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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
LANSING

STANLEY "SKIP" PRUSS  
DIRECTOR

October 3, 2009

The Honorable Jennifer Granholm  
Governor of Michigan

Ms. Carol Morey Viventi, Secretary of the Senate  
Mr. Richard J. Brown, Clerk of the House  
State Capitol Building  
Lansing, Michigan 48909

In accordance with Public Act 304 of 1982, the attached 2008 Annual Report for the Michigan Utility Consumer Representation Fund (UCRF) is transmitted to the Legislature.

The state's six largest investor-owned utilities who use cost recovery proceedings to recover purchased gas and power supply costs from ratepayers were required, under this Act, to remit a total ratepayer funded assessment of \$1,096,950 in 2008 to provide for fair and adequate representation of Michigan residential energy ratepayers in gas and power supply cost recovery proceedings, reconciliation cases and other related proceedings before the Michigan Public Service Commission. 47.5% (\$521,051) of the revenue is allocated to fund intervenor grants, 47.5% (\$ 521,051) of the revenue is allocated to the Department of Attorney General, and the remaining 5% (54,848) is allocated for administrative costs.

The Utility Board requested an Annual Year (AY) authorization in 2008 of \$950,000 using current and accrued funds in order to provide sufficient revenue to fund qualified intervenor grants. This provided a total of \$902,500 available grant funding and \$47,500 for administrative costs. The same amount was requested for Annual Year (AY) 2009.

In 2008, six new grants (09-01, 09-02, 09-03, 09-04, 09-05, 09-06) in the total amount (with amendments) of \$719,899 were granted against AY 2009 (pending approval of the budget). Work on the four grants approved in 2007 against the AY 2008 authorization continued. These grants included (UCRF 08-01, 08-02, 08-03, and 08-04) in the total amount of \$611,460. Decisions from previous years were still pending in some cases.

Grants are rated based on compliance with statutory requirements and criteria established by the board. In 2008, the cases selected for UCRF funding represent approximately 95% of the residential customers of utilities participating in cost-recovery proceedings or nearly 3 million natural gas customers and 3.5 million electric customers in the state of Michigan. UCRF grant recipients included the Residential Ratepayer Consortium (RRC), Michigan Environmental Council (MEC/PIRGIM), Michigan Community Action Association (MCAAA), and the American Association of Retired Persons (AARP) of Michigan. The membership and scope of these organizations is provided in Appendix 1.

In 2008, UCRF funded intervenors achieved approximately \$1.7 million dollars in direct disallowance for residential customers, were responsible for the withdraw of a request for a rate recovery of approximately \$13 million dollars, influenced a \$11.2 million savings on the sharing of pollution control allowances, and advocated positions in settlements that contributed to significant rate reductions. UCRF funded intervenors also affected planning and purchasing practices that improve outcomes and rates for residential customers over the long-term. The UCRF grant program continues to give a voice to residential customers in this complex utility ratemaking process and provides for more reasonable and fair planning and cost treatment for ratepayers.

DELEG is an equal opportunity employer/program.  
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

The board continued improvements in administration and management of the grant program. In 2008, particular attention was paid to improvements in grantee billing practices and budget amendment review process.

The Attorney General's Office also receives UCRF funding to intervene on behalf of the utility ratepayers of Michigan in Act 304 proceedings. The Attorney General's Office will submit its' P.A. 304 Annual Report under separate cover.

Sincerely,  
UTILITY CONSUMER PARTICIPATION BOARD

A handwritten signature in cursive script, appearing to read "Alexander H. Isaac".

Mr. Alexander H. Isaac, Chair

cc. Stanley F. Pruss, Director, DELEG

**UTILITY CONSUMER REPRESENTATION FUND  
ANNUAL REPORT**

**CALENDAR YEAR 2008**

**UTILITY CONSUMER PARTICIPATION BOARD**

Alexander Isaac, Chair  
Sister Monica Kostielney  
Ronald F. Rose  
Marc Shulman, Vice Chair  
Dr. Harry M. Trebing

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### APPENDIX I - UCRF 2008-09 Grantees Membership Scope and Description

Questions regarding this report should be addressed to:

Utility Consumer Participation Board  
Department of Labor and Economic Growth  
Attention: Ms. Robin C. Bennett  
P.O. Box 30004  
Lansing, Michigan 48909  
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## 1. INTRODUCTION

Public Act 304 of 1982, as amended (Act 304) provides for the establishment and implementation of gas and power supply cost recovery clauses in the rates and rate schedules of public utilities. The Utility Consumer Participation Board (UCPB) and the Utility Consumer Representation Fund (UCRF) were further created by the Act to achieve equitable representation of interests of energy utility customers in energy cost recovery proceedings. The purpose of the UCPB is to make grants from the Act 304 Utility Consumer Representation Fund (UCRF) to qualified nonprofit organizations and local units of government to represent the interests of residential utility customers in energy cost recovery and reconciliation proceedings before the Michigan Public Service Commission, other state and federal agencies, and the courts.

This annual report to the Legislature, which is required under section 6m(22) of the Act, covers the activities of the Utility Consumer Participation Board for the 2008 calendar year.

As of 12/31/2008, The Utility Consumer Participation Board awarded \$719,899 (AY 09 authorization) in UCRF grants in calendar year 2008 to consortia of several non-profit, consumer groups. The board also continued to monitor grant work previously authorized. Grant recipients in 2008 included the Residential Ratepayer Consortium (RRC), Michigan Environmental Council (MEC), and the Michigan Community Action Agency Association (MCAAA). Combined, the grantees represent state-wide, nonprofit groups with over 400 member agencies and tens of thousands of individual members focused on issues related to energy, consumer protection, environmental, public health, and community action.

In 2008, UCRF grant recipients participated in over 40 proceedings on behalf of residential customers of the State of Michigan.

Though it is difficult to determine and validate exact monetary benefits attributable to any single party, the direct savings to ratepayers as a result of UCRF funded intervention exceeded \$3 million in 2008. In addition, significant indirect savings result from negotiations, oversight, and improved practices achieved through ratepayer intervention in Act 304 proceedings. While it is important to note that some of the direct and indirect savings are a result of changes that all parties, including the utilities, recognize and agree to in reconciliation cases, many of the cost and policy issues important to residential ratepayers would not be addressed without UCRF funded advocates. Benefits from this advocacy include disallowances, refunds, future savings from lower annual rates, improved planning, lower risk, and policy reform and innovation. The UCPB, through the administration of the UCRF, continues to advance the purpose of Act 304 and improve outcomes for residential energy customers in Act 304 and related proceedings.

In addition to UCRF intervenor grant awards, The Attorney General's Office receives UCRF funding for intervention on behalf of the utility ratepayers of Michigan. Coordination in UCRF funded cases is monitored by the board. Practices including advance review of grant applications, grant amendments, and regular reporting on case status and interventions, adopted by the UCPB continue to improve coordination of the grantees efforts with the Attorney General. This provides efficient use of resources while achieving coverage of a wide range of complex and highly specialized issues involved in major cases without duplication of effort. The Attorney General's office is also consulted in its role as legal counsel to the board. Expenditures and results of the Attorney General's intervention are provided in a separate annual report submitted by their office to the Legislature.

## 2. UCPB MAJOR RESPONSIBILITIES

MCL 460.61 provides for the creation of a Utility Consumer Participation Board, defines its membership, and prescribes its duties.

MCL 460.6m creates the Utility Consumer Representation Fund, establishes provisions for its generation, distribution and use, limits the beginning dates of cost recovery proceedings, and places reporting requirements on both fund recipients and the Board.

The duties and responsibilities of the Act under these two sections were discharged as described in sections 2.1 and 2.2.

### *2.1 UCPB Board Action 2008*

Listed below are a summary of discussion points and actions taken by the Utility Consumer Participation Board in the administration of the Utility Consumer Representation Fund from January 1, 2008 to December 31, 2008.

#### February 4, 2008 – Regular Meeting

1. Isaac requested that the financial reports be distributed in advance of the meeting.
2. Eklund reviewed the financial report and status of grants.
3. Wilsey discussed grant publicity.
4. Wilsey reported on the Energy Michigan meeting held December 19, 2007. Isaac requested additional information from the meeting.
5. Pending energy legislation impacting Act 304 and residential customers was discussed.
6. The board approved the following budget amendments:

Motion by Shulman, second by Rose and motion carried to approve the budget amendment to UCRF 08-01 for case U-15245, increase legal budget by \$15,000, increase expert budget by \$10,000 and increase 1% administrative budget by \$250.

Motion by Rose, second by Kostielney and motion carried to approve budget amendment to UCRF 08-01 for Case U-13919 Appeal (IM Power), increase legal budget by \$18,000, increase expert budget by \$2,000, and increase 1% administrative budget by \$200.

