

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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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
(Filed July 29, 2022)

And Related Matters

Application 23-01-015
Application 23-03-001
Application 23-08-018

**APPLICATION OF CRIMSON CALIFORNIA PIPELINE, L.P. AND
SAN PABLO BAY PIPELINE COMPANY LLC FOR REHEARING OF D. 25-06-044**

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Pursuant to California Public Utilities Code¹ (“PU Code”) Section 1731(b)(1) and Rule 16.1(c) of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure (“Rules”), Crimson California Pipeline, L.P. (“Crimson”) and San Pablo Bay Pipeline Company LLC (“SPB”) (together the “Joint Applicants”) submit this Application for Rehearing of Commission Decision (D.) 25-06-044, *Decision Granting Crimson California Pipeline, L.P. and San Pablo Bay Pipeline Company LLC Authority to Increase Rates on the KLM and San Pablo Bay Crude Oil Pipelines* (“Decision” or “D. 25-06-044”).² The Decision in the above-

¹ All statutory references are to the PU Code unless otherwise specified.

² Section 1731(b)(3).

referenced consolidated applications was issued on July 3, 2025. This Application for Rehearing is timely filed.³

I. BACKGROUND

D. 25-06-044 resolves the following four consolidated applications:

- Application No. (“A.”) 22-07-015, filed by Crimson on July 19, 2022 pursuant to PU Code Section 455.3 seeking authorization to increase the rates for transportation on Crimson’s Kettleman-Los Medanos (“KLM”) pipeline system by 10 percent, effective September 1, 2022;
- A. 23-03-001, filed by Crimson on March 3, 2023 pursuant to PU Code Section 454 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);
- A. 23-01-015, filed by SPB on January 27, 2023 pursuant to PU Code Sections 455.3 and 454, seeking authorization to increase the rates for transportation on SPB’s pipeline system by 35.9 percent, with 10 percent of the requested increase becoming effective on March 1, 2023; and
- A. 23-08-018, filed by Crimson on August 20, 2023 pursuant to PU Code Section 455.3 seeking authorization to increase the current KLM rates by 10 percent effective October 1, 2023.

On January 25, 2024, SPB filed A. 24-01-016 seeking to increase rates for transportation on the SPB pipeline system by 10 percent effective March 1, 2024. A. 24-01-016 has been stayed pending Commission resolution of the above-noted consolidated applications. Given the pendency of A. 24-01-016, D. 25-06-044 sets the just and reasonable rates for transportation on the SPB and KLM pipeline systems (also collectively referred to as the “SPB-KLM Pipeline”) for the period September 1, 2022 to March 1, 2024.

D. 25-06-044 authorizes SPB and Crimson to increase rates on the SPB-KLM Pipeline to \$1.9566 per barrel, effective September 1, 2022. For the period September 1, 2022 to March 1, 2024, the actual rates that were in effect for the SPB-KLM Pipeline were as follows:

³ The 30th day after July 3, 2025 is August 3, 2025 (a Sunday). Pursuant to Commission Rule 1.15, the filing deadline in Commission Rule 16.1(a) is extended to Monday, August 4, 2025.

<u>SPB</u> ⁴		<u>KLM</u> ⁵	
9/1/22 to 3/1/23	\$1.771/barrel	9/1/22 to 3/1/23	\$1.70/barrel
3/1/23 to 3/1/24	\$1.948/barrel	10/1/23 to 3/1/24	\$1.87/barrel

D. 25-06-044 further authorizes the Joint Applicants to retroactively charge and collect the difference between the authorized rates and the rates charged and collected beginning March 3, 2023 (for KLM) and March 1, 2023 (for SPB), with interest.⁶

In authorizing \$1.9566 per barrel as the reasonable rate for service on the SPB-KLM Pipeline, D. 25-06-044 concludes that the Joint Applicants' reasonable, combined cost of service (less revenue credits) is \$57,636,522, based upon review and consideration of the specific elements of the Joint Applicants' cost of service, including operating expenses, rate base, depreciation and amortization expense, and cost of capital.⁷ The authorized rate of \$1.9566/barrel represents the adopted cost of service less revenue credits of \$57,636,522 divided by the adopted total volume of 29,457,864 barrels⁸ for the SPB-KLM Pipeline.

As set forth below, the Joint Applicants submit that the Decision's adopted cost of service is unjust and unreasonable because it is based upon determinations regarding the Joint Applicants' operating expenses, rate base, and cost of capital that are unsupported by the evidentiary record and, in fact, inconsistent with the weight of the evidence, as well as contrary

⁴ Rates for routes originating on the SPB segment of the SPB-KLM Pipeline.

⁵ Rates for routes originating on the KLM segment of the SPB-KLM Pipeline.

⁶ D. 25-06-044; Ordering Paragraphs 2-4.

⁷ *Id.* at 43.

⁸ *Id.* at 41.

to established Commission policy and precedent. Fundamentally, the Decision’s finding as to what the appropriate just and reasonable rate is for the SPB-KLM Pipeline would prevent the Joint Applicants from being able to recover their actual and necessary operating expenses, much less earn a reasonable return on their investment, and thereby the Decision’s finding violates the core ratemaking principle made clear by the United States Supreme Court in *Hope* and *Bluefield*—that a regulated entity be allowed to charge rates that provide it with an opportunity to recover its costs *and* earn a reasonable return on its investment that is commensurate with returns of firms with comparable risks.

II. STANDARD OF REVIEW

Commission Rule 16.1(c) mandates that applications for rehearing “shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law. The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.”

PU Code Section 1757 provides the judicial standard of review for “a complaint or enforcement proceeding, or in a ratemaking or licensing decision of specific application that is addressed to particular parties.” Under Section 1757(a), the Commission’s decision must be set aside if any of the following occurred:

1. The commission acted without, or in excess of, its powers or jurisdiction.
2. The commission has not proceeded in the manner required by law.
3. The decision of the commission is not supported by the findings.
4. The findings in the decision of the commission are not supported by substantial evidence in light of the whole record.
5. The order or decision of the commission was procured by fraud or was an abuse of discretion.

6. The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

As explained below, D. 25-06-044 fails to set forth the required findings of fact that support the Commission's rejection of various elements of the Joint Applicants' cost of service; it also reflects determinations as to the reasonableness of various elements of the Joint Applicants' cost of service; it also reflects determinations as to the reasonableness of various elements of the Joint Applicants' cost of service that are contrary to law and that are not supported by substantial evidence.

