the reality that the Carriers' nominations tend to align well with the actual volumes that then flow on the pipelines, as evidenced by the November and December 2023 nominations.

Table 3
Nominations vs. Actual Volumes by Route - November-December 2023[385]

		Nominations (bpd)		Actuals (bpd)		Difference	
System	Route	Nov-23	Dec-23	Nov-23	Dec-23	Nov-23	Dec-23
SPB - 20"	Non-Rodeo	58,307	61,512	61,058	60,260	4.72%	-2.04%
SPB - 20"	Rodeo	13,500	12,600	12,435	12,473	-7.89%	-1.01%
SPB - SJR	Station 36 to Cross Valley	7,360	5,495	7,413	5,172	0.72%	-5.88%
KLM - 204	Belridge Station	2,500	3,000	2,443	4,511	-2.27%	50.37%
KLM - 204	Buena Vista Hills Area	3,899	3,379	3,415	6,562	-12.42%	94.20%
KLM - 204	Cymric Area	115	110	81	131	-29.41%	18.65%
KLM - 204	Lost Hills/Cahn Area	4,279	3,972	3,961	3,900	-7.43%	-1.82%
Total		**89,960**	**90,068**	**90,806**	**93,008**	**0.94%**	**3.26%**

As Table 3 above shows, for November 2023, the Carriers received nominations totaling 89,960 bpd, and actually transported 90,806 bpd, a difference of 0.94 percent. Similarly, for December 2023, nominations were 90,068 bpd, and actual volumes were 93,008 bpd, a difference of 3.26 percent. Table 4 below confirms that, while Rodeo-impacted routes maintained their volume increases from the actual

[384] Tr. at 1037:24-1039:22.
[385] For November 2023 actuals, *see* CRIM-MJW-052 (at tab "Vol. Data."). For December 2023 actuals, *see* VMSC-CRC-0050 (at tab "Vol. Data (w Dec 23)). For nominations, *see* VMSC-CRC-0050 (at tab "KLM23 06084, 006157).

volumes in November and December 2023 through the January and February 2024 nominations—increasing by one percent—all other routes declined substantially—over 13,000 bpd or 14 percent, on an net basis from December 2023 to February 2024, consistent with the overall trend.

Table 4
Rodeo/non-Rodeo Volumes and Nominations:
November 2023 – February 2024[386]

		Actuals (bpd)		Nominations (bpd)		Change (bpd)	
System	Route	Nov-23	Dec-23	Jan-24	Feb-24	Dec-23 → Feb-24	%
SPB - 20"	Non-Rodeo	61,058	60,260	55,452	57,430	-2,830	-4.70%
SPB - 20"	Rodeo	12,435	12,473	12,600	12,600	127	1.02%
SPB - SJR	Station 36 to Cross Valley	7,413	5,172	861	625	-4,547	-87.91%
KLM - 204	Belridge Station	2,443	4,511	500	1,097	-3,414	-75.68%
KLM - 204	Buena Vista Hills Area	3,415	6,562	5,965	4,168	-2,394	-36.48%
KLM - 204	Cymric Area	81	131	110	110	-21	-15.72%
KLM - 204	Lost Hills/Cahn Area	3,961	3,900	4,000	3,835	-65	-1.66%
Total		**90,806**	**93,008**	**79,488**	**79,865**	**-13,143**	**-14.13%**

Having attempted to simultaneously rely and cast doubt upon the nominations over these months, Mr. Tolleth presents an equivocal straddle. He takes the Rodeo conversion and its impact on the Carriers' volumes as a given, as an established fact, stating that "we've . . . talked about the Rodeo refinery conversion, which we know has and will result in increased levels of flows on the carrier system" and "[w]e've also talked about the Rodeo refinery conversion, which is leading to a larger share of San Joaquin Valley production flowing on the carriers' pipeline. I think at this point in this proceeding, that's relatively non-controversial."[387]

[386] *Id.*
[387] Tr. at 1041:20-24, 1056:6-10.