Motion by Rose, second by Kostielney and motion carried to approve budget amendment to UCRF 08-01 for case U-13808 Appeal (DECo), increase legal budget by \$8,000, increase expert budget by \$2,000, and increase 1% administrative budget by \$100.

Motion by Rose, second by Kostielney and motion carried to approve the budget amendment to UCRF 08-01 for Case U-13917 Appeal (CECo), increase legal budget by \$3,000, increase expert budget by \$2,000 and increase 1% administrative budget by \$50.

Motion by Rose, second by Shulman and motion carried to approve MEC/PIRGIM UCRF Grant 08-01 Amendment #2, addition of nuclear legacy case(s) filed before September 30, 2008, in the total amount of \$35,350 broken down as follows - \$20,000 legal budget, \$15,000 expert budget and \$350 1% administrative budget. Case numbers and filings must be reported to the board and DLEG for inclusion in the grant.

7. The board denied the following budget amendment (but invited the grantee to submit another request in the future if circumstances warrant):

Motion by Rose, second by Kostielney and motion failed to approve the budget amendment to UCRF 08-01 for case U-13771, increase legal budget by \$14,000, increase expert budget by \$6,000, increase 1% administrative budget by \$200.

8. Rose requested that grantees submit timely billings and that Eklund include a breakdown by case of the budget, amended budget and billings to date.

#### June 2, 2008 – Regular meeting

1. Rose moved, second by Kostielney, and motion carried to approve minutes of February 4, 2008 with the following amendment on p.5 last paragraph: In regard to removals OF ISSUES FROM RATE FILINGS, the Board should not assume that there is a sinister plot behind every removal.
2. Isaac and Rose thanked Eklund for preparing and distributing the financial information to the Board in advance of the meeting.
3. Rose questioned each of the grantees regarding lags in billing. Shaltz noted the supplemental billing information provided brought billing current and the remaining balance is consistent with the June 30,

2009 expiration date of the grant. Keskey noted that invoices through April had been submitted but were still under review by DLEG. The most current invoices were still in internal review. Eklund noted that (based on consultation with Droste) DLEG had no way of penalizing for late billings. Rose requested Liskey look into that matter. Keskey noted he was working on a spreadsheet depicting the most current information that they have that they could show the board each month. Keskey noted that case schedules are often extended, so the work may not flow well with the grant timeline. Nelson noted that it would be possible to submit a zero statement if no work was done during the month. Kostielney noted that it seemed that the State of Michigan would have established financial protocols and procedures to support grant administration and billing and discouraged designing a separate program. Shaltz explained that they do have financial forms and contracts that called for quarterly reports. More frequent billing was acceptable to DLEG. Wilsey suggested that billings continue but grantees could also report encumbrances (amounts billed still subject to internal and/or DLEG review). Rose noted he would like these a week to ten days in advance of the meetings. Rose requested Liskey coordinate with DLEG to consider if the contract language can and/or should be amended to improve billing practices.

4. Wilsey provided the Board with the draft 2009 UCRF grant notice. The requested appropriation is \$950,000 the amount available for grants (less administrative fees) is \$902,000. DLEG will distribute the notice. Potential interested parties were added to the distribution list. She recommended the board set a special meeting for review of grant proposals. Rose moved, second by Kostielney and motion carried to schedule a special meeting on Monday, August 25, 2008, 10:00 a.m. for the purpose of reviewing 2009 UCRF grant submissions. There was extensive discussion of managing future grant requests for currently funded cases. Wilsey will work with DLEG to address funding of cases that span multiple funding cycles.

5. The board approved the following budget amendments:

Motion by Kostielney, second by Rose and motion carried to approve the budget amendment to UCRF 07-01 for case U-14716-R, increase legal budget from \$13,125 to \$19,250, increase expert budget from 13,125 to \$19,250 and increase 1% administrative budget from \$262 to \$385 and for case U-14717-R, decrease legal budget from \$13,125 to \$7875, decrease legal budget from \$13,125 to \$6,125, and decrease administrative budget from \$262.5 to \$140.

Motion by Rose, second by Kostielney and motion carried to approve a budget amendment to increase the budget for UCRF 08-01, Case U-13919 Appeal (IM Power) by \$20,000.

Motion by Rose, second by Kostielney and motion failed to approve a budget amendment to increase the budget for UCRF 08-01, Case U-15290 CECO's "Balanced Energy Initiative" in the total amount of \$35,350 (\$25,00 expert, 10,000 legal and \$350 admin).

Motion by Rose, second by Kostielney and motion carried to approve a budget amendment for UCRF 08-01, Case U-15290 CECO's "Balanced Energy Initiative" to transfer \$3,000 from the expert budget to the legal budget.

Motion by Rose, second by Shulman and motion carried to approve a budget amendment for UCRF 08-01, Case U-15415 CECO's PSCR Plan Case 2008 to transfer \$5,000 from expert budget to legal budget for prospective work on the case.

Motion by Rose, second by Shulman and motion carried to approve a budget amendment for UCRF 08-01, Case U-15244 DECO Rate Case to increase the budget by a total \$15,150 (\$10,000 legal, \$5,000 expert, and \$150 admin).

Motion by Rose, second by Shulman and motion carried to add case Michigan Consolidated Gas v. MPSC, et. al, Court of appeals Docket No. 282741 to UCRF 08-03 and approve a budget amendment for MEC/PIRGIM UCRF 08-01 to transfer \$5,050 (\$2,500 legal, \$2,500 expert, and \$50 admin.) from Case U-15454 CECO GCR Plan Case to MCAA UCRF 08-03 Case Michigan Consolidated Gas v. MPSC, et. al, Court of appeals Docket No. 282741.

Motion by Rose, second by Shulman and motion carried to add case U-15506 to UCRF 08-03 and approve a budget in the amount of \$40,400 (\$25,000 legal, \$15,000 expert, and \$400 admin).

6. Board advised Keskey to address budget issues for upcoming GCR Reconciliation Cases administratively.

August 4, 2008

1. The 2007 UCPB Annual Report was referred to the Board and public for review and comment. Wilsey requested Annual Report information from the AG's office. Approval of the Annual Report will be taken up at the August 25, 2008 special meeting.
2. 2009 UCRF Grant proposals are due August 8, 2008.
3. MEC/PIRGIM 08-01 Budget Transfer Requests – Keskey noted that the budget amendment approved June 2, 2008 for grant 08-01 totaled \$35,150 (increase of \$15,150 for Case U-15244 DECO Rate Case and \$20,000 Case U-13919 IM Power Appeal ). Any amount over \$25,000 must be approved by the State Administrative Board which means the funds are not immediately available. He proposed keeping the budget addition of \$15,150 and instead of a \$20,000 addition to the budget for Case U-13919 Appeal utilizing transfers of existing funds from other cases. Kostielney moved, second by Rose and motion carried to approve a transfer of \$20,000 from existing case budgets in UCRF 08-01 to Cases U-13919. Rose moved, second by Kostielney and motion carried to approve transfer of \$19,680.38 from existing case budgets in UCRF 08-01 to case U-15244. Rose moved, second by Kostielney and motion carried to approve transfer of ~~\$8,085~~ \$8585 from existing case budgets in UCRF 08-01 to case U-13919 appeal. Specific transfer amounts are subject to confirmation of availability of funds by DLEG.
4. MCAAA 08-03 Budget Transfer Request - Rose moved, second by Kostielney and motion carried to approve a transfer of \$40,400 from existing case budgets in UCRF 08-03 to case U-15506. Rose moved, second by Kostielney and motion carried to add cases and to establish corresponding budgets from transfers from existing cases in UCRF 08-03 to U-15041-R (\$4,040 – \$2,000 legal, \$2,000 expert, \$40 admin), U-15042-R (\$4,040 – \$2,000 legal, \$2,000 expert, \$40 admin) and U-15628 (\$20,200 - \$10,000 legal, 410,000 expert, \$200 admin).
5. A special meeting is scheduled August 25, 2008 10:00 a.m., Ottawa Building, 4<sup>th</sup> Floor Training Room. The main subject will be review of 2009 grants. Other agenda items will include approval of 2007 UCRF Annual Report, 2009 Administrative Assistant contract.