III. SPECIFICATIONS OF ERROR

- A. D. 25-06-044 fails to make the required findings of fact supporting its treatment of various cost-of-service elements, including: (1) rejection of the Joint Applicants' requested change in accounting practices for integrity-related expenditures; (2) adoption of an 8.5 percent cost of debt, which in turn undermines its adoption of a return on equity of 11.91 percent; (3) removal of the Allowance for Funds Used During Construction ("AFUDC") from the Joint Applicants' rate base; and (4) disallowance of certain shared service expenses and expenses incurred by Crimson Midstream Operating ("CMO") and corporate expense incurred by CorEnergy Infrastructure Trust, Inc. ("CorEnergy") that were allocated to the Joint Applicants in the normal course of business.
- B. Denial of the Joint Applicants' request to expense rather than capitalize certain integrity-related expenditures is contrary to law, Commission policy and precedent, and is not supported by substantial evidence.
- C. Adoption of an 8.5 percent cost of debt as well as the 11.91 percent return on equity is not supported by substantial evidence and is undermined by the record evidence.
- D. Removal of AFUDC from the Joint Applicants' rate base is contrary to law and established Commission ratemaking principles and policies and unlawfully reverses prior Commission orders pertaining to the Joint Applicants.
- E. The disallowance of certain general and administrative expenses actually incurred and allocated to the Joint Applicants lacks any factual or legal basis.

IV. LEGAL ARGUMENT

A. **D. 25-06-044 Fails to Make the Required Findings of Fact Necessary to Support Its Rejection of Various Elements of Joint Applicants' Recommended Cost of Service.**

D. 25-06-044 is devoid of the required findings of fact necessary to support its treatment and related disallowance of costs that were properly included in the Joint Applicants' cost of service. Though D. 25-06-044 includes seven "Findings of Fact," none of those findings relate to, much less describe, the record evidence supporting the Decision's rejection of (1) the Joint Applicants' request to expense rather than capitalize certain of its integrity-related expenditures, (2) the Joint Applicants' recommended cost of debt, (3) the Joint Applicants' treatment of AFUDC, and (4) certain general and administrative expenses that were incurred in support of the SPB-KLM Pipeline and allocated to the Joint Applicants.

Furthermore, as set forth below, the record is devoid of substantial evidence upon which findings of fact supporting the Decision's disallowance of costs properly included in Joint Applicants' cost of service could be made.

B. **D. 25-06-044 Errs Legally and Factually in Rejecting Joint Applicants' Requested Change in Accounting Practices for Integrity-Related Expenditures.**

D. 25-06-044 determines that costs related to the Joint Applicants' Integrity Management program⁹—*i.e.*, costs incurred and required to repair and maintain the SPB-KLM Pipeline in safe operating condition, must be capitalized rather than expensed. As such, the Commission rejected the Joint Applicants' proposal to include \$4,161,125 of integrity expense in the cost of service.¹⁰

⁹ 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. *See* Joint Applicants' Opening Brief (March 29, 2024) at 66-68.

¹⁰ D. 25-06-044 at 27-29.

Based upon the erroneous assumption that the Joint Applicants' request to expense integrity-related pipeline repair costs conflicts with Commission policy, D. 25-06-044 improperly rejects the requested accounting change on grounds that the Joint Applicants did not meet "their burden of demonstrating that the Commission should deviate from existing ratemaking principles."¹¹

As set forth below, contrary to the Decision's rationale, the Joint Applicants' request to expense its integrity-related expenditures does not conflict with Commission policy but, instead, is entirely consistent with Commission ratemaking principles, practice, policy, and precedent. Furthermore, review of the record reflects uncontroverted evidence supporting the requested accounting change as well as the absence of any factual basis for rejecting the Joint Applicants' request to expense its integrity-related expenditures.

1. *D. 25-06-044 Fails to Weigh the Evidence of Whether Expensing of the Joint Applicants' Integrity-Related Expenditures Is Consistent with GAAP and Therefore Reasonable.*

D. 25-06-044 asserts that the Joint Applicants' proposed accounting of certain integrity-related expenditures, where such expenditures would be expensed instead of capitalized, constitutes a departure from existing Commission ratemaking principles, irrespective of whether the proposed treatment is consistent with the Generally Accepted Accounting Practices ("GAAP") that are applicable to regulated oil pipelines.¹² D. 25-06-044 assumes a conflict with Commission practice where none exists and then compounds the error by denying the requested accounting change on grounds that Joint Applicants have failed to demonstrate that the Commission should resolve the illusory conflict with ratemaking principles in their favor.

¹¹ *Id.* at 29.

¹² D. 25-06-044 does not specify the so-called "ratemaking principles" in question, instead simply alluding to the Joint Protestants' broad policy argument that costs should be borne by all shippers over the actual useful life of the pipeline. D. 25-06-044 at 28-29.

The Commission does not treat the cost of pipeline integrity-related repair projects differently than other costs for accounting purposes. The Commission has stated that utilities must follow “conventional” or “current” accounting practices for pipeline costs.¹³ Consequently, if the Commission, based upon the record, determines that it is consistent with GAAP and therefore reasonable for the Joint Applicants to expense, rather than capitalize, integrity-related expenditures, there is inherently no conflict with or deviation from any Commission ratemaking principle.

Commission precedent is quite clear that authorization for a utility to expense integrity-related expenditures in accordance with GAAP is consistent with, rather than a deviation from, Commission ratemaking principles. Specifically, in Decision No. 23-11-069 that resolved PG&E’s 2023 General Rate Case, the Commission adopted PG&E’s proposal to account for its integrity-related pipeline expenditures as expenses in accordance with GAAP.¹⁴

While improperly denying the Joint Applicants’ proposed accounting treatment due to their failure to prove consistency with an unspecified, non-existent ratemaking principle, D. 25-06-044 fails to address the bedrock question whether, consistent with conventional or current accounting practices, *i.e.*, GAAP, it is reasonable for the Joint Applicants to expense rather than capitalize their integrity-related expenditures. Under GAAP, a pipeline utility should capitalize its integrity-related expenditures if such expenditures improve the functionality, quality, or useful life of the pipeline; conversely a pipeline utility should expense its integrity-related costs if such expenditures do not improve the functionality, quality, or useful life of the pipeline.¹⁵ D.

¹³ D.12-12-030; Conclusion of Law P 24, at 123 (2012); *In the Matter of the Application of San Diego Gas & Elec. Co.*, D.14-06-007, at 27 (2014).

¹⁴ *Application of Pacific Gas & Electric Co.*, D.23-11-069 (2023); *mimeo.* at pp. 853-855.

¹⁵ CRIM-RLW-009 at 31: 18-32:3; Tr. at 68:6-12

25-06-044, however, fails to address the basic issue, *i.e.*, whether the Joint Applicants' integrity-related expenditures do or do not improve the functionality, quality, or useful life of the pipeline, much less weigh the relevant evidence of record.