Yet, with regard to the downward trend in the Carriers' volumes, Mr. Tolleth offers an about-face from his approach to accounting for the Rodeo conversion impact. As to the Rodeo impact, Mr. Tolleth recommended, that the "manifestation of these new volumes . . . which is within the defined Test Period . . . should be monitored, and properly incorporated for ratemaking purposes to the extent their regular and recurring impact can be reliably quantified," and indicated it is not essential that such a change occur within the Test Period.[388] In describing his approach to Base and Test Period ratemaking, he testified that "Test Period levels of costs and volume are then developed by using Base Period levels with limited adjustments for known and measurable changes that can be quantified and/or expected to occur in the near future—usually within the Test Period itself."[389] During cross-examination, Mr. Tolleth testified that he viewed it as reasonable to look beyond the end of the Test Period to capture the impact of the Rodeo conversion.[390]

Thus, with the Test Period volume figures only reflecting a portion (two months) of the Rodeo impact, Mr. Tolleth supports looking beyond the Test Period and making an adjustment forward in time to capture the full impact, if it can be sufficiently identified and quantified. However, in contrast, Mr. Tolleth opposed

[388] VMSC-CRC-MRT-0001 at 27:25-28:2.
[389] *Id*. at 14:1-3 (emphasis added).
[390] Tr. at 806:4-808:2, 826:10-13, 827:15 (reviewing CRIM-050).

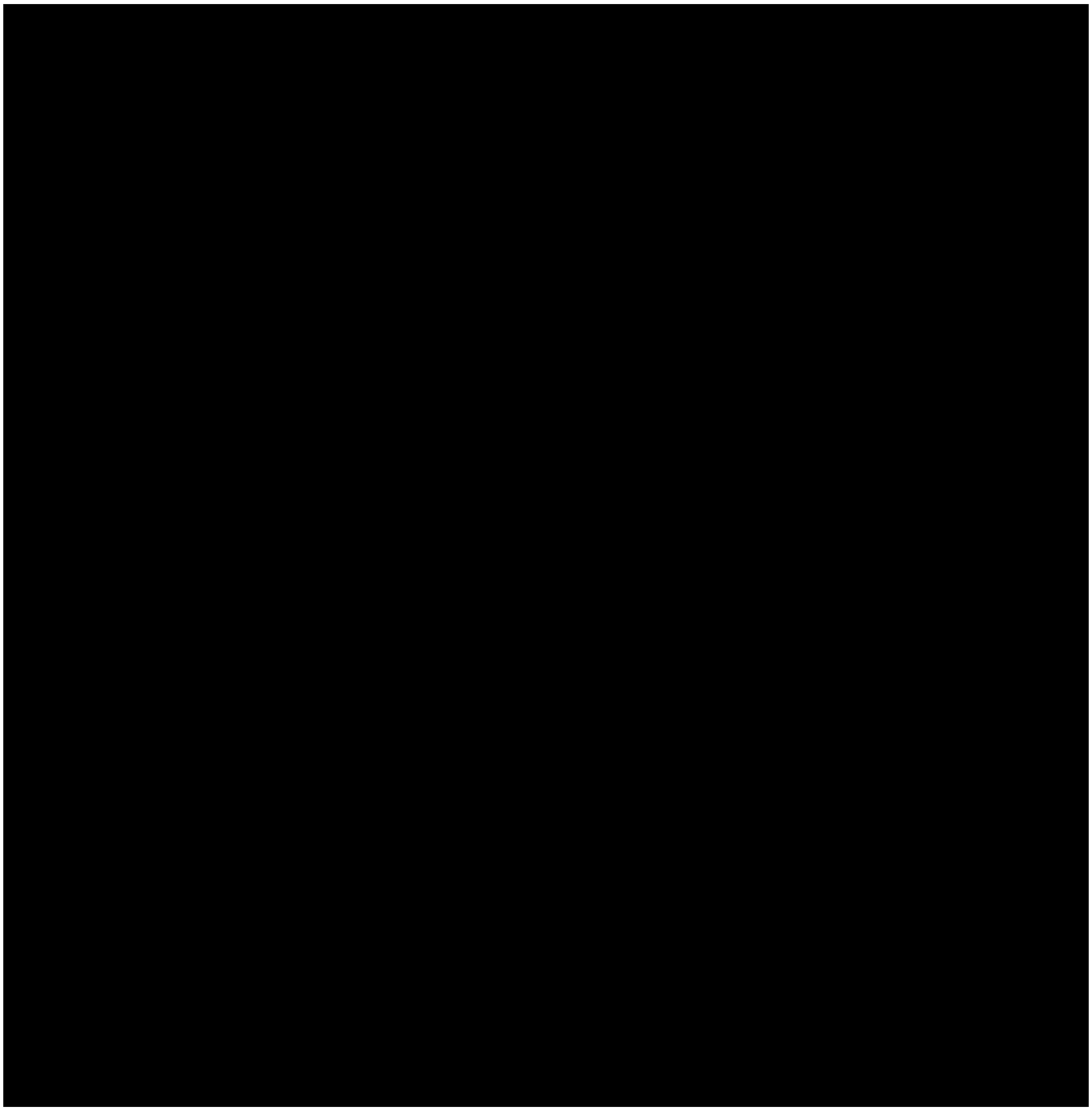
accounting for the structural decline in the Carriers' total volumes as a condition that would continue beyond the Test Period[391] despite the fact that the existence of this decline trend is well established, the trend is documented in the record by Dr. Webb as to the KLM and SPB pipelines,[392] the decline continued throughout the Base and Test Periods, and it can reasonably be expected to continue beyond the end of the Test Period. Indeed, Mr. Tolleth acknowledged that his own Figure 2,[393] adjusted for the Plains Line 2000 outage, shows a decline in volumes from 107,533 bpd as of October 2020 to 73,140 bpd as of September 2023, a 32-percent drop.[394]