#### August 25, 2008 – Special Meeting

1. The 2007 UCPB Annual Report was presented with one technical correction, p.9, Section 2.2 table column 5 header “Amt Awarded (Amt Expended)” changed to “Amt Awarded (Amt Expended as of 12/31/07)”. Shulman moved, second by Kostielney and motion carried to approve annual report as corrected (Rose dissenting).
2. 2009 Grant Application of the RRC was presented and discussed. Application is for participation in GCR Plan and Reconciliation cases for CECo, SEMCo, MichCon and MGU as well as MichCon 2009 General Rate Case and Case U-15628 (gas storage case). The Attorney General staff reported that they have no concerns with Act 304 compliance issues based on review of the proposal submitted. Trebing noted that the grant application included results from previous grants. He requested these results be presented in summary form for the benefit of the lay reader. He further asked the grantee if proposed grant work included examination of impacts on the price of gas to Michigan residential customers of collusion among producers. Kostielney noted the information under tab 3 provides important information regarding the stature and scope of Michigan constituencies represented by the application. There was extensive discussion regarding the chart of rate case charges v. commodity charges in gas rates. Rose asked if the cases in which multiple parties propose to participate in have been thoroughly vetted to assure the board there is no duplication of effort. Experts for organizations have different perspectives/backgrounds/expertise. Once filing is reviewed, strategies and issues are reviewed with Attorney General and other consumer interest intervenors before testimony is filed. A final run through with clients determines what priorities are pursued. Trebing noted that the collaboration has worked over time. Keskey remarked that a review of the record demonstrates that no duplication on issues has occurred in past cases. They may choose to pursue common issues but testimony will be distinct. Wilsey requested that future case status reports note any “common issues” of UCRF grantees/AG. Motion by Shulman, second by Kostielney and motion carried to approve 2009 RRC grant application with addition of results summary in total amount of \$263,610.
3. 2009 Grant Application of the MEC was discussed. Application is for participation in various PSCR Plan and Reconciliation cases for DECo and CECo; DECO Rate Case U-15244 and CECo Rate Case U-15245; U-15290 “Balanced Energy Initiative”; U-15611 “Nuclear Legacy Issues”; as well as potential

refiling (U-13771); potential appeals (CECo U-14701R and U-15001, U-15245 Rate Case, U-15611); and on-going appeals (COA Appeal CEC Co U-14701, COA Appeal DECo U-14702, COA Appeal IM Power U-13919, MI SC Appeal DECo U-13808, MI SC Appeal CEC Co U-13917). The board broke the cases down and reviewed new cases, on-going cases, appeals, potential appeals. Status, potential for success, costs and benefits to customers, Act 304 compliance, potential duplicity (w/ AG), and appeal issues and strategy were extensively discussed.

Motion by Shulman, second by Trebing and motion carried to approve a grant for an initial expenditure of \$800 (amended to \$875 each) for purposes of filing a claim of appeal in CEC Co U-14701R/U-15001, U-15245 Rate Case, U-15611 in the total amount of \$2,625.

Motion by Rose, second by Isaac (Shulman requested a roll call vote) and motion carried to approve a grant for “nuclear legacy related cases” U-15611 (\$28,684), US SC Appeal U-13919 (\$46,360), MI SC Appeal U-13808 (\$21,544), Refiling Generic Complaint U-13771 (\$13,029), MI SC Appeal U-13917 (\$21,544), and U-15245 (\$21,109) in the total amount of \$152,270. Upon a roll call vote the following voted yes: Kostielney, Rose, Isaac, Trebing. The following voted no: Shulman. The following were absent: None.

Liskey communicated concerns related to addressing SNF issues under Act 304 to the board. Keskey responded to the concerns raised with opposing arguments.

Shulman left the meeting at 3:12 p.m.

Motion by Rose, second by Kostielney and motion carried to approve a grant for COA Appeal 14701 (\$5,454), COA Appeal 14702 (\$2,727), DECo U-15244 Rate Case (\$14,039) in the total amount of \$22,220.

Motion by Trebing, second by Rose and motion carried to approve a grant for U-15002-R (\$8,736.50), U-15417 (\$1,818), 2009 DECo PSCR Plan (\$9,393), 2008 DECo Reconciliation U-15417-R (\$909), U-15001 (\$14,342), U-15415 (\$1818), CEC Co PSCR Plan (\$13,029), U-15415 R (\$909), U-15290 (\$57,570) in the total amount of \$108,524.50.

4. The Ecology Center grant application was presented. There was significant discussion of whether the proposed work plan was unique and or permissible under Act 304. Motion by Trebing, second by Rose and motion carried to table the MEC grant request to the next meeting scheduled October 6, 2008 pending review of additional data and information to be provided by applicant.

5. The Chairman called for a change in the order of the agenda to take up the Administrative support contract proposal. Details of the proposal were reviewed. Motion by Rose, second by Trebing and motion carried to approve renewal of the Administrative Support Contract with Michelle Wilsey as proposed effective October 1, 2008-September 31, 2009 in the total amount of \$19,975.

6. The MCAAA grant application was reviewed. Application is for participation in various GCR Plan and Reconciliation cases for CEC Co and MichCon; CEC Co Rate Case U-15506; MichCon “Excess Storage” Case U-15628; and Appeal of MichCon U-14401-R. Coordination on common cases with RRC was again discussed. Motion by Rose, second by Trebing and motion carried to approve a grant for CEC Co 2009 GCR Plan U-15454 (\$1,818), CEC Co 2009 GCR Reconciliation U-15454-R (\$909), CEC Co 2008 GCR Reconciliation U-15041-R (\$18,786), CEC Co 2010 GCR Plan (\$17,473), CEC Co 2009 GCR Plan U-15451 (\$6,767), MichCon 2009 GCR Reconciliation U-15451-R (\$909), MichCon 2008 GCR Reconciliation U-15042-R (\$25,048), MichCon 2010 GCR Plan (\$39,592), MichCon U-15628 “Excess Storage Gas” (\$28,684) Appeal MichCon U-14401-R (\$1,818) in the total amount of \$141,804.

7. Motion by Rose, second by Trebing and motion carried to defer agenda item #VII.c. to the next board meeting.

October 6, 2008

1. Kostielney moved, second by Trebing and motion carried to approve amendment of the work plan U-13919 appeal. Upon a roll call vote the following voted yes: Kostielney, Rose, Trebing. The following voted no: Shulman. The following were absent: Isaac. The amendment allowed for an expenditure of up to \$5,000 of the supplemental funds approved by the board at the August 25 meeting to be used for pre-acceptance phase work on the case. The \$5,000 would be subtracted from work on the merits if the case is accepted.

2. There was extensive debate regarding retroactive payments for work not covered by the grant budget

and a proposal by Rose to grant payment for unpaid work. A request was made to the attorney general staff to provide the board with written advice on the matter. Rose moved, second by Kostielney and motion carried to table the issue of payment for write-off expense in the case of U-13919. Kostielney noted that a second was not needed to table an item.

3. 2009 Ecology Center grant application was extensively discussed. The board indicated that a more specific work plan was needed. No action was taken on the matter.

4. Kostielney moved, second by Trebing and motion carried to approve MEC Budget Amendment Request for CECo U-14701-R/U-15001 appeal to increase the budget to a total of \$12,726.

5. Kostielney moved, second by Rose and motion failed (2 yes, 1 no) to approve the MCAAA budget request for CECo U-15506 in the total amount of \$15,655.

6. Rose moved, second by Kostielney and motion carried to approve the following budget amendments to RRC 08-02: MGU U-15450 decrease expert to \$5,760, decrease legal to \$10,620, decrease admin to \$163.80; MICon U-15451 increase expert to 15390, increase legal to \$17100, increase admin to \$324.90; SEMCO U-15452 decrease expert to \$6480, decrease legal to \$10530, decrease admin to \$170.10; CECo U-15454 increase expert to \$20,520, increase legal to \$21,600, increase admin to \$421.20.

December 15, 2008

1. MEC/PIRGIM Request 1: Amendment of Budget for Appeal of CECo U-15245, UCRF 09-01/UCRF 09-02. Kostielney moved, second by Rose and motion failed (2-2) to approve the Amendment of Budget for Appeal of CECo u-15245, UCRF 09-01/UCRF 09-02.

2. MEC/PIRGIM Request 2: Amendment of Budget appeal CECO U-14701 (COA 274471) and DECO U-14702 (COA 274471), UCRF 09-03 was withdrawn.

3. MEC/PIRGIM Grant Amendment Request 3: Amendment to UCRF 09-04 to add cases and budget for participation implementation of 2008 Energy Act (PA 295, 286) with respect to electric utilities. Rose moved, second by Kostielney, and motion failed (4-0) to amend UCRF 09-04 to add cases and budget for participation implementation of 2008 Energy Act (PA 295, 286) with respect to electric utilities.

4. MEC/PIRGIM Grant Amendment Request 4: Amendment to UCRF 09-02 to add case and budget for CECo rate case U-15645. Rose moved, second by Kostielney and motion carried to approve an amendment to UCRF 09-02 to add case and budget for CECo rate case U-15645 in the total amount of \$7,000 for purposes of initial review, filing and to report back to the board (its administrative assistant and the Attorney General) with a work plan on Act 304 issues involved in the case.