As set forth below, the preponderance of the evidence—indeed the only record evidence—demonstrates that the Joint Applicants' integrity-related expenditures, while necessary to comply with regulatory requirements, do not improve the functionality, quality, or useful life of the pipeline and therefore, consistent with GAAP, such expenditures, totaling \$4,161,125, should be properly expensed.

2. *Denial of the Proposed Accounting Change Lacks Evidentiary Support.*

It is a basic Commission ratemaking principle that a utility should record its costs by following “conventional” or “current” accounting practices.¹⁶ As noted above, the standard for conventional or current accounting practices is GAAP. Accordingly, treatment by a utility of its costs in accordance with GAAP is necessarily consistent with Commission ratemaking principles.

As supported by the record, under GAAP, a pipeline utility should capitalize its integrity-related expenditures if such expenditures improve the functionality, quality, or useful life of the pipeline; conversely a pipeline utility should expense its integrity-related costs if such expenditures do not improve the functionality, quality, or useful life of the pipeline.¹⁷

The Joint Applicants and the Joint Protestants¹⁸ each provided testimony in support of their respective recommendations that integrity-related expenditures should be expensed or

¹⁶ D.12-12-030; *mimeo.* at p. 123; D.14-06-007; *mimeo.* at p. 27.

¹⁷ CRIM-RLW-009 at 31: 18-32:3; Tr. at 68:6-12

¹⁸ The “Joint Protestants” include Valero Marketing and Supply Company and California Resources Corporation.

capitalized. Review of the record reveals that the Joint Protestants offered no material evidence that the Joint Applicants' integrity-related expenditures at issue would improve the functionality, quality, or useful life of the pipeline, in contrast, to the substantial, material evidence demonstrating that the Joint Applicants' integrity-related expenditures, while necessary to comply with regulatory requirements, would not improve the functionality, quality, or useful life of the pipeline.

The Joint Protestants' testimony in opposition to the requested accounting change was sponsored by a witness with no first-hand experience in the operation or maintenance of a crude oil pipeline¹⁹ and did not adduce any evidence, factual or otherwise, supporting a claim that the Joint Applicants' integrity-related expenditures would improve the useful life of the pipeline. Instead of presenting facts, their testimony consists of an argument that: (1) it is uncertain whether the California Air Resources Board ("CARB")'s scoping plan will affect the useful life of the Joint Applicants' pipeline; (2) the integrity-related expenditures provide a multi-year benefit so they should not be borne solely by current shippers; and (3) the expense treatment of integrity-related expenditures, irrespective of whether it is in accordance with GAAP, is unfair to current shippers.²⁰

The only fact presented by Joint Protestants, *i.e.*, that the pipeline is 100 years old, is not material or relevant to the question of whether the Joint Applicants' daily expenditures to maintain the integrity of their pipelines do or do not improve the useful life of the pipelines. Reliance on the age of the pipeline as a determinant of whether an integrity-related expenditure should be capitalized or expensed is contrary to GAAP. It is also certainly insufficient to support

¹⁹ Joint Applicants' Opening Brief at 66.

²⁰ Joint Applicants' Closing Brief at 73-74.

the Joint Protestants’ conclusory and irrelevant statement that “any integrity maintenance expenditures extend the pipeline facilities beyond their original useful life, as the pipeline is ‘already a hundred years old,’” which, in any case, is an irrelevant statement addressing the pipeline’s “original” useful life rather than its current useful life.²¹ As the record reflects, while repair of an affected piece of metal may extend the physical life of the pipe, it does not extend the pipeline’s useful life.²²

In contrast to the Joint Protestant’s showing, the Joint Applicants sponsored testimony by Mr. Waldron, who has over 20 years of first-hand experience in the operation and maintenance of crude oil pipelines. In his Prepared Direct Testimony²³ and Prepared Rebuttal Testimony,²⁴ Mr. Waldron provides extensive, material evidence demonstrating that the Joint Applicants’ integrity-related expenditures, while necessary to comply with regulatory requirements, do not improve the functionality, quality, or useful life of the pipeline, including the following:

- In light of Governor Newsom’s net zero plan for California and CARB’s scoping plan setting a goal to reduce crude oil usage by 94% by 2045, Carriers, with consideration given to other factors, determined, consistent with GAAP, that it was no longer appropriate to capitalize integrity maintenance expenditures because they would not realistically extend the pipelines’ useful life.²⁵
- Declining crude oil production and throughput volumes will cause the pipelines to cease operating far before the CARB plan’s ultimate carbon reduction goals are achieved. As California crude oil production continues to decline in tandem with declining volumes on Carriers’ system, the pipeline approaches its minimum flow rate and will reach a point where it can no longer operate, ending the pipeline’s useful life well before the 2045 target date for zero carbon emissions.²⁶

²¹ D. 25-06-044; *mimeo.* at 28.

²² Joint Applicants’ Closing Brief at 73.

²³ CRIM-RLW-006.

²⁴ CRIM-RLW-009.

²⁵ Joint Applicants’ Opening Brief at 65.

²⁶ *Id.* at pp. 66-67.

- Crude oil production economics can adversely affect the useful life of the Carriers' pipelines. 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 margin, rendering crude oil production uneconomic and thereby eliminating demand for crude oil transportation on the Carriers' system and further limiting the pipeline's useful life.²⁷
- Integrity-related maintenance projects and associated expenditures do not increase the functionality of the pipeline. The most common integrity-related maintenance activities involve 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. To the extent an issue is identified, such as wall loss, the Carriers would replace the affected piece of metal. Rather than improve the functionality of the pipeline, the required maintenance simply allows the pipeline to function as it did prior to the repair.²⁸ As such, while repair of the affected piece of metal may extend the physical life of the pipe, it does not extend the pipeline's useful life.²⁹
- The criterion for capitalization of costs incurred on an existing asset is that an expense may be capitalized only if it extends the useful life of the asset or increases the operational capacity or functionality of the asset, not simply whether it has a multi-year benefit. A common example used in accounting literature to illustrate this point is painting an asset. If a company repaints an existing asset to protect the exterior surface, which provides a multi-year benefit, the cost of painting is expensed in the year the cost is incurred; it is certainly not capitalized.³⁰

The only way that the Decision's rejection of the proposed accounting change could be found to be consistent with GAAP and Commission policy, would require a finding, based upon the evidence of record, that the Joint Applicants' integrity-related expenditures improve the useful life of the pipeline. The record, however, is devoid of any factual evidence to support such a finding. As such, the Decision's rejection of the Joint Applicants' request to expense certain of its integrity-related expenditures is unlawful.

²⁷ *Id.* at pp. 67-68.

²⁸ *Id.* at p. 68.

²⁹ Joint Applicants' Closing Brief at p. 73.

³⁰ CRIM-RLW-009 at 31:22-32:3; Tr. at 145:1-12; Carriers' Closing Brief at pp. 74-76.