The parallels between the Rodeo conversion impact and the structural decline in the Carriers' volumes are clear, and, indeed, the documentation and clarity of the KLM-SPB decline are more solidly established over time and in the record. Yet, Mr. Tolleth strains in favor of looking beyond the Test Period to incorporate the recent Rodeo impact and against doing so for the long-term, well-documented structural decline in onshore California production—the production that is transported through the KLM-SPB system and supplies the San Francisco Bay Area refineries.

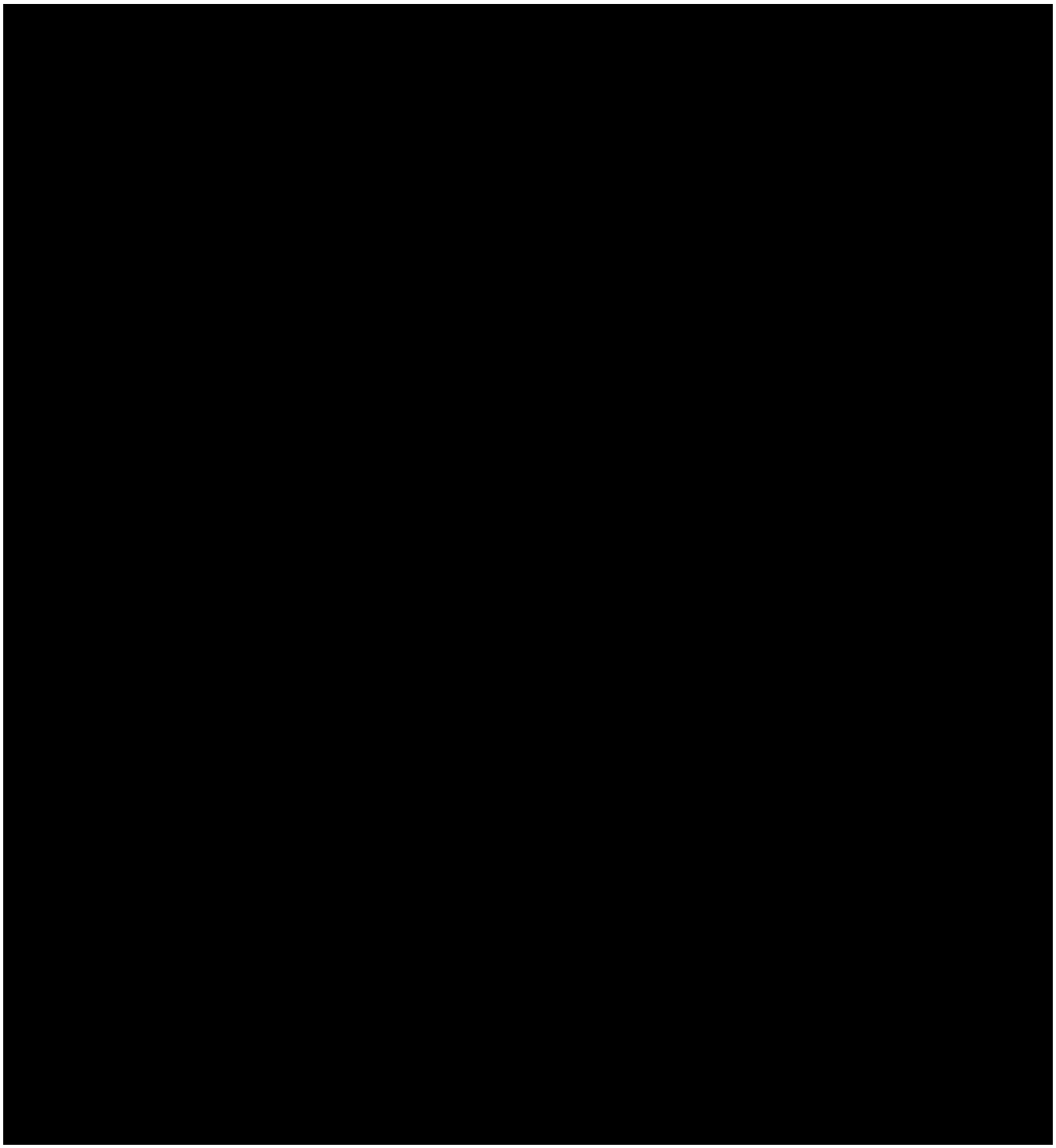
[391] Tr. at 846:10-21.
[392] CRIM-MJW-022 at 31:15-32:2; CRIM-MJW-031.
[393] VMSC-CRC-MRT-0001 at 18; VMSC-CRC-MRT-0012 at "Figure 2."
[394] Tr. at 845:1.