5. MCAAA Grant Amendment Request 5: Amendment to UCRF 09-05 to add case and budget for MichCon gas rate case. Rose moved, second by Shulman, and motion carried to approve an amendment to UCRF 09-05 to add MichCon gas rate case (docket number to be assigned) and budget in the amount of \$10,000 for purposes of initial review, filing and to report back to the board (its administrative assistant, the Attorney General, and coordinate with other UCRF grantees involved in the case) with a work plan on Act 304 issues involved in the case.

6. MCAAA Grant Amendment Request 6: Amendment to UCRF 09-05 to add cases and budget for participation implementation of 2008 Energy Act (PA 295, 286) with respect to gas utilities. Keskey requested that this amendment request be deferred until a later date.

7. MCAAA Grant Amendment Request 7: Clarification of expenditure for CECo Gas Rate Case U-15506 (Decoupling). Rose moved, second by Kostielney, and motion failed to approve the request for funding in the amount of \$35,000 for the CECo gas rate case U-15506.

11. Rose moved, second by Kostielney and motion carried to approve the 2009 UCPB Regular Schedule of Meetings as follows:

Meeting Date	Submission deadline for meeting materials/agenda requests
Feb 2, 2009 (Mon)	Jan 12, 2009 (Mon)
Apr 1, 2009 (Wed)	Mar 11, 2009 (Wed)
Jun 1, 2009 (Mon)	May 11, 2009 (Mon)
Aug 3, 2009 (Mon)	Jul 13, 2009 (Mon)
Aug 24, 2009 (Mon)*	Jul 24, 2009 (Friday)
Oct 5, 2009 (Mon)	Sept 14, 2009 (Mon)
Dec 7, 2009 (Mon)	Nov 16, 2009 (Mon)

\*2010 grant application review meeting.

2.2 UCRF Grants Awarded in 2008

Grant ID	Author-ization Year	DESC	Expiration Date	Amt Awarded (with any amendments as of 12/31/2008)	Amt Expended (as of 12/31/2008 unless otherwise noted)
MEC UCRF 09-01	2009	Initial expense for purposes of filing a claim of appeal in CECo U-14701R/U-15001, U-15245 Rate Case, U-15611.	9/30/2009	\$14,471	\$5,620
MEC UCRF 09-02	2009	Proposed intervention in nuclear legacy related cases” U-15611, US SC Appeal U-13919, MI SC Appeal U-13808, Refiling Generic Complaint U-13771, MI SC Appeal U-13917, and U-15245. Amended to include CECo rate case U-15645.	9/30/2009	\$159,270	\$5,101
MEC UCRF 09-03	2009	Continued and proposed COA Appeal 14701, COA Appeal 14702, DECo U-15244 Rate Case.	9/30/2009	\$22,220	\$5,454 <i>(through 11/30/08)</i>
MEC UCRF 09-04	2009	For U-15002-R, U-15417, 2009 DECo PSCR Plan, 2008 DECo Reconciliation U-15417-R, U-15001, U-15415, CECo PSCR Plan, U-15415 R, U-15290	9/30/2009	\$108,524	\$6,345
MCAAA UCRF 09-05	2009	Participation in CECo 2009 GCR Plan U-15454, CECo 2009 GCR ReconU-15454-R, CECo 2008 GCR ReconU-15041-R, CECo 2010 GCR Plan, CECo 2009 GCR Plan U-15451, MichCon 2009 GCR ReconU-15451-R, MichCon 2008 GCR ReconU-15042-R, MichCon 2010 GCR Plan, MichCon U-15628 “Excess Storage Gas”, Appeal MichCon GCR Recon U-14401-R. Amended to include MichCon gas rate case (docket number to be assigned)	9/30/2009	151,804	\$20,643
RRC UCRF 09-06	2009	Participation in CECo 2009-10 GCR Plan Case, CECo 2008-09 GCR Plan Recon Case, Michcon 2009-10 GCR Plan Case, MichCon 2008-09 GCR Plan Recon Case, SEMCO 2009-10 GCR Plan Case, SEMCO 2008-09 GCR Plan Recon Case, MGU 2009-10 GCR Plan Case, MGU 2008-09 GCR Plan Recon Case; MichCon 2009 General Rate Case, MichCon Case U-15628, monitoring of GCR Dockets of other Michigan gas companies.	9/30/2009	\$263,610	\$17,380
Total				\$719,899	\$60,543

### 2.3 Resource Availability

The total amount of new grants requested for calendar year 2008 totaled \$ 817,708.50. The UCRF authorization available for grants were \$902,500 (FY09 authorization pending budget approval). Upon review of the proposals submitted, the board determined three of the four applications were eligible for full or partial funding. The total amount initially granted by the board was \$691,053. The board continued to accept new proposals and grant amendments throughout 2008. The total amount granted at year-end was \$719,899.

In addition to intervenor funds, the board approved a contract for administrative support in the total amount of \$19,975 for the term October 1, 2008-September 30, 2009.

### 2.4 Resource Efficiency and Non-Duplication Due Diligence

The four grant proposals submitted to the board were as follows:

1. **The RRC Proposal** (\$263,610) focused on intervention in 2009-2010 GCR Plan and 2008-09 GCR Reconciliation cases for the four largest gas utilities in Michigan (CECo, MichCon, SEMCo, and MGU), monitoring of dockets of smaller companies, participation in the 2009 MichCon general rate case, and participation in MichCon gas storage case U-15628.
2. **The Ecology Center proposal** (\$60,600) proposed intervention in the 2009-10 PSRC Plan Case for Detroit Edison focusing on advocacy of certain program, policy, or practice changes related to the manner in which DECo utilizes renewable energy and passes through the cost of renewable energy under Act 304 processes, including rate design matters.
3. **The Michigan Community Action Agency Association** (\$157,459) **proposed intervention in** CECo cases 2008-09 GCR Plan Case (U-15454), 2008-2009 GCR Plan Reconciliation Case (U-15454-R), 2007-08 GCR Plan Reconciliation Case (U-15041-R), 2009-10 GCR Plan Case, and U-15506 Rate Case; MichCon cases 2008-09 GCR Plan Case (U-15451), 2008-09 GCR Plan Reconciliation Case (U-15451-R), 2007-2008 GCR Plan Reconciliation Case (U-15042-R), 2009-10 GCR Plan Case; and COA 282741(Appeal of MichCon U-14401-R).
4. **The Michigan Environmental Council** (\$336,039.50) proposed intervention in DECo cases 2007 PSRC Plan Reconciliation Case (U-15002-R), **U-15417**, 2009/10 PSRC Plan Case, 2008/09 PSRC Plan Reconciliation Case (U-15417-R), U-15244 Rate Case; CECo cases 2007 PSRC Plan Reconciliation Case (U-15001-R), 2008/09 PSRC Plan Case (U-15415), 2009/10 PSRC Plan Case; 2008/09 PSRC Plan Reconciliation Case (U-15415-R), U-15245 Rate Case, U-15290 “Balanced Energy Initiative”, U-15611 “Nuclear Legacy Issues”; potential refiling of U-13771 Generic Complaint; potential appeals of CECo U-14701-R/U-15001 (pollution control allowance profits), CECo U-15245 Rate Case (nuclear legacy issues), and CECo U-15611; and continued participation in On-going COA Appeal of U-14701 (CECo), COA 278798 Appeal of U-14702 (DECo), COA Appeal of U-13919 (IM Power), MI SC Appeal of U-13808 (DECo), MI SC Appeal of U-13917 (CECo).

Issues and strategies among the various parties participating in the same cases, including the Attorney General, were discussed in the advance review process and again during the board review meeting. Actual and potential duplication of effort was eliminated prior to approvals. Coordination with the Attorney General is required by the conditions of the grant. In order to monitor efforts, the Board now requires grantees to submit bi-monthly financial and case status reports for discussion at UCPB meetings.

### 2.5 Administrative Efficiency

The Board continued to improve administrative processes and efficiency in the following ways:

1. Utilized the revised UCRF grant application designed by DLEG Purchasing and Grant Services and the Michigan Attorney General’s Office.
2. Requested the opinion of the Attorney General’s office during grant review regarding the legal compliance of the individual grant applications with the governing statute or case law prior to the approval

of grants and whether there was any objection to either the approval or the submission of individual grants to the State Administrative Board.

3. Requested the opinion of utility representatives present during grant review as to concerns or objections regarding the legal compliance of the individual grant applications with the governing statute or case law prior to the approval of grants and whether there was any objection to either the approval or the submission of individual grants to the State Administrative Board.
4. Renewed contract with part-time contractor to assist the Board and coordinate efforts with other parties of interest.
5. Followed regular bi-monthly meeting schedule.
6. Implemented bi-monthly case status reports from grantees.
7. Formalized process of written grant amendments and documented board approval prior to submission to DELEG.
8. Revised annual report.
9. Expanded information publicly available on the web site.