C. D. 25-06-044 Legally Errs in Adopting an 8.5 percent Cost of Debt Contrary to the Record and in the Absence of Any Substantial Evidence.

D. 25-06-044 adopts an 8.5 percent cost of debt for the Joint Applicants that is not based upon the evidence of record in the subject, consolidated applications. Instead, the Decision's cost-of-debt analysis starts with reference to the 8.8 percent cost of debt for Joint Applicants' parent, Crimson Midstream Operating (CMO), that was established in prior rate proceedings. Based upon testimony that the cost of debt of a hypothetical Single B credit rating is 8.5 percent, D. 25-06-044, contrary to record facts demonstrating that the Joint Applicants were unlikely to have access to Single B-rated credit, adopts 8.5 percent as the Joint Applicants' cost of debt.³¹

The Decision's adoption of an 8.5 percent cost of debt based upon an inapposite hypothetical Single B credit rating (apparently influenced by a prior Commission decision), rather than upon a proper weighing of the record evidence, constitutes legal error.

The evidence in this proceeding shows that any debt that would be issued by CMO, the Joint Applicants' parent company, would be rated "no higher than single B and likely would be rated CCC or lower."³² The Joint Applicants' witness, Dr. Webb, therefore recommended an 11-percent debt cost, the midpoint between Single B bond yields (8.5%) and CCC bond yields (13.5%) during the Test Period.³³ D. 25-06-044, at 37, misstates Dr. Webb's recommendation as being based on the midpoint of CAA- and B-rated bonds.

As D. 25-06-044 notes, the Joint Applicants believe Dr. Webb's recommendation to be conservative given Mr. Waldron's testimony that the "likely" rating of any CMO debt would be

³¹ D. 25-06-044 at 37-38.

³² CRIM-RLW-006 at 9:20-21.

³³ Joint Applicants' Opening Brief at p. 88, *citing* CRIM-MJW-007 at 36:1-7 & CRIM-MJW-022 at 77:10-78:4.

CCC or lower, supporting an even higher debt cost than 13.5 percent.³⁴ Moreover, uncontroverted facts of record support Dr. Webb’s recommendation. As of the end of the Test Period, the CMO credit facility—the only debt that the Joint Applicants had access to—had an interest rate of 10.2 percent, notwithstanding the restrictive covenant that would act to lower the interest rate,³⁵ thereby indicating that Dr. Webb’s recommended cost of debt may be too low. Further, Summit Midstream—one of the sub-investment-grade oil companies tracked by Dr. Webb, with a Single B rating—had recently issued debt at a 12% interest rate, again validating Dr. Webb’s cost of debt.³⁶ In addition, the record shows that, in January 2024, CorEnergy loaned cash to Crimson Midstream Holdings (“CMH”) at a fixed interest rate of 11 percent, so that it could pay off the CMO credit facility, among other liabilities.³⁷

Thus, the Decision’s adopted 8.5-percent cost of debt is contradicted by the factual record indicating a much higher debt cost is fully warranted, and, moreover, it is undercut by its proximity to the Joint Protestants witness Mr. Upton’s 7.66-percent recommendation, which was shown to be unrealistic and unsupported, with Mr. Upton himself admitting on the stand that he was unsure whether the Joint Applicants could obtain debt at such an interest rate.³⁸

Finally, the Joint Applicants note a further piece of the factual context that undercuts the Decision’s outcome—the 2024 CorEnergy bankruptcy, which was driven to a considerable degree by the Joint Applicants’ transportation rates and revenues not keeping pace with long-term, sustained volume declines. Obviously, the bankruptcy of one of the two owners of the

³⁴ D. 25-06-044 at 37.

³⁵ Joint Applicants’ Opening Brief at pp. 92-93.

³⁶ *Id.* at p. 93.

³⁷ CRIM-RLW-009 at 33:9-16.

³⁸ Tr. at 707:14-18.

Joint Applicants' parent company negatively affects the ability of CMO to secure debt financing and directionally increases any interest rate that could be obtained. And, the only reason why CMO did not file for bankruptcy was the fact that CorEnergy lent CMO sufficient cash to retire the CMO credit facility that was about to mature and become due.³⁹ Moreover, it is telling that a relevant factor in rating debt at or below CCC is the existence of a risk of default and bankruptcy—validating Mr. Waldron's characterization of the likely range of debt cost and suggesting Mr. Waldron was conservative.⁴⁰

Simply stated, there is no evidence of record to support the Decision's determination to set Joint Applicants' cost of debt based upon an 8.5 percent cost of debt for a hypothetical Single B rated company. In so arbitrarily acting, the Commission has abused its discretion.

The Joint Applicants further note that the Commission's error in adopting a cost of debt of 8.8 percent, when all the record evidence supports a cost of debt of at least the 11 percent recommended by Dr. Webb also demonstrates the error with the Commission's adopted return on equity of 11.91 percent. Indeed, both the Joint Applicants and the Joint Protestants agreed that equity investors face greater risk compared to lenders, and therefore equity investors require a higher return as compared to lenders.⁴¹ If the Joint Applicants' cost of debt is at least 11 percent, which the record evidence supports, then the Joint Applicants' return on equity cannot be 11.91 percent. Joint Applicants' witness Dr. Webb provided an exhibit (CRIM-MJW-049) summarizing all cost of capital decisions issued by the Commission and the Federal Energy Regulatory Commission ("FERC") between 1980 and 2019. That exhibit shows that those prior

³⁹ CRIM-RLW-009 at 14:7-21.

⁴⁰ Joint Applicants' Opening Brief at 92-93.

⁴¹ Joint Applicants' Closing Brief at 97-98.

Commission and FERC decisions imply an equity premium (*i.e.*, the amount by which the return on equity exceeds the cost of debt) of around 500 basis points. Thus, adoption of a cost of debt of 11 percent based on the record evidence would also support Dr. Webb’s proposed return on equity of 15 percent.

D. The Decision’s Removal of AFUDC from the Joint Applicants’ Rate Base Violates Basic Ratemaking Principles and Unlawfully Reverses Prior Commission Decisions that Include AFUDC in the Joint Applicants’ Rate Base.

The Decision rejects the Joint Applicants’ inclusion of AFUDC in rate base, removing \$410,259 from their cost of service, on the grounds that “Crimson Midstream did not expend the funds to construct the KLM or SPB systems. The systems were purchased after construction. Carriers have not demonstrated that it is reasonable for them to recover construction costs they did not expend.”⁴² The Decision contravenes fundamental principles of public utility ratemaking and introduces a novel, harmful change into regulated utilities’ recovery of their investments in utility plant, while altering dramatically future purchases and sales of utility assets.

