

## UTILITY CONSUMER PARTICIPATION BOARD

June 7, 2010

### MINUTES

A meeting of the Utility Consumer Participation Board was held Monday, June 7, 2010 in the Ottawa Building, 4<sup>th</sup> Floor Training Room, Lansing, Michigan.

#### I. Call to Order

Chairman Isaac called the meeting to order at 10:13 a.m. Board members present: Alexander Isaac, Sister Monica Kostielney and Marc Shulman (via telephone). Members absent: Harry Trebing. Others present: Michelle Wilsey, Board Assistant; Chris Bzdok, Michigan Environmental Council; David Shaltz, Residential Ratepayer Consortium; Brian Coyer, Public Interest Research Group in Michigan and Michigan Community Action Agency Association; Michael Moody, Assistant Attorney General; Leah Brooks, Citizens Against Rate Excess.

#### II. Agenda

Kostielney moved, second by Shulman and motion carried to approve the agenda as printed. Coyer questioned whether all board members received copies of the report sent last night via email and copies distributed today. Wilsey noted that correspondences received after the agenda is posted are verified and included with the list of correspondences received on the next agenda.

#### III. Minutes

Minutes of April 12, 2010 were approved as printed.

#### 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. CARE Case Status Report April 12, 2010 (Liskey)
- B. MCAAA UCRF-08-01: Report on Appeal of U-14401-R and Court Decision (Keskey).
- C. MCAAA Grant 09-05: Report on CECO GCR Plan case U-15704 and MPSC Order (Keskey).
- D. MEC/PIRGIM UCRF Grant 09-01 and UCRF 10-05: Report on CECO Big Rock Decommissioning Reconciliation Case, U-15611 and MPSC Order (Keskey).
- E. MEC/PIRGIM Grant UCRF 09-04; Report on CECO PSCR Reconciliation case, U-15001-R and MPSC Press Release and MPSC Order (Keskey)
- F. MEC's Case Status Report FY-10 dated 4/9/2010 (Bzdok)
- G. UCPB Meeting Transcript 4/12/2010 (Penn)
- H. UCPB Meeting 4\_12\_2010 Minutes (Wilsey)
- I. UCPB Meeting 4\_12\_2010 Major Action Summary (Wilsey)
- J. List of 2009 UCRF Grant Funded Cases (Keskey)
- K. Cover letter from CARE President Ms. Kelly Kitchen (Liskey)
- L. CARE Case Status Report dated May 18, 2010 (Liskey)
- M. CARE UCPB Grant 10-10 FERC Cases Budget Amendment Request dated May 18, 2010 (Liskey)
- N. CARE UCPB Grant 10-10 FERC Cases Budget Amendment Request dated May 18, 2010 Break down of transfer amounts (Approved budget/Proposed Transfer/Final Budget). (Liskey)
- O. CARE Plan Case Available for Transfer Revised May 18, 2010 (Budget/Final Costs/Balance). (Liskey)

- P. RRC Request for Modification to Grant No. UCRF-10-01 2010-2011 GCR Plan Cases Only (Shaltz)
- Q. MEC Case Status Report 5\_24\_2010 (Bzdok)
- R. MEC Grant Amendment Request No. 2 Power Supply Issues in Consumers' 2010 Rate Case (U-16191) 5\_24\_2010 (Bzdok)

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

**V. New Business**

**A. CARE Budget Amendment Request**

Transfer request was examined by the board. Brooks explained that CARE based this request on an assessment by their expert and counsel regarding the best use of resources. In this transfer request they are seeking to reallocate some of the funds to reflect a large case that's developing and will be filed with FERC on July 15, 2010. The main objective of CARE in this case is to make sure that Michigan residential ratepayers are not charged more than their proportional share.

Kostielney moved, second by Shulman and motion carried to approve the CARE budget transfer request to UCRF Grant 10-10 as follows:

Transfer \$51,280 from FERC Smart Grid, Open Access Transmission and Resource Adequacy Plan cases to FERC Cost Allocation cases as follows.

Decrease Budgets

|                                 |   |  |
|---------------------------------|---|--|
| Smart Grid PL09-400             | - | \$2,020 (Original budget \$19,000 Revised budget if approved \$16,980) |
| Open Access Transmission AD09-8 | - | 25,020 (Original budget \$27,000 Revised budget if approved \$1,980)   |
| Resource Adequacy Plan ER08-394 | - | 24,240 (Original budget \$33,000 Revised budget if approved \$8,760)   |

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Total Decrease -51,280

Increase Budget

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|---------------------------|----------|--|
| Cost Allocation ER09-1431 | \$51,280 | (Original budget \$17,000 Revised budget if approved \$68,280) |
|---------------------------|----------|--|