### 3. UCRF RESULTS

#### *3.1 Cost/Benefit Analysis and Discussion*

In creating cost recovery mechanisms that allowed utilities to recover energy supply costs from ratepayers outside of a contested rate case, the Michigan Legislature assured that Michigan's residential energy customers would be effectively represented through the creation of the Utility Consumer Representation Fund (UCRF). UCRF funding is collected from assessments on utilities that use the cost recovery mechanism. This cost is paid by customers through their rates. Therefore, the revenue for the fund is generated from ratepayers and expended to assure their representation in utility cost recovery proceedings.

The PSCR and GCR cases have a "plan" and "reconciliation" phase. The plan cases for each utility set the framework and establish the cost of fuel recoverable from all customers. The reconciliation phase looks back at the assumptions and performance of the utility under the plan and "corrects" or "true-up" the plan factors with reality. The differences are then passed through to customers through collections, credits or refunds. UCRF grant funded parties advocate for the interests of residential customers in this process.

The 2008 grant recipients' proposals sought to accomplish the following primary goals:

- 1) Improve overall energy supply planning in order to reduce costs to Michigan residential ratepayers.
- 2) Improve specific strategies such as purchasing, hedging, storage, etc. to minimize the costs to Michigan residential ratepayers.
- 3) Scrutinize costs actually incurred by utilities are reasonable and prudent in order to assure Michigan's residential ratepayers are not bearing undue costs or risks.
- 4) Contest costs and implement safeguards associated with the sale or realignment of significant assets (including nuclear, gas storage, etc.) in order to protect Michigan ratepayers' investment and future risk.
- 5) Improve utility reporting and transparency on activities that impact ratepayer interests.
- 6) Promote the public interest in regard to environmental matters.
- 7) Obtain refunds, credits or offsets to minimize the cost of utility service.

There are many factors that impact assessment of effectiveness of UCRF funded intervention on behalf of residential customers including: 1) certain cases and proceedings span more than one grant year, 2) proceedings, through the appeal process, may remain pending for several years, 3) impact of a decision in one year often continues to benefit ratepayers in future years, 4) outcomes may result from multiple parties interventions and may be reported (in whole or part) by each party, 5) lack of a standardized reporting approach and validation method, and 6) indirect benefits not reflected in direct cost reductions.

In 2008, UCRF funded intervenors achieved approximately \$1.7 million dollars in direct disallowance for residential customers, were responsible for the withdraw of a request for a rate recovery of approximately \$13 million dollars, influenced a \$11.2 million savings on the sharing of pollution control allowances, and advocated positions in settlements that contributed to significant rate reductions. UCRF funded intervenors also affected planning and purchasing practices that improve outcomes and rates for residential customers over the long-term. These results are detailed in section 3.2 of this report.

### 3.2 Summary of UCRF Grant Activity and Results

In 2008, UCRF grantees reported participation (or decisions from prior year participation) in the following cases:

GCR Plan and Reconciliation Cases (13)	PSCR Plan and Reconciliation Cases (12)	Other Act 304 Cases (5)	Appeals (11)
<b>U-14402-R</b>	<b>U-15417</b>	<b>U-15506</b> (General Rate Case)	<b>COA #267194</b> (re:U-14403)
<b>U-14718-R</b>	<b>U-15415</b>	<b>U-15628</b> (sale of excess system gas supply and related accounting.)	<b>COA #282741</b> (re: U-14401-R)
<b>U-14717-R</b>	<b>U-15001</b>		<b>COA #278798</b> (re: U-14702)
<b>U-15452</b>	<b>U-14701</b>		<b>MSC #134474</b> (re: U-13919)
<b>U-14716-R</b>	<b>U-14701-R</b>	<b>U-15245</b> (General Rate Case)	<b>MSC #136433</b> (re: U-13917)
<b>U-14715-R</b>	<b>U-14702-R</b> (consolidated with U15259)	<b>U-15290</b> (Balanced Energy Initiative)	<b>COA #288706</b> (re: u-15245)
<b>U-15450</b>			<b>COA #287696</b> (re: U-15001,U-14701-R)
<b>U-15451</b>	<b>U-15244</b>	<b>U-15244</b> (General Rate Case)	<b>COA #264860</b> (re: U-13919)
<b>U-15454</b>	<b>U-15002-R</b>		<b>MSC #134474</b> (re: U-13919)
<b>U-15041-R</b>	<b>U-15001-R</b>		<b>MSC #136433</b> (re: U-13917)
<b>U-15042-R</b>	<b>U-13917</b>		<b>COA #274471</b> (re: U-14701)
<b>U-15043-R</b>	<b>U-14275-R</b>		
<b>U-15040-R</b>	<b>U-15677</b>		

The following section provides a discussion of results based on an independent review of the record by UCPB staff as well as a direct reporting by the grantee. Complete dockets related to the cases are available through the Michigan Public Service Commission's Electronic Docket Filing System (EDocket) at [www.michigan.gov/mpsc](http://www.michigan.gov/mpsc). Results for individual cases may be verified by reviewing the case docket. MPSC case numbers have been included for purposes of research and validation.

## Grant Recipient: Residential Ratepayer Consortium

### Grant # UCRF 06-04

#### **U-14402-R, SEMCO 05-06 GCR Reconciliation Case**

*Independent Summary:* MPSC Order issued 1/29/2008. Parties admitted to the case included SEMCO, AG, RRC, MPSC staff. Testimony was filed by SEMCO, RRC, AG. RRC sought a total disallowance of \$3.2-3.4 million, arguing that SEMCO failed to properly use historical pricing information to guide its early, winter, and monthly purchases. Commission did not support any disallowances.

*Grantee Summary:* In its expert testimony, the RRC sought **\$3.4 million** in cost disallowances for unreasonable and imprudent purchasing decisions SEMCO made during the 2005-2006 GCR period:

Based on SEMCO's actual experience with Early purchases and the Index in 2005 and SEMCO's own representation that it monitors gas prices, SEMCO should have discontinued use of the Early Purchases in the January through March 2006 period and replaced them with Index purchases. SEMCO's Early Purchases were \$530,131 more expensive than if the purchases were made using the "NYMEX Close" adjusted for the bid basis and \$1,177,341 more expensive than the purchases using the "Index" adjusted for the bid basis. The Early Purchases were more expensive in 10 out of 12 months with the Weighted Average Price being \$0.5152/Dth higher when compared to Index. SEMCO should have been tracking the relative cost of these purchases and discontinued the practice.

If Early Purchases had been discontinued for January through March and replaced with Index purchases, the savings would have been \$757,248. SEMCO was imprudent by not tracking the obvious lack of success with these purchases and \$757,248 was the RRC's recommendation for a conservative, minimum disallowance for SEMCO's "Early Purchases".

SEMCO's Winter Term Purchases were \$479,982 more expensive than making those purchases using the NYMEX Close and \$1,087,897 more expensive than making those purchases using the Index. The RRC recommended a full disallowance of \$1,087,897 for the excess costs caused by these purchases.

Based on the information available to SEMCO prior to October 2005, the RRC's witness concluded that SEMCO's continued use of NYMEX purchases from October through March was imprudent. The total excess cost for Normal Monthly Purchases compared to Index in the 2005-2006 GCR Reconciliation period was \$1,567,704. The RRC recommended a disallowance of \$1,320,069 for the purchases made by SEMCO in October 2005 through March 2006 only.

The RRC's basic position was that SEMCO's failure to track and understand how its heavy reliance on the NYMEX for pricing its gas supply purchases during the 2005-2006 GCR period was unreasonable and imprudent and caused it to incur excess gas costs that should not be recovered from its GCR customers.

The RRC's expert witness also testified that SEMCO's peaking service was unnecessary and over-priced in the 2005-2006 GCR period because the Company had a Balancing Account with Consumers for up to 40,000 Dth/Day and a purchase in July for 2,000 Dth/D on Consumers for December, January and February that would provide 60,000 Dth or 6 days at 10,000 Dth in each month at much less expense than the peaking service SEMCO purchased. In addition, it appeared the Company had the ability to transfer supply from Eaton Rapids and ANR Storage to Consumers to meet peak day demand. For these reasons he recommended a disallowance of \$275,000 for the demand portion of SEMCO's peaking service because it was unnecessary.

The RRC filed its initial brief on June 18, 2007 and its reply brief on July 9, 2007. On November 5, 2007, the presiding Administrative Law Judge issued his Proposal for Decision (PFD) in this case in which he rejected the cost disallowances advocated by the RRC as well the one proposed by the Attorney General. The RRC filed its exceptions to the PFD on November 19, 2007.