The Decision correctly indicates that the Commission has held that, as assets are placed into service, the associated AFUDC is capitalized into rate base,⁴³ a description that is consistent with Dr. Webb’s testimony.⁴⁴ The Commission has recognized this principle as a basic component of oil pipeline ratemaking:

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 AFUDC in

⁴² Decision at 34.

⁴³ Decision at 32, n.77.

⁴⁴ CRIM-MJW-001 at 25.

rates through depreciation charges over the useful life of the asset, and a return is earned on the undepreciated portion of the AFUDC.⁴⁵

However, the position—reflected in the Decision’s outcome—that such AFUDC, having been capitalized and made part of the utility’s rate base, would be removed from rate base if the utility were sold to a new owner is without support in Commission precedent, would be irrational as a matter of regulatory policy, and conflicts with prior Commission decisions authorizing the inclusion of AFUDC in the Joint Applicants’ rate base.

It is well established in Commission precedent⁴⁶ and more generally in recognized authorities on utility cost-based ratemaking⁴⁷ that AFUDC is and remains part of rate base and, as noted above, is recovered “over the useful life of the asset.” The Joint Applicants found no indication in these authorities of any caveat that recovery “over the useful life of the asset” would be truncated if an asset were sold and transferred to the books of another utility.

⁴⁵ *Application of San Diego Gas & Electric Co.*, D.13-05-010 at 984-85 (2013).

⁴⁶ *See, e.g., Application of So. Cal. Edison Co.*, D.19-05-020, at 311-312 (2019):

AFUDC is the standard way of capitalizing equity and debt costs incurred for financing Construction Work in Progress (CWIP). Capitalizing these costs helps ensure that full construction costs are paid by customers who received the services provided by the capital projects.

and Application of Pac. Gas & Elec. Co., D.14-08-032, at 611-12 (2014):

PG&E applies AFUDC to account for the costs of financing construction work in progress (CWIP) projects lasting beyond 30 days. Once a CWIP project becomes operative, i.e., used and useful, capitalized AFUDC is part of the CWIP project cost added to plant in service. PG&E is then allowed to recover the capitalized AFUDC through depreciation charges over the useful life of the asset, and to earn a rate of return on the undepreciated portion of AFUDC. PG&E calculates its AFUDC rate in accordance with the FERC formula.

⁴⁷ *See, e.g., Principles of Public Utility Rates*, 2nd ed., Bonbright *et al.* at 246 (“The entire cost of the plant (including AFUDC) is added to rate base, and it earns a rate of return on investment and is depreciated over the life of that plant.”).

Indeed, the Decision’s novel concept that the Joint Applicants cannot maintain AFUDC in their rate base as to these assets because they did not themselves incur the financing costs for the original installation of the SPB and KLM pipelines is so broad as to, in theory, swallow all plant costs incurred by previous owners, not just the construction financing costs covered by AFUDC—construction financing costs are costs, just as are the costs of steel pipe, valves, or pumps. The Decision’s broad language—that “Carriers have not demonstrated that it is reasonable for them to recover construction costs they did not expend”⁴⁸—appears to call into question all construction costs, not just AFUDC. Such an outcome is flawed on multiple grounds.

First, if such a principle existed in California law or in the policies or decisions of the Commission, it would be well known and, indeed, a matter of notoriety in the jurisprudence of utility regulation. The Joint Applicants are aware of no statute or regulation establishing such a principle nor can they find any indication of a prior comparable ruling by the Commission.

Second, upon review, the Joint Applicants could find no indication of such a principle existing in general utility law or policy from a review of reputable treatises on utility regulation.⁴⁹ Notably, the Decision fails to cite any support for the purported principle that unrecovered AFUDC would be erased upon sale of an asset.

Third, as noted above, a number of the Joint Applicants’ pipeline assets have been acquired through purchases from other companies, including the SPB and KLM pipeline systems. As to those acquired pipelines, the Joint Applicants have subsequently gone through rate cases before the Commission in which AFUDC was included in the proposed cost of service

⁴⁸ D. 25-06-044 at 34.

⁴⁹ *Id.*

and rates of both the SPB and KLM pipelines, and there is no instance in which the Commission directed removal of AFUDC from rate base in rate proceedings involving either of the two pipeline systems.

For example, in a 2021 proceeding regarding a proposed rate increase for the KLM pipeline in A. 21-06-023, the pipeline relied upon a cost of service presented by Dr. Webb that included AFUDC in rate base.⁵⁰ The Commission approved that rate increase in D.22-12-035, ruling that “[t]he rate increase request in the Application complies with and is consistent with all applicable Public Utilities Code Sections, General Orders, Rules, and Commission decisions.” *Id.* at 11.

Similarly, in a 2022 proceeding regarding a proposed rate increase for the SPB pipeline in A. 21-05-018, the pipeline again relied upon a cost of service presented by Dr. Webb that included AFUDC in rate base.⁵¹ The Commission approved that rate increase in D.22-10-026, ruling that “[t]he rate increase request in the Application complies with and is consistent with all applicable Public Utilities Code Sections, General Orders, Rules, and Commission decisions.” *Id.* at 2. There are no new facts or circumstances justifying a reversal by the Commission of its prior decisions permitting the Joint Applicants’ incorporation and maintenance of AFUDC relating to facilities that were not constructed by Joint Applicants in rate base.

Nowhere in those proceedings was any question raised as to the recovery by the Joint Applicants or any other Crimson-owned pipeline in its rates of the AFUDC component of rate

⁵⁰ See Application of Crimson California Pipeline, L.P., Docket No. A.21-06-023 (June 30, 2021), including Exhibit MJW-2 and appended Statements E (“Rate Base”), F1 (“AFUDC”), and F2 (“Amortization of AFUDC”).

⁵¹ See Application of Crimson California Pipeline, L.P., Docket No. A.21-05-018 (May 28, 2021), including Exhibit MJW-3 and appended Statements E (“Rate Base”), F1 (“AFUDC”), and F2 (“Amortization of AFUDC”).

base, or indeed of any other component of the rate base that the pipeline did not itself incur—which, upon each such acquisition, would have been the case for the entirety of each pipeline’s rate base. Any attempt to challenge the proper inclusion in rate base of such balances as to these pipeline assets under this novel theory would clearly be contrary to fundamental ratemaking principles as well as prior Commission decisions.

Further, if the Decision’s ruling is not reversed on rehearing, it would obviously disrupt well-settled practices with regard to utility recovery of investment. A simple example demonstrates the point.

