UTILITY CONSUMER PARTICIPATION BOARD

February 1, 2010

MINUTES

A meeting of the Utility Consumer Participation Board was held Monday, February 1, 2010 in the Ottawa Building, 4th Floor Training Room, Lansing, Michigan.

I. Call to Order

Alexander Isaac called the meeting to order at 10:12 a.m. Board members present: Alexander Isaac ; Sister Monica Kostielney and Harry Trebing (via telephone). Members absent: March Shulman. Others present: Michelle Wilsey, Board Assistant; David Shaltz, Residential Ratepayer Consortium; Don Keskey, Public Interest Research Group in Michigan and Michigan Community Action Agency Association; Leah Hall, Citizens Against Rate Excess; James Ault, Michigan Electric & Gas Association; Lori Penn, Court Reporter.

II. Agenda

Kostielney moved, second by Trebing and motion carried to approve the agenda as printed.

III. Minutes

Kostielney moved, second by Trebing and motion carried to approve minutes of December 7, 2009 with the correction of the date on the top of p.3 from 2011 to 2010.

IV. Correspondences (Received and placed on file)

Isaac noted the following materials were received and provided to the board for their review and consideration.

A. Budget transfer and supplemental grant request-UCRF Grant 10-06 (MCAAA) (Keskey)
B. Grant amendment request-UCRF 10-05 (PIRGIM)
C. 2010 Utility Consumer Representation Fund Financial Report As of 12/2/09 (Eklund)
D. 2010 Utility Consumer Representation Fund Financial Report As of 12/3/09 (Eklund)
E. 2010 Utility Consumer Representation Fund Financial Report As of 12/4/09 (Eklund)
F. Revised budget sheet--Supplemental grant request for U-15645 (Keskey)
G. Transcript 12_7_09 UCPB Meeting (Penn)
H. UCPB - 2010 Meeting Schedule (Bennett)
I. Minutes 12_7_09 UCPB Meeting (Wilsey)
J. Major Action Summary 12_7_09 UCPB Meeting (Wilsey)
K. CARE Case Status Report 2_1_2010 (Hall)

Wilsey noted that additional items received after the submission date will be recorded on the next agenda.

Isaac requested that all participants at the meeting introduce themselves. Introductions were made. Isaac noted that there was no representation from the AG office. Wilsey commented that she had sent a note to Mr. Moody , per the board's request, expressing that the board would like to work out a role for the AG's representation and that she would be willing to work on a proposal to that end. No response has been received yet.

V. New Business

Wilsey commented that there were no new business items.

VI. Old Business

Kostielney asked if there had been acknowledgement of receipt or response to the letter of invitation to the Senate Energy Policy and Public Utilities Committee to attend the board meeting. Wilsey noted that she recommended and Isaac approved extending the invitation to the April board meeting. Kostielney reviewed the letter for corrections. Isaac would sign and mail the letter once the final corrections were made.

VII. Public Comment

Isaac invited comments or reports from the public or grantees. Leah Hall, CARE provided an update on the seven PSCR cases that they have been intervening in including Alpena Power Company, Edison Sault Electric Company, Northern States Power Company, Upper Peninsula Power Company, Wisconsin Public Service Corporation, Wisconsin Electric Power Company, and Indiana and Michigan Power Company. They were granted intervention in all seven cases, and have served discovery on all the companies in all seven cases.

The Alpena Power case is settled. Nearly all power is purchased from Consumers under a contract which expires next year. They will therefore plan to revisit the case next year. Settlement discussions are pending in the Edison Sault case, no issues were found to challenge.
In the Northern States power case a $50,000 under-recovery was requested, however the CARE expert witness found they actually had a $450,000 over-recovery. They are working to resolve the discrepancy. Upper Peninsula Power Company filed supplemental testimony in their case on January 22nd, which caused the CARE expert witness to revisit a couple of issues raised in the new testimony. Responses to those are expected soon; and the new testimony on our part is due on February 12. CARE testimony Wisconsin Public Service will be filed this afternoon. Wisconsin Electric Power Company will be a major case, with testimony due March 10. Analyses and discovery are on-going. The Indiana and Michigan Power Company case is also pending.

Wilsey noted that there had not been intervention in the PSCR cases of many of these companies for a long time and asked if they were cooperative? Hall noted that they were. The only question raised related to CARE intervention was whether they had membership in the services territories. CARE confirmed that they did. Membership of CARE was discussed.

Trebing commented that it is important that CARE is looking at the small and medium sized companies given that most attention and resources are given to large company service territories. This offer protection to consumers throughout the state. Kostielney noted that the board has tried for a long time to expand representation and this accomplishes that goal.

Isaac asked if websites were available for the client organizations of the other grantees. Shaltz explained that the client organizations have websites and they post material to them. Keskey said that each organization that they represent have their own well developed web sites. The law firm is in the web site development process. Isaac said that it is important to disseminate information via electronic media and encouraged grantees to post and communicate actions and results. Sister Monica agreed that it is important to communicate via electronic media but it is essential that staff is trained and encouraging usage for it to be effective.