In its final order in this case, the MPSC granted SEMCO's application and ordered that SEMCO's \$262,810 over recovery inclusive of interest should be rolled into the next GCR period as a credit to the cost of gas. It was "not persuaded" that the cost disallowances advocated by the RRC should be adopted.

**U-14715-R, MGU 06-07 GCR Reconciliation Case**

*Independent Summary:* MPSC Order: November 13, 2008. Parties admitted to the case included MGU, AG, RRC, MPSC Staff. Testimony was filed by MGU, AG, RRC, RRC did not recommend a disallowance though some utility purchases were not favorable to GCR customers because the purchases were made in accord with the approved GCR plan. RRC critiqued Dollar Cost Averaging (DCA) program and suggested collaborative similar to MichCon to address purchasing practices. Collaborative was agreed to for future cases. Settlement agreement reached. Overrecovery \$1,357,667 approved in settlement.

*Grantee Summary:* RRC filed the testimony of its expert witness on January 4, 2008. In his testimony, RRC witness Frank J. Hollewa analyzed all of MGUC's gas purchases during the 2006-2007 GCR period, including its Dollar Cost Averaging (DCA) purchases, Term, Monthly and Daily purchases. He also examined the Company's storage operations during the winter period and its capacity release credits. After completing his audit of MGUC's performance during the 2006-2007 GCR period, Mr. Hollewa concluded that:

Though they were made in conformity with the Company's Commission-approved GCR Plan, MGUC's DCA and Term purchases came with a premium paid by the GCR customers for the price stability they secured. In light of this development, Mr. Hollewa recommended that MGUC work with the other parties to explore whether the Company's DCA purchasing method should continue and how MGUC's purchasing methods can be improved. (As a result, MGUC committed to doing that as part of its 2008-2009 GCR Plan process).

With respect to MGUC's Monthly and Daily purchases, Mr. Hollewa identified four areas of concern for which he requested additional information and explanation from MGUC. MGUC agreed to provide that information and if it reveals a need for modifying the Company's approach to making these purchases, that issue will be addressed by the collaborative effort in MGUC's 2008-2009 GCR Plan, described above.

With respect to the Company's storage operations, Mr. Hollewa identified two areas of concern that need to be addressed with additional information and explanation from MGUC. MGUC agreed to provide that information and if it reveals a need for modifying the Company's approach to its storage operations, that issue will be addressed by the collaborative effort in MGUC's 2008-2009 GCR Plan, described above.

A more detailed exposition of how the Company calculates its capacity release credits needs to be included in MGUC's GCR Reconciliation filings. In response to Mr. Hollewa's testimony, MGUC has revised the exhibit it is sponsoring in this case to provide the extra detail requested.

Based on his analysis of MGUC's GCR Reconciliation evidence, Mr. Hollewa did not recommend any cost disallowances because the Company's actions during the 2006-2007 GCR period were within the bounds of its approved GCR Plan. However, Mr. Hollewa's testimony showed that changes in the natural gas market during the past two-three years make it clear that MGUC needs to modify the way it buys gas for its GCR customers. That evidence provided an impetus for pursuing those changes in the Company's 2008-2009 GCR plan.

Other than MGUC, the RRC was the only party to file testimony on the initial date set for the filing of MPSC Staff and intervenor testimony. In February 2008, MGU filed supplemental testimony that amended the Company's case. MGUC discovered discrepancies in the Company's Lost and Unaccounted For and Company Use volumes resulting from the transition of ownership from Aquila, Inc. to Integrys Energy, Inc. The case schedule was suspended as MGUC continued its audit and sought to reconcile the accounting discrepancies. The parties continued to meet with MGUC to receive updates on the results of the Company's internal audit. On August 5, 2008, the Company filed new testimony and exhibits that updated its GCR reconciliation.

After evaluating the new supplemental evidence comprising an internal audit reviewed by Price Waterhouse Cooper, the RRC engaged in settlement negotiations with the parties. On October 17, 2008 a settlement agreement was reached in which:

MGUC agreed to refund to its GCR customers **\$1,357,667** by rolling in a credit in that amount to

the Company's 2007-2008 GCR expenses and reconciliation.

MGUC agreed to revise exhibits in its 2006-2007 GCR Reconciliation and the affected exhibits in the 2007-2008 GCR Reconciliation to reflect the adjusted Consumers Energy Company storage balance and to correct gas receipts for the 2007-2008 GCR period. This addresses MGUC's imputed estimate of gas receipts caused by the metering error that occurred from deliveries made by Consumers Energy Company in the 2006-2007 GCR period.

#### **U-14716-R CECO 06-07 GCR Reconciliation**

*Independent Summary:* MPSC Order 7/29/08. Parties admitted to the case included CECO, MPSC Staff, RRC, AG, MCAAA. Testimony filed by CECO, RRC, AG. RRC requested disallowance of \$2,710,500 for purchases in Feb07 for delivery in Mar07 arguing storage gas should have been used. Commission rejected proposed disallowance.

*Grantee Summary:* RRC filed the testimony of its expert witness on December 20, 2007. In his testimony, RRC witness Frank J. Hollewa analyzed the Company's gas purchasing methods during the 2006-2007 GCR period and its fixed price coverage. He concluded that, though Consumers' fixed price purchases were within the guidelines approved by the Commission in the Company's GCR Plan (Case No. U-14716), the data shows that the results were not very good for the GCR customers. The Company's adherence to these guidelines and its aggressiveness in securing fixed price coverage as a means of pursuing price stability cost the average residential customer an extra \$150/year compared to the market price of gas during this period. This finding suggests that changes in the natural gas market over the past 2-3 years with respect to pricing dynamics mean that Consumers' natural gas purchasing guidelines need to be reformed. (Using the evidence developed in Case No. U-14716-R, the RRC pursued this issue in the Company's 2008-2009 GCR Plan.)

In addition, Mr. Hollewa identified two gas purchases for February and March 2007 that were unusual. These were purchases made at the end of the GCR period to assure that the Company had adequate supplies to get it through the winter period. After analyzing the status of the Company's storage assets in February and its forecast of system requirements, Mr. Hollewa concluded that the first purchase of 1,138,500 Dth for 2/14 - 2/28/07 was justified to meet the Company's system requirements. However, with respect to the second purchase, he found that there was no good reason that less expensive withdrawals of gas from storage could not have been used to meet part of the Company's March requirements instead of the more expensive purchase of gas Consumers purchased on the market in the dead of winter. As a result, Mr. Hollewa recommended a disallowance of **\$2,710,500** for this unreasonable and imprudent purchasing decision.

Other than Consumers Energy Company, the RRC was the only party to file testimony in this case.

Consumers Energy Company filed rebuttal testimony on January 24, 2008. The hearing in this case was held on February 12, 2008. The RRC filed its initial brief on March 13, 2008 and its Reply Brief on April 2, 2008.

On April 29, 2008, the presiding Administrative Law Judge issued her Proposal for Decision (PFD) in which she recommended that the Commission adopt the RRC's proposed disallowance of \$2,710,500.

Consumers Energy and the MPSC Staff filed Exceptions opposing the PFD on May 13, 2008. The RRC and the Attorney General filed Replies to Exceptions supporting the PFD on May 23, 2008.

On July 29, 2008 the Commission issued its final order in this case. The MPSC rejected the disallowance recommended by the presiding Administrative Law Judge in the PFD that endorsed the RRC's analysis in this case. The Commission chose to accept Consumers' evidence on why in March 2007, the Company did not withdraw more gas from storage to meet its requirements at a lower cost than the gas purchases it made, *even though the Company refused to provide the data that would substantiate the claims made in the Company's testimony and exhibits*. The practical effect of this decision is to diminish the amount and quality of evidence necessary a utility needs to satisfy its burden of proving in a GCR reconciliation that its gas supply decisions are reasonable and prudent. The RRC expects that it will need to engage in vigorous motion practice in the future to seek to compel CECO to divulge the details of

its gas supply operations.

#### **U-14717-R MICHCON 06-07 Reconciliation Case**

*Independent Summary:* MPSC Order 4/22/08. Parties admitted to the case included MichCon, AG, MPSC Staff, RRC, MCAAA. Testimony filed by MichCon, RRC, Staff. AG, MCAAA did not file testimony but were participants in the settlement agreement. RRC testimony focused on purchasing strategies. Built on testimony in previous cases. Noted improved data comparing results from QIM, 21 day moving average methods. Significant improvement in term purchasing over 05-06 year performance. Lowest fixed price for future purchases as compared to results for largest gas distribution companies. Recommended further improvement in summer term purchases and a disallowance of \$763,344 related to a term purchase. Net underrecovery of \$9,320,988 was approved in settlement agreement.