If a utility company installed a new oil pipeline, incurring construction financing costs, and, upon completion, included the resulting costs as AFUDC in the rate base for the pipeline, the utility would then be permitted to commence recovery of that rate base, including the AFUDC, in its regulated rates over the coming years. However, if the utility after, say, two years of operating the pipeline chose to sell it to another utility, then, under the Decision’s AFUDC position, the unrecovered portion of AFUDC in the acquired pipeline’s rate base would be wiped out once it came into the hands of the acquiring utility. If not corrected on rehearing, the Decision’s erroneous position would have serious negative impacts on California pipelines, and potentially all cost-based utilities subject to the Commission’s jurisdiction. It would discourage transactions in such assets and potentially lead to the re-valuation of existing pipeline assets with AFUDC balances that have undergone sales.

E. D. 25-06-044 Legally Errs by Excluding Certain General and Administrative Expenses that Were Actually Incurred and Allocated to the Joint Applicants and Shown to be Necessary to Ensure Safe and Reliable Transportation Service.

The Decision excludes two categories of general and administrative expenses from the Joint Applicants’ cost of service: (1) those shared services expenses that were incurred by CMO

(the parent company of the Joint Applicants) and allocated to the Joint Applicants in the normal course of business but characterized by the Joint Protestants as “absorbed” expenses, and (2) general and administrative expenses that were incurred by CorEnergy, one of the ultimate owners of the Joint Applicants, and allocated to the Joint Applicants in the normal course of business. The Joint Protestants challenged both categories of expense as unnecessary and argued they should be removed from the cost of service altogether; D. 25-06-044 adopted that position wholesale.

As demonstrated below, the Joint Applicants submitted substantial evidence demonstrating the critical need for and reasonableness of the general and administrative expenses that were actually incurred by CMO and CorEnergy and allocated to the Joint Applicants. While much of that evidence was not even disputed, it was effectively ignored by the Decision’s adoption of a cost of service that completely removes expenses that were and are necessary to ensuring that the Joint Applicants have sufficient staffing in place to provide safe and reliable transportation service.

As such, the Decision’s determination to disallow shared services (or “absorbed”) expenses of \$1,827,466 and the CorEnergy allocations of \$2,941,741 from the Joint Applicants cost of service in the absence of substantial evidence is an abuse of discretion and contrary to the requirements of *Hope* and *Bluefield* that a common carrier should be afforded the opportunity to recover its legitimate operating expenses in its rates.

1. *The Decision erred by excluding certain shared services expense that CMO actually incurred and allocated to the Joint Applicants.*

The Decision recognizes that the “[Joint Applicants] run a lean organization,” yet nevertheless concludes that given the “relatively small number of employees,” the Joint Applicants had an obligation to prove that they had retained the appropriate number of employees, on an

“employee-by-employee” basis, before the total shared services expense that was *actually* allocated to the Joint Applicants could be included in the cost of service.⁵² Not only is this ruling predicated on inaccurate statements of fact, it lacks any legal foundation. Indeed, the Joint Applicants are aware of no other general rate proceeding where the Commission has required the utility to demonstrate, on either an employee-by-employee or department-by-department basis, that it has retained what the Commission determines to be precisely the right number of employees before the salaries and wages of those employees may be included in the utility’s cost of service. Indeed, the Decision itself cites no caselaw to support its evidentiary ruling here. For these reasons, the Joint Applicants submit that the Decision’s ruling excluding \$1,827,466 of the salaries and wages expense *actually* incurred by CMO and allocated to the Joint Applicants from the cost of service is factually and legally incorrect and should be reversed.

To be clear, the \$1,827,466 in salaries and wages expense concerns the increased amount of salaries and wages expense that were allocated from CMO to the Joint Applicants in 2022 compared to 2021, following the spin-off of CMO’s Gulf Coast pipeline assets to Crescent Midstream (“Crescent”).⁵³ The Decision states that the “parties agree that no additional economic benefits to ratepayers accompanied the increase in cost.”⁵⁴ That statement is contrary to the facts. As the Joint Applicants explained in their closing brief, Mr. Waldron’s statement that there were no “economic benefits” associated with the Crescent spin-off had nothing to do with ratepayer benefits but instead referred only to the fact that the Joint Applicants had not received any additional (economic) compensation as part of the Crescent spin-off.⁵⁵ Mr.

⁵² D. 25-06-044 at 15-16.

⁵³ Joint Applicants Opening Br. at 25-26.

⁵⁴ D. 25-06-044 at 14.

⁵⁵ Joint Applicants Closing Br. at 29-31.

Waldron repeatedly emphasized in his pre-filed testimony and during cross-examination that CMO has retained the appropriate number of employees to ensure that it can safely and reliably operate its pipeline assets, and that there would be no incentive for CMO to retain employees that were unnecessary or that performed redundant tasks.⁵⁶ Safe and reliable transportation service is an obvious ratepayer benefit. For example, Mr. Waldron testified:

So ... you asked the question did costs go up or down [post-Crescent spin-off.] I don't think about it [that] way. I think about it do we have appropriate staffing levels to run a safe, reliable business? And I say our staffing levels were appropriate after the spinoff of the Gulf. ...

So the simplicity of just saying the business is static and you separate a big part of the business and the head count should go down, it's just simplistic. It's too simplistic. Businesses are living organisms that have to adapt to the future. ...

The shippers are getting a bargain, and they get safe, reliable operation. And the management team puts their money where their mouth is because we have more on the line than anybody.⁵⁷

Mr. Waldon also described the significant workload and responsibilities of all CMO employees:

I mean, the one thing you have to understand is that ... we are a tiny organization. So I'm the CFO. I order lunch for board meetings and stop off at Target and [buy] bottled water for the office. So we don't get so caught up in titles. There's job functions that have to be done, activities that have to be done.

And so, you know, wherever the – wherever the work needs to get done, it's going to get done. I mean, we might work 70 hours in a week, you know. I frequently work on Saturdays and Sundays. So it's just – there's – I know in big companies people think, Oh, here's my job responsibility, and my job is done. But, . . . that's just not the way I operate. The job is never done because there's more work to do than we have employees to do it.⁵⁸

None of the factual statements in Mr. Waldron's testimony were seriously disputed; instead, the Joint Protestants reverted to an overly-simplistic position that because CMO had

⁵⁶ Joint Applicants Opening Br. at 29-30.

⁵⁷ Joint Applicants Closing Br. at 27-28; Tr. at 257:15-258:5, 260:1-7.