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Total Increase \$51,280

**B. RRC Budget Amendment Request.**

Transfer request was examined by the board. Shaltz explained that the transfer is shift of 15 hours from the MGU GCR plan case and 15 hours from the SEMCO GCR plan case on the expert witness line items. RRC proposes reallocating the 30 hours by adding 10 hours to the MichCon GCR plan case in the expert

witness line item, and 20 of those hours to the Consumers Energy GCR plan case in the expert witness line item. Shaltz explained that these adjustments are proposed because some of the expenses they expected to incur in these other cases have not materialized; and the MichCon and Consumers cases, because they are the larger gas companies, have ended up requiring more hours than initially expected. These proposed modifications reflect a reasonable forecast of where RRC's actual hours will lie in these cases. Shaltz noted that this isn't a request for any increased funding; it's just shifting the dollars within the grant to better match RRC's anticipated expenditures.

Kostielney moved, second by Shulman and motion carried to approve the RRC Budget transfer request for UCRF Grant 10-01 as follows:

Transfer of \$5,454 from MGU Corporation and SEMCO Energy Gas Co. 2010-2011 GCR Plan Cases to the Michigan Consolidated Gas Company 2010-2011 GCR Plan case. No additional funds or new cases are proposed in this request.

Decrease Budgets

|                     |            |          |  |
|---------------------|------------|----------|--|
| MGU Corp U-16145    | (Original) | 27,270   | (13,500 expert, 13,500 legal, 270 admin) |
| Requested Amendment |            | -\$2,727 | (10,800 expert, 13,500 legal, 243 admin) |

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Total Amended Budget (if approved) \$24,543

|                      |            |          |  |
|----------------------|------------|----------|--|
| SEMCO Energy U-16147 | (Original) | 27,270   | (13,500 expert, 13,500 legal, 270 admin) |
| Requested Amendment  |            | -\$2,727 | (10,800 expert, 13,500 legal, 243 admin) |

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Total Amended Budget (if approved) \$24,543

Increase Budget

|                        |  |          |  |
|------------------------|--|----------|--|
| MichCon Gas Co U-16146 |  | \$27,270 | (13,500 expert, 13,500 legal, 270 admin) |
| Requested Amendment    |  | \$ 1,818 | (15,300 expert, 13,500 legal, 288 admin) |

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Total Amended Budget (if approved) \$29,088

|                             |  |          |  |
|-----------------------------|--|----------|--|
| Consumers Energy Co U-16149 |  | \$27,270 | (13,500 expert, 13,500 legal, 270 admin) |
| Requested Amendment         |  | \$ 3,636 | (17,100 expert, 13,500 legal, 306 admin) |

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Total Amended Budget (if approved) \$30,906

**C. MEC Budget Amendment Request**

Transfer request was examined by the Board. Bzdok explained that this request will allow expanded work on the cases and issues approved at the last meeting in the Consumers Energy Rate Case U-16191. Consumers Energy announced plans to defer its proposed Essexville coal fire generating plant, which freed up a significant amount of money this board had authorized in Grant No. 2 of 2010, which was about \$74,000. Bzdok asked his experts where they could do the most good with this money, and they said in the rate case. This requested transfer will therefore allow MEC to use those transferred funds to continue pursuing issues authorized by the board in the rate case. The allocation of the transferred funds would be approximately \$31,000 for legal and \$40,000 for experts. Bzdok noted that Moody raised the question of the benefit of allocating funds given the impending filing deadline. He provided the board with a memo laying out a detailed work plan and addressing those concerns. He pointed out that MEC would only spend the funds necessary to do the work based on the recommendation of the experts. He further noted that two of the issues, the line losses and the utilization of the generation assets, are already fairly well developed through the PSCR case. The third issue, spent nuclear fuel, is very well developed through Mr. Keskey's work through MEC and the whole record, including the victory in the last rate case that they achieved. And the fourth is the energy optimization, and that's been well developed by MEC's partners using some other resources. The work plan provided for the requested transfer demonstrates what has been done and what's left to be done stretching into December for the use of those funds. This request arises due to the withdrawal of the Consumers' certificate of need case and the availability of funds. Kostielney moved, second by Shulman and motion failed to approve Budget transfer UCRF Grant 10-04. Transfer a total of \$74,035.50 in unused 2010 grant funds for use in advocating on power supply cost issues in the pending Consumers Energy Company rate case (U-16191). This is in addition to the transfer of \$7,461.37 approved by the board at the meeting on April 12, 2010. No additional funds or new cases are proposed in this request.