*Grantee Summary:* The RRC filed its expert testimony on January 11, 2008. In his testimony RRC witness Frank Hollewa evaluated all of MichCon's gas purchases in the 2006-2007 GCR period. These included those made under the Quartile Index Method (QIM), the 21-day Moving Average Method, Term purchases and the Company's decision to purchase 1.7 Bcf in March 2007 above operationally required volumes. Based on his analysis Mr. Hollewa concluded that:

MichCon's implementation of its QIM resulted in the lowest price for future purchases when compared to Michigan's other three large gas distribution companies.

MichCon's move to a 21-day Moving Average Method away from a Dollar Cost Averaging Method yielded better results for GCR Customers.

MichCon's use of fixed price methods for purchasing gas cost the average GCR Customer approximately \$88 per year for price stability compared to purchases made at market prices (compared to the \$150 price stability premium experienced by Consumers Energy GCR customers in the 2006-2007 GCR period). Against this backdrop, the RRC worked with MichCon and the other parties in the Company's 2007-2008 GCR plan to improve MichCon's fixed price purchasing methods going forward.

While MichCon's term purchases were not optimal in all cases, the Company's performance in the 2006-2007 GCR period was much better than in past years and the Company made marked improvements in how it priced gas made under this purchasing method, consistent with recommendation the RRC has made in prior cases.

With respect to the Company's purchase of 1.7 Bcf in March as part of its summer injection plan, Mr. Hollewa recommended a disallowance of **\$763,344**. This was based on his finding that the Company made erroneous pricing comparisons when deciding how to make discretionary purchases that were part of the March supply package.

After the RRC filed its testimony, MichCon filed its rebuttal testimony. That testimony provided additional information about the Company's March purchases that was not made available in the Company's filing or in discovery. Based on its analysis and evaluation of that rebuttal evidence, the RRC concluded that settlement of this case was the appropriate course. A settlement agreement was signed on March 24, 2008 and was approved by the Commission on April 22, 2008.

#### **U-14718-R SEMCo 06-07 Reconciliation Case**

*Independent Summary -* MPSC Order 3/11/2008. Participants in the case included SEMCo, RRC, AG, MPSC Staff. Testimony was filed by SEMCo and RRC. Focus on gas purchasing strategies. Consistent with previous testimony in U-14402-R. No disallowance recommended as actions were within bounds of approved plan. Efforts to reform practices to improve outcome for GCR customers provided for in settlement. Resulted in a settlement agreement that created a collaborative to review gas purchasing strategies.

*Grantee Summary -* RRC filed the testimony of its expert witness on January 8, 2008. In his testimony, RRC witness Frank J. Hollewa evaluated all of SEMCO's Gas purchases during the 2006-2007

GCR period. These included the Company's Dollar Cost Averaging (DCA), Summer Term, Early and First of Month (FOM) using NYMEX Close and Index. He also examined SEMCO's three peaking services and storage operations during the winter period. After completing his audit of the Company's performance during the 2006-2007 GCR period, Mr. Hollewa concluded that:

Though the Company made its DCA purchases in conformity with its approved GCR Plan, the evidence shows that the “insurance cost” for price stability associated with SEMCO’s DCA purchases was an extra \$50 per year for each of its GCR customers. In light of this development, Mr. Hollewa recommended that SEMCO work with the other parties to explore whether and how the Company’s DCA purchasing method can be improved. (As a result, SEMCO committed to doing that as part of its 2008-2009 GCR Plan process).

Though the Company’s summer term purchases were made within the parameters of SEMCO’s approved GCR Plan, the results were not very good. This was due in part to what Mr. Hollewa perceived as a lack of structure in how the Company went about making the purchase decisions for these supplies. He recommended that SEMCO work with the other parties to explore a more structured purchasing approach, similar to MichCon’s QIM, for improving the Company’s performance. (As a result, SEMCO committed to doing that as part of its 2008-2009 GCR Plan process).

Though SEMCO’s Early Purchases were made in conformity with its approved GCR Plan, the use of this method has produced only negative results for GCR customers over the past three years. Mr. Hollewa recommended that SEMCO discontinue this method of purchasing gas and work with the other parties to explore other purchasing approaches to replace it. (As a result, SEMCO committed to doing that as part of its 2008-2009 GCR Plan process).

SEMCO’s FOM purchases showed improvement over past GCR periods. The Company made more of its purchases at Index, consistent with the RRC’s past recommendations to the Company, and achieved better results. Mr. Hollewa recommended that the Company continue to refine its approach to making these purchases and continue to move in the direction of making more of these purchases at Index.

SEMCO’s peaking services were cost-justified in the 2006-2007 winter period and Mr. Hollewa recommended that the Company pursue the changes to its peaking services that were addressed in the settlement of the Company’s 2007-2008 GCR Plan case.

While Mr. Hollewa disagreed with part of SEMCO’s storage operations, there were no material monetary consequences to the GCR customers from the Company’s decisions. He therefore made no recommendation for a disallowance.

Based on his analysis of SEMCO’s GCR Reconciliation evidence, Mr. Hollewa did not make a recommendation for any cost disallowances because the Company’s actions during the 2006-2007 GCR period were within the bounds of its approved GCR Plan. However, Mr. Hollewa’s testimony showed that changes in the natural gas market during the prior two-three years make it clear that SEMCO needs to modify the way it buys gas for its GCR customers. That evidence provided an impetus for pursuing those changes in the Company’s 2008-2009 GCR plan.

Other than SEMCO, the RRC was the only party to file testimony in this case. The parties engaged in settlement negotiations and a settlement agreement was submitted to the Commission on February 21, 2008. In that agreement the parties agreed to convene a collaborative to address SEMCO’s future gas purchasing practices.

#### **U-15452, SEMCo 08-09 GCR Plan Case (Continued under UCRF 08-02)**

*Independent Summary:* MPSC Order 7/1/2008. Parties admitted to the case included SEMCo, AG, MPSC Staff, RRC. Testimony filed by SEMCo. Initial GCR factor of 8.4651 with contingency matrix adjuster was revised to 11.7388 with contingency matrix. GCR factor of 10.5214 with contingency factor was approved in settlement agreement. Unable to determine direct influence of RRC on negotiations.

*Grantee Summary:* The RRC filed its Petition to Intervene and was admitted as a party to the proceedings at the February 13, 2008 prehearing conference. The RRC then conducted its audit of SEMCO’s filing by filing discovery requests and examining the discovery responses provided by SEMCO to the RRC’s interrogatories and those of other parties. On May 2, 2008, SEMCO filed amended testimony and exhibits. The parties then engaged in settlement discussions. As a result, the RRC, in concert with the other parties, reached an agreement on:

setting the GCR factor together with a methodology for setting the GCR Factor in the balance of the GCR period if natural gas prices decrease;  
gas purchasing practices to be used by SEMCO during the GCR period and the out years of the

five year forecast period;  
revising the Company's peak day design level consistent with the RRC's recommendation.

## **Grant Recipient: Michigan Environmental Council**

### **UCRF 08-01**

#### **U-14701-R 2006 PSCR Reconciliation CECO**

*Independent Summary:* Order 4/22/08. Parties admitted to the case include: CECO, MPSC staff, MCV, AG, Michigan Power Limited Partnership, Ada Cogeneration Limited Partnership, Cadillac Renewable Energy, MEC-PIRGIM. Testimony filed by: CECO, MEC-PIRGIM. The Attorney General and MEC/PIRGIM argued that all SO<sub>2</sub> sale and auction proceeds should be returned to PSCR customers. Commission adopted a 70/30 sharing of proceeds. Attorney General and MEC/PIRGIM objected to the 50/50 allocation of proceeds from the Consumers Ludington Plant. Proposed 100% of sale proceeds be credited to PSCR customers. Commission denied proposal and approved 50/50 split. MEC objected to recovery of \$1,314,619 shortfall on DOE D&D Fund Assessment recovery. Commission allowed recovery as proposed by Consumers. 5/22/08 MEC filed Petition for Rehearing and Reconsideration. Petition for rehearing denied 8/12/2008. Claim of appeal filed 10/23/2008. *MEC v MPSC and CECO*, Court of Appeals Docket 287696.