⁵⁸ Tr. at 205:16-22, 208:7-15.

spun off one of its pipeline assets but did not experience a significant reduction in headcount in certain corporate departments at that same time, it must be *presumed* that CMO had retained an inefficient number of employees to support its business post-spin-off. That presumption lacks foundation, particularly in light of the Decision’s recognition that CMO already runs a “lean organization.” Moreover, the Joint Protestants’ witness that argued for exclusion of these “absorbed” expenses readily admitted that he had no *actual* first-hand experience operating an oil pipeline, meaning his assumptions and assertions as to how many employees CMO should have retained before or after the Crescent spin-off lack foundation.⁵⁹ The Decision itself does not call into question the credibility of Mr. Waldron’s testimony. Nevertheless, it effectively rejects Mr. Waldron’s unchallenged factual statements and accepts the Joint Protestants’ unsupported and self-serving position by rejecting \$1,827,466 of salaries and wages expense and criticizing the Joint Applicants for not submitting evidence, on an employee-by-employee basis, demonstrating that every single employee within the organization is necessary to the Joint Applicants’ safe and reliable transportation service.⁶⁰

The Decision cites no prior Commission order, where the Commission applied such a heightened standard to salaries and wages expense, and, in fact, there is a Commission order (discussed below, which the Joint Applicants cited in their opening brief and the Decision ignores) that is contrary to the Commission’s application of the heightened evidentiary standard here. It is also worth noting that, if the standard that the Commission has applied to the Joint Applicants in this proceeding were to be applied to other utilities, rate case proceedings would almost never end and evidentiary records would be monumental because, unlike the Joint

⁵⁹ Joint Applicants Opening Br. at 30; Tr. at 896:14-23.

⁶⁰ D. 25-06-044 at 15-16.

Applicants and CMO, most utilities regulated by the Commission employ hundreds if not thousands of employees to run their business.

Furthermore, the Joint Applicants *did* offer very specific and detailed evidence fully demonstrating the roles and increased responsibilities of the CMO employees within the departments that were challenged by the Joint Protestants. As recognized in the Decision, the employees whose costs were removed from the Joint Applicants' cost of service fall within the following four departments: accounting, information technology ("IT"), control center/engineering, and executive officers. As an initial point, a clear example of the unreasonableness of the Joint Protestants' position on this issue, and of the Decision's corresponding acceptance of it, is that for executive officers, the Joint Protestants asserted that the "absorbed" salaries and wages expense translated to the equivalent of 0.3 of a full-time employee. In other words, CMO had improperly retained not one too many employees in the executive office, but the equivalent of three-tenths of a single employee too many. The Decision's acceptance of that assertion as a basis for excluding significant salaries and wages actually incurred by the Joint Applicants is arbitrary and defies logic.

Nevertheless, the Joint Applicants offered largely undisputed factual evidence regarding the job responsibilities of employees within these departments.⁶¹ For example, Mr. Waldron discussed the workload and increasing responsibilities of CMO's IT department, noting that as a result of, and in response to, the widely publicized ransomware cyberattack that led to the complete shutdown of Colonial Pipeline Company's pipeline system (a major refined products pipeline), the Joint Applicants are now audited by the U.S. Transportation Security

⁶¹ Joint Applicants' Closing Br. at 35-40.

Administration and have experienced heightened IT security requirements.⁶² Mr. Waldron testified that the increasing workload of CMO's IT personnel has more than offset the spin-off of the Gulf Coast assets. Ensuring the Joint Applicants have sufficient security protocols in place to protect against cyberattacks like that experienced by Colonial is an obvious ratepayer benefit and an activity that should be endorsed by the Commission, not condemned by disallowing the Joint Applicants' right to recover the salaries and wages expenses paid to CMO's IT personnel that provided vital support to the Joint Applicants' operations.

Mr. Waldon addressed CMO's control center personnel, referring to regulations that govern the number of control center operators that CMO was required to maintain, including after the Crescent spin-off.⁶³ In other words, CMO could not simply reduce the headcount of its control center department following the Crescent spin-off, as the Joint Protestants claimed they should have done and that the Decision indirectly accepts by excluding such expenses from the cost of service. Mr. Waldron discussed the increasing responsibilities of CMO's accounting group, including that, following the CorEnergy acquisition, they had additional audit responsibilities necessary to comply with Sarbanes-Oxley regulations.⁶⁴ The Decision acknowledges this evidence, yet discounts it because it was not presented on an employee-by-employee basis.⁶⁵ Again, the Joint Applicants submit that such a finding departs from the uncontested record evidence and Commission precedent.

⁶² *Id.* at 36-37; CRIM-RLW-009 at 10:1-11:2; Tr. at 257:21-23.

⁶³ Joint Applicants Closing Br. at 37; CRIM-RLW-009 at 7:3-8:22.

⁶⁴ Joint Applicants Closing Br. at 26-28.

⁶⁵ The Joint Applicants also note that they provided detailed salaries and wages information for their employees. *See* VMSC-CRC-MRT-0032 and VMSC-CRC-MRT-0034.

Mr. Waldron also explained that the Gulf Coast assets that were spun off to Crescent were far easier to operate compared to the California assets, such that the percentage allocations derived from the Massachusetts formula (which serve as the basis for determining the allocation percentages from CMO to the subsidiary pipelines) were not necessarily representative of how much labor was spent supporting the California assets compared to the Gulf Coast assets.⁶⁶ That fact was not disputed by the Joint Protestants, yet it is ignored by the Decision.

Finally, the Joint Applicants' expert witness Dr. Webb explained the fundamental principle that a regulatory agency should not substitute its own judgement for that of a utility's management and that costs should be presumed prudent unless there is a showing of "obvious and gross mismanagement."⁶⁷ The Commission has in turn adopted the core tenets of this noted regulatory principle, 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.⁶⁸

The Decision's findings and rulings on this issue turn this principle on its head by relying on an after-the-fact analysis that simply and unremarkably shows that there was an increase in the amount of salaries and wages expense being allocated to the Joint Applicants following the spin-off of the Gulf Coast assets to Crescent. There is no evidence in the record demonstrating or even suggesting that CMO's employment decisions at the time of the Crescent spin-off were wrong or inefficient, or that they are wrong today. Despite this fact, under the Decision's

⁶⁶ Joint Applicants' Closing Br. at 38.

⁶⁷ Joint Applicants' Opening Br. at 26-27; CRIM-MJW-022 at 10:16-11:6.

⁶⁸ *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, 2022).

findings, the Joint Applicants will be precluded from recovering the expenses associated with those employees that are necessary to its operations.

The evidentiary standard that the Decision imposes on the Joint Applicants to defend actual salaries and wages expense contravenes Commission precedent and, moreover, is inconsistent with the substantial record evidence offered by the Joint Applicants that demonstrate that CMO has retained the appropriate personnel to run its business. The Joint Applicants should be afforded the opportunity to recover the salaries and wages expense in the cost of service to have any hope that they can continue offering transportation service to their customers.