Heightening the contradictory positioning of Mr. Tolleth on this issue was his discounting of the internal records of VMSC, a sponsor of his testimony. In this regard, VMSC resisted producing its internal records reflecting its expectations for future demand for refined petroleum products produced by its Benicia refinery located in the San Francisco Bay area, forcing Crimson to move to compel such production, which motion was granted. **[BEGIN HC PROTECTED]** [redacted]

[395] *Id*. at 851:13-866:24, 866:18-24.



[396] Tr. at 853:19-854:8.
[397] *Id*. at 854:15-17, 855:6-10.
[398] *Id*. at 856:22-857:3
[399] CRIM-048 at 12.
[400] Tr. at 857:17-858:7.
[401] *Id*. at 859:4-9, 854:20-855:10.



[402] *Id*. at 859:10-860:7.
[403] *Id*. at 860:8-17.
[404] *Id*. at 860:18-24.
[405] *Id.* at 828:8-829:18.
[406] *Id*. at 864:19-865:8.

[redacted] **[END HC PROTECTED]** Mr. Tolleth's effort to minimize that structural decline conflicts with his recognition "that KLM-SPB pipeline system moves crude oil produced from wells in California . . . that the pipeline system transports oil produced from the San Joaquin Valley . . . [which is] the primary producing basin the pipeline system serves . . . [which is] onshore production . . . [and] that the level of onshore crude oil production in California could have an impact on the volume of crude oil that is shipped on the pipeline system . . . ."[408]

Mr. Tolleth's testimony on these points presented a clear contrast between his strained effort to recognize the recent, advent of Rodeo-related volumes on the KLM-SPB system and his equally strained effort to ignore the connection between the long-term, widely recognized "fundamental" decline in California onshore crude oil production and the long-term decline in KLM-SPB system volumes. Further, Mr. Tolleth's effort to downplay the significance of the "secular" decline in California onshore oil production is belied by the fact **[BEGIN HC PROTECTED]**

[407] *Id.* at 1031:12-22.
[408] *Id.* at 849:11-850:5.