Keskey was invited to update the board on recent results. Keskey reported on the final result at the Commission of Consumers Energy Electric rate Case U-15645. He noted that the results were summarized in a memo to the board dated November 9, 2009. Keskey reported that in the case, the MPSC sided with the MEC and PIRGIM in their position that the DOE liability should be removed from rate base, and that was $165 million times the overall rate of return times the tax factor, which would be, we estimated about 17 1/2 million. They were the only party that brought this issue up. Now, this has been part of the series of issues that have been contested in cases for a long time. The Commission finally granted their relief, and also ordered Consumers Energy to start a process toward putting in the SNF fees that they collected from ratepayers and did not contribute to the nuclear waste fund into a separate trust and ordered a process for that examination to start. They examined the Commission's November 2nd order in U-15645, and determined that the Commission had made some calculation errors with respect to granting the adjustment on the DOE liability. They then filed a petition for rehearing that indicated that an additional $44 million should be taken from out of rate base for the DOE liability and that the DOE liability should be reflected in the cost of capital at zero cost and not at a debt cost. On January 25th, 2010, the Commission's rehearing order granted their petition in full and removed the additional $44 million of the DOE liability out of Consumers Energy's rate base, reflected the DOE liability in the cost of capital at zero cost, which reduced the overall rate of return of Consumers Energy, and also required Consumers Energy to refile all of its cost-of-service studies and its tariffs to reflect an additional rate reduction of over $5 million for these corrections, and also required that the refund that Consumers Energy must render to ratepayers in the case will be retroactive and will add that additional $5 million. Keskey estimates that the overall result is that on the DOE liability issue is a $17 1/2 million reduction in rates for that one issue as it is applied in a ratemaking formula. The other aspect of this case also is that the trust remedy remains in place as a process going forward.

Additionally, Keskey noted, this should likely hold as a matter of precedent for future cases. That means that the ratepayers are actually saving $17 1/2 million every single year. Over ten years, that's $175 million. DOE liability is not a kind of an issue that, like rate of return you argue in every single case. Keskey noted that Consumers Energy has 30 days from January 25th to appeal to the Court of Appeals, which I believe is February 24th, and we obviously don't know what Consumers Energy will in fact do on these issues.

In other matters Keskey reported that a final order was issued on December 16, 2009 in Consumer's Energy reconciliation Case U-15041-R that was under UCRF grant 09-05case They played a supportive role in favor of recommendations made by AG and RRC. Commission did not grant rate adjustment but reporting ideas have merit for on-going cases.

Keskey also submitted a status sheet of all the cases under 2010 grants. Many of the cases are active right now.

Wilsey noted that some of the results achieved under the grant program show up as line items on customer bills. This makes it easier to demonstrate and explain benefits to the public and legislature.

Ault commented on case on the case u-15645 noting that his understanding of the decision was that the commission did not deny recovery of those costs. It is a question of capitalizing or expensing the cost. If it is taken out of rate base it could still be shifted to an expense. Keskey argued that was incorrect. He explained that the Palisades refunds relate to the refund of decommissioning trusts that the ratepayers had paid for into external trusts regulated by the Commission or internal trusts that the ratepayers paid for decommissioning, and as a result of litigation starting with, several cases starting with 14992, the company was ordered to refund all of those decommissioning funds that would no longer be needed for decommissioning because they sold the asset to Entergy, and any excess, any kind of a profit they made. Now, the Commission did allow in Consumer's Energy case U-15645, the company to recognize for the test year 2010 $519,000 in its operating expense for the contingent liability of interest expense that would be accumulated for the year 2010 if the federal government would ever perform. That, we do not have a problem with because when the trust gets established, hopefully next year, that will be included in the trust, along with the $163 million, so that the money is segregated and protected.

Keskey further asserted that this issue has nothing to do with capitalization or expense confusions, it is a straight-forward direct recoupment of funds that have to be protected for the ratepayer and/or refunded to the ratepayer, depending on future developments, in a similar way that the Palisades excess decommissioning funds are being refunded to the public, and I believe the totals there are about $255 million over 18 months roughly.

Ault wanted to avoid the impression that the money was fraudulently collected. He will review case and if he finds points of contradiction with the explanation provided by Keskey he will provide the board with information and clarification. Kostielney noted that she did not interpret any comments as implying fraud, just that the treatment of the funds was probably not carefully reassessed as conditions changed. Keskey responded that Consumers Energy under the Nuclear Waste Policy Act and the standard contract could select an option in (about) 1984, as to whether to deposit that pre-1983 fees into the nuclear waste fund or to hold it internally and pay it when the federal government arrived at their doorsteps to start picking up their spent nuclear fuel, which now is becoming a highly theoretical event if it will ever happen. However, the inclusion of that DOE liability, referred to as the contingent liability because it may never really end up to be a liability, which the ratepayers paid for in advance in the 1990s, should never have been in rate base or as a positive addition to the cost of capital, because the ratepayers already paid for it. If anything, the ratepayers should have been earning some kind of present value interest on the money they advanced before the liability was due to be paid the federal government. So in the complexity of the entire situation, this has happened, and we've corrected it. And we have always asserted that in view of the highly theoretical possibility that this amount will ever have to be paid to the federal government, and in view of the fact you've already collected it from the ratepayers, the best place for all these funds is an external, interest-bearing, MPSC-regulated trust because it's still the ratepayers money really, and it's got to be -- it's growing every year, the amounts are becoming large, it is making the ratemaking process more complex and confusing, and by putting it in a trust, you segregate it and make it clear, it will either be paid to that trust, will either be paid to the federal government if and when they ever dispose of the spent nuclear fuel, or if the feds fail on the utility defaults, then there will be some funds someday in that trust where the State of Michigan and its citizens and its ratepayers will have resources to try to dispose of the spent nuclear fuel.

VIII. Next meeting

A. The next regular meeting of the UCPB is scheduled Monday, April 12, 2010, 10:00 a.m.

IX. Adjournment – Meeting adjourned at 11:53 a.m.