2. *The Decision's description of CorEnergy is factually incorrect and led to its erroneous rejection of the allocation of CorEnergy expenses to the Joint Applicants.*

The Decision finds that none of the expenses that were allocated to the Joint Applicants from CorEnergy should be included in the cost of service.⁶⁹ This includes \$2,941,751 of *actual* expenses that were allocated to the Joint Applicants in the Base Period, plus a Test Period adjustment of \$2,889,480 to account for the expected increase in the amount of expenses that would be allocated to the Joint Applicants following the sale of CorEnergy's MoGas and Omega assets. While the Joint Applicants disagree with the Decision's removal of both the Base Period and Test Period amounts related to CorEnergy allocations to the Joint Applicants, the Joint Applicants are only seeking rehearing as to the Decision's removal of the CorEnergy expenses that were actually allocated to the Joint Applicants during the Base Period (\$2,941,751). The Joint Applicants submit that the Decision inaccurately characterizes CorEnergy and its functions, causing the Commission to incorrectly exclude legitimate and reasonable expenses from the cost of service.

⁶⁹ D. 25-06-044 at 19.

The only justification offered by the Decision for excluding CorEnergy’s expenses that were actually allocated to the Joint Applicants in the ordinary course of business was “CorEnergy’s status as a ‘passive, indirect, minority stakeholder ... to Crimson Utilities,’” meaning that CorEnergy must be limited to earning “income through dividends and ‘not through business or trade.’”⁷⁰ As support for its characterization of CorEnergy, the Decision refers to prior Commission Decision 22-12-032, which denied CorEnergy’s change of control application that had requested authority for CorEnergy to assume 100% ownership of CMO.⁷¹ While the Decision fundamentally errs in its characterization of CorEnergy, even if the Decision were correct, it still does not support exclusion of these expenses from the Joint Applicants’ cost of service.

With regard to the Decision’s characterization of CorEnergy, as Mr. Waldron explained at hearing, in 2019 CorEnergy received a private letter ruling (“PLR”) from the Internal Revenue Service (“IRS”) confirming that it could own and operate assets.⁷² This fact is further confirmed in CorEnergy’s Form 10-K reports submitted to the Securities and Exchange Commission. For example, CorEnergy’s 10-K report for the year ending 2022, which is included in Exhibit LOU-0004, explicitly states: “CorEnergy’s Private Letter Rulings (“PLRs”) enable the Company to invest in a broader set of revenue contracts within its real estate investment trust (“REIT”) structure, including the opportunity to not only own, but also operate infrastructure assets.”⁷³ Thus, record evidence demonstrates that CorEnergy *can* own and operate the Joint Applicants’ pipeline assets, while maintaining its REIT status. As such, the Decision is simply wrong in

⁷⁰ Decision at *20.

⁷¹ *Id.*

⁷² Tr. at 163:7-24.

⁷³ VMSC-CRC-LOU-0004 at 100.

finding that there is a “clear mandate” that CorEnergy is “barred” from operating the Joint Applicants’ pipelines.⁷⁴ As this was the only justification provided by the Decision for excluding CorEnergy’s expenses from the cost of service and that justification is based on a factual error, the Decision’s disallowance of \$2,941,751 of expenses that CorEnergy actually allocated to the Joint Applicants during the Base Period, lack any evidentiary support and is unlawful.

Even if CorEnergy were “barred” from operating the Joint Applicants’ pipelines, that does not mean that the Joint Applicants are prohibited from receiving corporate support from CorEnergy and from recovering the expenses associated with that support in their rates. It is undisputed that the only reason the Joint Applicants have remained in service is because of CorEnergy. Specifically, given the Joint Applicants’ poor financial performance (*i.e.*, their rates not being compensatory to the service they provide), CMO was facing the very real threat of not being able to pay off its credit facility that was set to mature in March 2024, very likely resulting in CMO (and the Joint Applicants) entering bankruptcy.⁷⁵ The ratepayers have certainly benefitted from the Joint Applicants’ ability to continue offering transportation service.

Moreover, Mr. Waldron explained the corporate support that CorEnergy has provided to CMO and the Joint Applicants. For example, historically CMO had not employed in-house personnel with legal training and therefore relied exclusively on outside legal advice and support for its legal matters. Following CorEnergy’s acquisition of a minority interest in CMO, CorEnergy’s general counsel was able to provide support on a number of CMO matters, thereby

⁷⁴ D. 25-06-044 at 19.

⁷⁵ Joint Applicants’ Opening Br. at 38-39.

reducing CMO's legal bills.⁷⁶ The uncontroverted evidence of record demonstrates that CorEnergy expenses allocated to the Joint Applicants are reasonable, legitimate, and properly recoverable in the Joint Applicants' rates. The Decision's determination to the contrary is unlawful.

F. D. 25-06-044 Violates Joint Applicants' Rights under the U.S. Constitution By Denying the Opportunity to Recover Reasonable Costs of Operation, Much Less Earn a Reasonable Return on Investment.

D. 25-06-044 adopts a total cost of service for Joint Applicants of \$57,636,522.⁷⁷ D. 25-06-044 further determines that the adopted reasonable rate of \$1.9566/barrel would increase Joint Applicants' revenue of \$51,611,913 at existing rates by 11.67 percent, *i.e.*, by \$6,024,609, resulting in revenue of \$57,536,522, equal to the Joint Applicants' authorized cost of service.⁷⁸

As set forth above, D. 25-06-044 has legally erred in its treatment and related disallowance of certain costs properly included in Joint Applicants' cost of service, summarized as follows:

	<u>Issue</u>	<u>Disallowance</u>
(1)	Integrity Management Accounting	\$4,161,125
(2)	Shared Services Expense	\$1,827,266
(3)	Salaries and Wages	\$1,019,116
(4)	AFUDC	\$410,859
(5)	CorEnergy Base Period Disallowance	\$2,941,751
	Total Disallowance:	<u>\$9,359,723</u>

⁷⁶ *Id.* at 40.

⁷⁷ D. 25-06-044; Finding of Fact 2.

⁷⁸ *Id.* at 43.

D. 25-06-044 authorizes a rate of \$1.9566/barrel that will allow Joint Applicants to increase revenues by \$6,024,609. As such, the authorized rate increase is insufficient to allow the Joint Applicants to recover their reasonable operating costs of \$9,359,723 that were unlawfully disallowed by D. 25-06-044. Of course, it is a hallmark principle of utility ratemaking that the Joint Applicants are entitled to an opportunity to recover their legitimate costs and to earn a reasonable return on their investment.⁷⁹

D. 25-06-044 violates this fundamental principle by denying the Joint Applicants recovery of their legitimate expenses and foreclosing any opportunity to earn a return on their investment and is, therefore, unlawful.

V. CONCLUSION

For the reasons described above, Decision No. 25-06-044 should be reheard to correct the errors of law discussed herein.

⁷⁹ See *Federal Power Com. V. Hope Natural Gas.*, 320 U.S. 591 (1944); *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679 (1923).

Respectfully submitted August 1, 2025 at San Francisco, California.

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