[redacted] **[END HC PROTECTED]**

Indeed, in a further parallel, the same CorEnergy board meeting materials[409] that Mr. Tolleth relies upon as support for his Rodeo volume adjustment also clearly evidence the Carriers' assiduous tracking of San Joaquin Valley crude oil production in relation to pipeline throughput.[410] **[BEGIN HC PROTECTED]** [redacted] **[END HC PROTECTED]**

Finally, as to Mr. Tolleth's contention that the onshore production declines would not yield a specific volume adjustment (Tr. 1031:8-17), the claim is off-base. The Carriers are not seeking to translate [**BEGIN HC PROTECTED]** [redacted] **[END HC PROTECTED]** into a specific volume decline rate. That is not necessary because the impact of that structural decline in California onshore crude oil production has plainly manifested itself in the Carriers' throughput. Dr. Webb has calculated and presented such an adjustment that is concretely based on KLM and SPB historical volume decline rates, as provided by Mr. Jackson.[411]

[409] VMSC-CRC-MRT-0024.
[410] *Id.* at 43.
[411] CRIM-MJW-007 at 70:16-71:3, 72:14-18; CRIM-DWJ-001 at 14:15-22.

The point is that, if a post-Test-Period upward adjustment for the impact of the Rodeo conversion were found warranted, then the record likewise warrants a downward adjustment to capture the ongoing decline in onshore crude oil production transported by the Carriers. In both cases, the volume records **[BEGIN HC PROTECTED]** [redacted] **[END HC PROTECTED]** provide validation of the trends. While the Carriers continue to support recognition of the Rodeo impact in setting rates, the actual data on the Carriers' overall volumes available to date—nominations and volumes flowing—reflect that more than one factor is having an impact. That reality underlines the need for caution, and Dr. Webb's recommended volumes are realistic and take reasonable account of both the Rodeo impact and the ongoing downward decline in the Carriers' volumes as evidenced in the records of the Carriers.

2. What is the associated level of transportation revenues at rates pre-consolidated applications?

Based on the Carriers' proposed Test Period volume recommendation, 28,756,304 barrels,[412] and assuming the Carriers are afforded no rate increase in this proceeding, the Carriers' transportation revenues would be $50,382,738.[413] This figure is well below an appropriately calculated cost of service less non-

[412] CRIM-MJW-053 at 39 (Workpaper 3, column [f], row 11).
[413] *Id*. at 39 (Workpaper 3, column [i], row 11).

transportation revenue credit of approximately $77.15 million.[414] The Carriers requested rate increases are therefore more than justified so that they are entitled to charge rates that meet the requirements of *Hope* and *Bluefield*.

[414] CRIM-MJW-053 at 6 (Line 1).

G. What is the appropriate rate design to determine just and reasonable cost-of-service rates for the legacy KLM and legacy SPB long-haul transportation routes?

The Carriers recommend a rate design that includes an individual rate for all movements that utilize the SPB mainline of $2.4210/barrel, and an additional charge of $0.50/barrel above the SPB-only rate for all movements that originate on the KLM system, with one minor exception related to movements originating on the KLM system at Kettleman, as noted above.[415] In other words, the Carriers propose a rate of $2.4210/barrel for movements originating on SPB and $2.9210/barrel for movements originating on KLM, which was designed to reflect the integration of the two systems. This approach was developed to strike a balance between the reality that the KLM system shippers impose some incremental cost on the combined KLM-SPB system, while also recognizing that preserving the historic rate structure for KLM and SPB is no longer practical as it would entail widely different rates for what is effectively the same service.[416]

By contrast, Mr. Tolleth recommended a single uniform "postage stamp" rate of $1.9683/barrel for both systems.[417] As Dr. Webb explained, Mr. Tolleth's "postage stamp" rate recommendation is flawed by the many inappropriate assumptions included in his cost of service, as addressed in the sections above.[418]

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[415] CRIM-MJW-007 at 77:9-11.
[416] *Id.* at 77:14-18.
[417] VMSC-CRC-MRT-0085-A at "Proposed Rates"; *see also* VMSC-CRC-MRT-0001 at 4:12-16.
[418] CRIM-MJW-022 at 156:1-2.