Decrease Budgets

UCRF 10-04 Case 292659 (Appeal U-15805)      -\$ 1,837.50      (Original budget \$7,070 Revised budget if approved \$5,232.50)

UCRF 10-02 DECO PSCR Plan Case U-16047      - 3,500(Original budget \$8,080 Revised budget if approved \$11,580)

UCRF 10-03 CECO IRP Case U-15996      - 68,698.00      (Original budget \$80,000 revised budget if approved \$11,302)

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Total Decrease      - 74,035.50

Increase Budget

Consumers Energy Company Rate Case (U-16191)      \$74,035.50      (Original budget \$7,461.37 Revised budget if approved \$81,496.87)

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Total Increase      \$74,035.50

In discussion of the proposed amendment Shulman questioned the necessity to allocate this much funding when MEC is really not certain of the amount needed for the expert, and because it's hard to believe The amount requested with actually be needed, given the June 10 filing deadline for the case. He questioned whether there was a lesser amount that could be anticipated so that the board isn't allocating an amount above what might realistically be needed to deal with the case? Bzdok responded that they would work with whatever amount was approved by the board. He noted that the use of experts in this case is not limited to the time between now and June 10. They will do evaluate the discovery already received and file direct testimony. They will also assist with analyzing the rebuttal, preparing follow-up discovery, which I use for cross-exam, and perhaps evaluating and preparing surrebuttal testimony, which we have done and had admitted from this firm in the last two UCPB-funded cases where I have used these experts. I also am anticipating, because of the nature of these issues, the possibility that they would need to be here for cross-exam. And then I'm also anticipating needing help from them, as I typically do, with some of the questions or the analysis of testimony. So in other words, my approach is, I don't have them in most of the hearing, but then there are issues that come up in the hearing, and so then I need help from them, either with the analysis of revised exhibits or the analysis of cross-exam testimony to prepare the briefing. If they are not needed for any of these reasons, there will be a savings. However, given the board meeting schedule, there is not the opportunity to request additional funds. Shulman commented that he wanted to make sure that the board and the attorney general's office feels that any approved transfer is consistent with the policy that funds that are being requested are going to have a meaningful purpose for what it's intended for. He asked to hear from other board members and maybe from the attorney general's office as well as to this request. Kostielney asked what would happen if the funding falls short of the amount needed to complete the case? Bzdok said they would complete the case at their own and partners' expense. Kostielney questioned whether approving this request given the uncertainty of the budget would be setting any new precedent? Moody commented that the board has always approved estimated budgets. These cases do have a life of their own sometimes apart, beyond what you even review, in the filings, because one issue becomes larger than originally thought or, for many other variables. So that's not so much a problem. Moody also addressed his other concerns. One was on the timeframe. He raised that question because it is important to make sure that an intervener who does get funding has taken that into account. Moody stated that when he first reviewed the request, it was not clear that the filing deadline had been fully considered. It is true however, that experts can be used beyond the timeframe of the original filing. Based on the memo and this report, it appears the grantee has considered this. There has to be a plan in place that going to benefit ratepayers. Whether the grantee has fully met those standards is a policy question for the board.

Moody further commented that on the legal analysis regarding spent nuclear fuel. He noted that maybe it's even closer than originally thought, but I think we've given past memos or verbal advice that we felt those were more on the edge of what could be funded under the statute. The board has found they fall under the permissibility of the grant however, and has funded those issues in the past. His office has no concern with the line losses issue. Kostielney questioned how it was possible to use the amount of funds requested in the time allotted before the filing. She also questioned who the experts were. Bzdok responded that the experts proposed are George Sansoucy and Glenn Walker. They are the same experts who have worked on these cases previously and are identified in the grant amendment request. He noted the issues are well developed because they are issues they have pursued in other cases that are now coming up in the rate case. They are not using previous testimony but building on what has been done in those other cases. He is not certain all of the funds will be used and, if not, there will be a savings. He emphasized that he is not proposing to spend their budget between now and Thursday,