Indeed, Dr. Webb demonstrated that his updated cost of service recommendation supported a rate of $2.6335/barrel for movements on the SPB system and a rate of $3.1335/barrel for movements on the KLM system, both of which are well above the rates of $2.4210/barrel (SPB) and $2.9210/barrel (KLM) that the Carriers are requesting in this proceeding.[419]

Moreover, while the Carriers do not disagree in principle with the idea of a single unform rate, as Dr. Webb explained, Mr. Tolleth's approach ignores the reality that a single uniform rate would deprive the KLM system of the opportunity to recover its costs and earn a reasonable rate of return.[420] Indeed, because SPB cannot raise its rates above $2.4210/barrel—the amount requested in its initial filing—while KLM requested significantly higher rates, limiting KLM's rates to the $2.4210/barrel rate that SPB sought would have the effect of depriving KLM of the opportunity to recover its costs and earn a reasonable return.

Therefore, to ensure both pipelines have the opportunity to recover their costs and earn a reasonable return, in the context of this case, the Carriers recommend allowing SPB to charge a rate of $2.4210/barrel and KLM to charge a rate of $2.9210/barrel.

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[419] CRIM-MJW-053-A at "Proposed Rates". The figures presented here are derived from Dr. Webb's rebuttal cost of service, as modified to incorporate the parties' stipulations, which minimally differs from those presented in Dr. Webb's rebuttal testimony, CRIM-MJW-022, at 155:17-19 (referencing CRIM-MJW-033).
[420] CRIM-MJW-022 at 156:7-16.

H. What are the impacts, if any, on environmental and social justice (ESJ) communities, including the extent to which the requested authority impacts achievement of any of the nine goals of the Commission's ESJ Plan?

The rate increases sought by the Carriers will have little to no impact on environmental and social justice communities or, indeed, on California citizens generally. This lack of impact is due to the reality of the relationship between the rates charged by the Carriers for crude oil pipeline transportation services, on the one hand, and the retail price of refined petroleum products—gasoline, diesel, and jet fuel—that are produced by California refiners, such as Valero, and sold to California consumers. An example based on gasoline illustrates this reality.

The gasoline that Bay Area drivers pump into their vehicles began as crude oil that either arrived by marine tanker from overseas or was produced in the San Joaquin Valley (near Bakersfield) and was transported by the Carriers' pipelines to the Bay Area. In the Bay Area, the crude oil is delivered to one of the area refineries, such as the Valero refinery in Benicia. The refinery turns the crude oil into gasoline that is then distributed, typically by truck (or by a products pipeline and then truck) to local gas stations. For a gallon of gasoline as of March 15, 2024, a typical pump price at a station in Benicia was about $4.89, according to GasBuddy.[421]

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[421] https://www.gasbuddy.com/gaspricemap?lat=38.05861629401271&lng=-122.146949146339&z=16 (7-Eleven at E. 2nd St. and I-780; approximately 1.1 miles from Valero Benicia Refinery) (last accessed Mar. 26, 2024). Pursuant to Comm. Rule 13.10, the Carriers request that judicial notice be taken of the identified gasoline price from a widely recognized

If the Carriers' rate increase were to be approved in full by the Commission, the highest transportation rate would be $2.9210 per barrel. There are 42 gallons in a barrel, and, while the process and inputs involved in refining crude oil into gasoline, diesel, and jet fuel do not exactly translate 42 gallons of crude oil into 42 gallons of refined products, there is a rough approximation. With that caveat that this is an approximation, dividing the Carriers' highest rate being sought, $2.9210, by 42 yields a per-gallon value of 7 cents, out of the total price to the consumer of $4.89. So, the per-gallon cost of the Carriers' highest transportation rate is about 1.4 percent of the pump price at a gas station in Benicia (.07 ÷ 4.89 = 0.014). That other portion—the $4.82 that make up the rest of the pump price—is composed of the price paid by the refiner to the oil producer for the oil itself, the costs and profits of the refiner, and the cost of getting the gasoline from the refinery to the gas station—in the case of the Benicia gas station, if it gets gasoline from the Valero refinery nearby, it is the cost of delivery by a tanker truck.