only a portion will be spent in the direct testimony phase. The budget will continue to fund cross-exam and the analysis of the additional follow-up discovery and surrebuttal testimony, et cetera. In response to Kostielney he noted that they will not have another opportunity to request a budget amendment until after cross-examination. Wilsey asked if any of the funding would be used for work already completed. Bzdok responded that it would not be used for anything retroactive to approval. He noted it is a going forward budget for continued work on the case. Isaac asked when they learned of the June 10, 2010 filing deadline. He responded that they have known about the date since the scheduling order was issued but only became aware of the availability of the funds due to the deferral of the Consumers case on May 27, 2010. Wilsey noted that they had requested the addition of the case and funds previously with a transfer from existing cases that was approved by the board. They were back with this transfer request due to the new availability of funds. Shulman asked if there was a way for MEC to break down the funding more specifically for immediate needs of the case. Bzdok reviewed some of the breakdown provided in the grant request memo and discussed various funding options. Shulman noted that he was trying to achieve a greater level of accountability for the need for the dollars right now, especially with regards to the experts. He is uncomfortable issuing a blank check and would like to be sure that the experts are going to charge what is reasonable and consistent with their experience and with what the board has paid for similar types of expert testimony in the past. Bzdok assured Shulman that the funding is never viewed as a blank check. He offered to provide an accounting by line items in this plan with what the expenditures were on legal and expert to give you a comfort level that we are not viewing this as a blank check, we're just viewing it as an opportunity to use these funds where best utilized. He also commented was that with the cases coming down the pipe that MEC has been funded to do, there are additional needs, and so there is a strong incentive to use not more funds than necessary, because there is the possibility that any unused funds may be allocated to those additional needs. Shulman noted that some of the work is scheduled after the board's August 2 meeting. He would be more comfortable considering funding needed between now and then rather than the full amount. Bzdok suggested an alternate proposal to reduce the expert amount by \$5,000 and legal by \$10,000 now, and then provide you with the expenditures per line item in this plan at your August 2nd meeting. He noted the cross-exam hearing itself goes till July 28th, so it would not be possible to meet the board's two-week submission deadline. Kostielney noted that even with the reductions mentioned that still amounts to over 200 hours of work. She raised issue of feasibility and feels the board needs to be more accountable. Isaac asked Shulman wanted to amend his motion with the reduction proposed by Bzdok. He said he felt there was a need to modify the transfer allocation. Additional proposals were discussed.

Isaac moved, second by Shulman and motion carried to approve Budget transfer UCRF Grant 10-04 in the total amount of \$20,000 from unused 2010 grant funds for use in advocating power supply cost issues in the pending Consumers Energy Company rate case (U-16191). This is in addition to the transfer of \$7,461.37 approved by the board at the meeting on April 12, 2010. No additional funds or new cases are proposed in this request. The allocation of transfer funds and new budget sheets for amended cases to be provided by the grantee to DELEG and the Board.

Shulman left the meeting at 11:03 a.m.

- D. 2011 UCRF Grant Cycle – Wilsey reported that the 2011 grant announcement and application had been distributed. Applications for the initial grant review are due Friday, July 23, 2010.

## **VI. Old Business**

- A. 2009 Annual Report – Wilsey distributed a final draft of the annual report. She noted that the legislative report input referenced by Brian Coyer that was provided by Public Law Resource Center last night was not included in the draft. Wilsey reviewed it briefly and would incorporate the material as best as possible given the late submission. Wilsey summarized the basic results discussed in the report and noted that there were significant demonstrable benefits to customers as a result of the effort of grantees. Shaltz noted that the \$13-14 million results from the MichCon native base gas sale case were not included in the statement of total benefits achieved by UCRF grantees. Wilsey noted that it was a settlement agreement and therefore she was not certain the result could be attributed to only the efforts of UCRF grantees. Shaltz and Moody concurred that it was achieved through the efforts of RC, MCAAA and the attorney general. Wilsey would review the item and testimony again and make the adjustment in the final report. She noted that the board was careful not to overstate or duplicate reporting of results. She also noted a general trend seemed to be that direct disallowances in traditional PSCR and GCR cases were not frequently supported by the commission. Grantees were more successful pursuing issues that often were moved or raised outside of the traditional PSCR/GCR cases. Shaltz and Moody discussed their perceptions and experiences in pursuing these cases. The review and involvement of the attorney general greatly assists the board in evaluating the grant requests. Coyer commented on other results achieved by PIRGIM not included in the annual report. Wilsey noted that they occurred after December 31, 2009 and therefore will be reported in the 2010 Annual Report. She further noted that the benefits achieved for consumers demonstrate the on-going need for the UCRF. Kostielney noted that she felt what was important was the manner in which the report was distributed. It needs to be hand delivered to the governor and legislators – particularly the leadership.

The meeting was adjourned at 11:30 a.m. for a 10 minute recess. Shulman returned telephonically and the meeting was reconvened at 11:40 a.m.

The content and minor modifications of the 2009 Annual Report of the Consumer Utility Participation Board were discussed. Shulman moved, second by Kostielney and motion carried to approve the 2009 Annual Report with minor revisions including the restatement of the benefits with the review of the \$13-14 million benefit from the base gas sale case and review and revision of results for MEC, PIRGIM and MCAAA with consideration of the report provided by the Public Law Resource Center.

**VII. Public Comment** – Shulman suggested the Chairman consider the use of a consent agenda for future meetings. Birthday wishes were extended to Chairman Isaac.

## **VIII. Next meeting**

- A. The next regular meeting of the UCPB is scheduled Monday, August 2, 2010, 10:00 a.m.

**IX. Adjournment** – Meeting adjourned at 11:46 a.m.