Whether or not the Commission approves the Carriers' requested rate increases, the impact for California consumers, including ESJ communities, of the pipeline transportation rates charged by the Carriers will be minimal.

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gasoline price reporting service, which is "capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Cal. Evid. Code, § 452(h).

IV. REQUESTED RELIEF

1. Carriers' requested relief should be granted.

As demonstrated above and supported by record evidence, the Carriers submit that an appropriately calculated cost of service and application of realistic throughput assumptions fully supports their request to increase the SPB rates to $2.4210/barrel and the KLM rates to $2.9210/barrel. These proposed rate increases are necessary to afford the Carriers an opportunity to recover their legitimate operating expense and earn a reasonable return on their investment commensurate with returns available from other investments of comparable risks, as required by *Hope* and *Bluefield*. The Carriers' proposed cost of service is also firmly grounded upon the facts and is representative of the costs the Carriers have recently incurred and that they expect to incur going forward, in accordance with the principles set forth in *Pacific Tel.*

By contrast, as also demonstrated above, the Joint Protestants inappropriately exclude costs and cherry-pick data that suits their position in an effort to support a cost of service that would generate the lowest possible rates for transportation on the combined KLM-SPB system. If the Joint Protestants' positions are adopted, it would without question result in rates that violate the core tenets of *Hope* and *Bluefield*.

2. Pursuant to PU Code Section 455.3(b)(5), the Carriers' request that their proposed rate increases be made effective as of the date the applicable application was filed.

Section 455.3(b)(5) of the PU Code states:

> Any increase in the shipping rate charged by an oil pipeline corporation prior to commission approval shall not exceed 10 percent per 12-month period. The Commission shall determine the appropriateness of allowing retroactive charge and collection of subsequently approved rate increases above 10 percent.[422]

The statute is straightforward in expressly authorizing the Commission to consider the appropriateness of giving retroactive effect to a portion of a subsequently approved rate increase that is in excess of ten percent. Indeed, in an order denying Crimson's request for interim rate relief filed in the A.22-06-017 proceeding involving the SoCal system, the Presiding Judge recognized the applicability of Section 455.3(b)(5) of the Public Utilities Code and that Crimson may seek such retroactive rate relief.[423] Furthermore, the Joint Protestants' own witness Mr. Upton acknowledged during cross examination that allowing retroactive effect of a subsequently-approved rate increase is appropriate to resolve the situation of a pipeline not being able to charge in real-time the full amount of a rate increase that the Commission ultimately deems appropriate.[424]

[422] Cal. Pub. Util. Code § 455.3(b)(5) (emphasis added).
[423] *Administrative Law Judge's Ruling Denying Request for Interim Rate Relief*, at 3, Docket No. A.22-06-017 (issued Mar. 13, 2023).
[424] *See* Tr. at 586:2-22.

The Carriers submit that retroactive recovery is not only appropriate, but it is justified as a matter of law. As noted throughout this brief, a bedrock principle of utility ratemaking is that a regulated utility be permitted to charge rates that allow it to recover its operating expense and earn a reasonable return on its investment. As such, if the Commission finds that the Carriers have justified their requested rate increases, the only equitable remedy (and the equitable remedy permitted under Section 455.3) would be to allow the Carriers to collect revenues based on the justified rate increases. To do otherwise would provide a windfall to the Joint Protestants and the other KLM-SPB shippers, as they would have received transportation service at rates that the Commission agrees were below the just and reasonable level based on current and expected operating conditions.

Thus, in accordance with the noted statutory scheme, the Carriers submit that if the Commission approves their requested rate increases, it should also find that such rate increases may be retroactively applied dating back to the date on which the application seeking such rate increase was filed. For the KLM system, such retroactive application would date back to the submission of A.23-03-001 on March 3, 2023, and for the SPB system, such retroactive application would date back to the submission of A.23-01-015 on January 27, 2023.

V. CONCLUSION

Wherefore, for all the reasons set forth herein, the Carriers submit that the Commission should find that their requested rate increases are fully justified and that they may retroactively assess any authorized rate increases back to the date the applicable application was filed: January 27, 2023 for SPB and March 3, 2023 for KLM.

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