*Grantee Summary:* MEC/PIRGIM asserted three major issues: (1) 100% of the proceeds from the sale or auction of pollution control allowances should be credited to ratepayers, consistent with CECO's practice of charging 100% of said costs to ratepayers (this included \$58.7 million in SO<sub>2</sub> allowance sales and nearly \$3.5 million in EPA auction proceeds); (2) that 100% of the sale of land by CECO that was supported by ratepayers should also be credited to rates; and (3) that the Commission should correct for a double recovery of fee charges in rates that CECO obtained for the federal decommissioning and decontamination fund (CECO securitized all estimated annual fees for this fund for the period 2001-2006 through its 2001 securitization accomplished under Act 141 and 142, while the fees also remained included in the frozen rates, including both base rates and PSCR rates, during the same period. On April 22, 2008 the Commission issued its order which rejected MEC/PIRGIM's position with respect to the profits on land sales, and the D&D fund fee issue. The MPSC allowed CECO to retain 50% of the profits from land sales that had been held in rate base and supported in rates. The MPSC also allowed CECO to retain 30% of the proceeds realized from the sale of SO<sub>2</sub> pollution allowances, or the sum of \$17.6 million. In doing so, the Commission rejected CECO's request to retain 50% of the proceeds from pollution control allowance sales, while rejecting MEC/PIRGIM's position that 100% of the proceeds should be credited to rates. MEC/PIRGIM's position on this issue likely assisted in the Commission's reducing the amount CECO could retain to 30% of the SO<sub>2</sub> allowance sales proceeds (\$17.6 million out of \$58.7 million) rather than 50%, for a cost savings to ratepayers of \$11.7 million. On May 22, 2008 MEC/PIRGIM filed a petition for rehearing and reconsideration of the Commission's April 22, 2008 order, to reassert that 100% of the proceeds from pollution control allowances should be credited to rates. On August 12, 2008 the Commission issued its order denying the petition for rehearing. On September 10, 2008, MEC filed an appeal to the Court of Appeals in its docket 287696.

#### **U-14275-R 2005 PSCR Reconciliation DECO**

*Independent Summary* – MPSC Order 3/11/2008. MEC Motion for Rehearing denied. No other filings in 2008.

*Grantee Summary* - On June 21, 2007, MEC/PIRGIM filed a motion for rehearing and reconsideration of this order. On March 11, 2008, the Commission issued its order denying rehearing.

#### **U-15320 MCV PPA Case**

*Independent Summary:* MPSC Order 6/10/2008. Parties admitted to the case included MCV, ABATE, AARP (later withdrew), MPSC staff, Dow Chemical, AG, CECO, Dow Corning, MEC/PIRGIM, New covert Generating Co. Testimony filed by MCV. Settlement agreement reached 6/10/09. Altered

mechanism for calculating payment terms for the PPA agreement with Consumers Energy, instituted operational changes that will provide for more economic dispatch, and required MCV contribute \$5 million annually to support renewable energy in Michigan. Unable to determine from the record the influence of MEC/PIRGIM on terms of settlement agreement.

*Grantee Summary:* MEC/PIRGIM filed an intervention in this case which was granted on September 18, 2007. Thereafter, following several months of discovery, motion hearings, and extensive settlement discussions, a settlement agreement was reached by all parties (MPSC Staff, Attorney General and several intervenors including MEC/PIRGIM) and signed on June 9, 2008, which was approved by a Commission order dated June 10, 2008. This case resulted in changes in certain PPA charges between CECo and MCV, and also resulted in the agreement of the Parties (as approved by the Commission) committing MCV to contribute \$5 million annually to the renewable resources program fund which is part of a program approved by Commission orders. MEC/PIRGIM advocated throughout the proceedings and settlement discussions that this commitment to contribute to this fund by MCV should be continued. The approved settlement agreement also stabilized the reliability of MCV's operations while also saving costs for ratepayers.

### **U-15290 Balanced Energy Initiative CECO**

*Independent Summary:* MPSC Order 10/7/08. Parties admitted to the case included CECo, MPSC staff, ABATE, MCV, Constellation New Energy, New Covert Generating Company, LLC; Zeeland Power Company, LLC; and LS Power Company, LLC, AG, LS Power Associates, MEC-PIRGIM, Energy Michigan, Dow Corning and Hemlock Semiconductor Corporation, Broadway Gen Funding, LLC. Testimony filed by CECo. MEC-PIRGIM filed a motion to consolidate case with CECo 2008 PSCR Case No. U-15415. Consumers' application withdrawn on 9/24/2008 pursuant to the anticipated passage of new energy legislation providing an alternate forum for the review of proposed energy resources. Unable to determine influence of MEC/PIRGIM participation given the withdraw of the application prior to further testimony being filed.

*Grantee Summary:* MEC/PIRGIM intervened in this case on June 20, 2007 which was granted on June 27, 2007. Thereafter, following extensive discovery by the parties, and the filing of various motions and responses, another pre-hearing conference was held on October 11, 2007. On November 16, 2007, another hearing was held, after which the Administrative Law Judge denied motions by the Attorney General and ABATE to dismiss the case on jurisdictional grounds. Thereafter, further discovery continued, and the date for filing testimony was subsequently suspended, based upon the agreement by the parties to temporarily defer filings pending the outcome of proposed legislation. Subsequent pre-hearing conferences have been held in 2008. On September 24, 2008, CECO filed a notice of withdrawal of its application. The Commission dismissed the case by its order dated October 7, 2008.

### **U-15417 2007/08 PSCR Plan DECO**

*Independent Summary:* MPSC Temporary Order 7/29/08. Parties admitted to the case include DECo, MPSC staff, ABATE, Energy Michigan, AARP, MEC-PIRGIM, AG. Testimony filed by DECo. Testimony filed by DECo, AG, AARP. MEC-PIRGIM has not filed testimony. MEC-PIRGIM filed a brief supporting the position and testimony of AARP in this case on DSM, IRP and energy efficiency. MEC/PIRGIM further disputed the accuracy and validity of the company's sales, load, and peak demand forecasts. They argued that the Commission should consider the expiration of the rate reduction required by the settlement in Case No. U-14838. Rates will increase when the rate reduction expires on April 1, 2008, additional revenue will add to the company's present returns, and may offset some of the additional costs that Detroit Edison claims in this case. Recommended that the Commission issue a warning under Section 6j(7), MCL 460.6j(7), to Detroit Edison indicating that the company may not be authorized to recover costs in its 2008 PSCR reconciliation that are unnecessarily incurred because of its failure to invoke cost-saving features of its current interruptible service tariffs. Temporary order authorizes DECo to immediately implement a temporary PSCR factor of 11.22 mills per kWh, beginning with the first billing cycle for the month following the order and until issuance of the final order in this case. A PFD was issued 8/26/08. According to the ALJ, MEC/PIRGIM's claims were not supported by evidence, and are not relevant to this Act 304 proceeding. The ALJ noted that section 6(j)(1)(a) of Act 304 provides for

the recovery of specific costs under the company's PSCR clause and that MEC/PIRGIM had not quantified or requested any specific adjustment to Detroit Edison's projected 2008 PSCR expenses and proposed PSCR factor. ALJ disagreed with MEC/PIRGIM's view that Detroit Edison is essentially proposing to cease using its established interruptible tariffs to manage system load to address system peaks, and is instead proposing to serve all load in disregard of the cost to serve the interruptible load during peak times. According to the ALJ, MEC/PIRGIM's arguments are not supported by the record and Detroit Edison's testimony indicates that if power is not available, interruptible customers would be required to interrupt their load in compliance with the company's tariff. Final Order pending.

*Grantee Summary:* DECo filed this case on September 28, 2007. MEC/PIRGIM filed an intervention in this case on November 15, 2007 which was granted on November 28, 2007. On January 31, 2008 DECO filed a new PSCR Plan and revised testimony, and a motion for a temporary PSCR rate increase, which the Commission denied by its order dated March 11, 2008. On June 4, 2008, DECO filed a renewed motion for a temporary rate increase. Hearings were held on June 30, 2008. Initial briefs were filed on July 14, 2008, and reply briefs on July 28, 2008. The briefs on behalf of MEC/PIRGIM supported another party's request for the reinstatement of some energy efficiency programs and cautioned against a large temporary rate increase. The issues concerning energy efficiency were thereafter overtaken by legislative events, namely, the adoption of 2008 PA 286 and 295.

#### **U-15415 2007/08 PSCR Plan CECO**

*Independent Summary:* MPSC Order 11/13/08. Parties admitted to the case include CECO, MPSC staff, ABATE, Michigan Power Limited Partnership, Ada Cogeneration Limited Partnership & Cadillac Renewable Energy, LLC, MCV, AARP, MEC-PIRGIM, AG. Testimony filed by CECO, MEC-PIRGIM, AARP. MEC intervention and testimony addressing issues of NOx and SO2 allowances, the forecast of the 2008-2012 peak load forecast and the resultant need for capacity, and the refunding of a portion of the Big Rock nuclear decommissioning overrecovery. Order 11/13/2008. Commission concurred with MEC/PIRGIM and attorney general doubts about the optimistic peak load forecast but held that overstatement of sales growth in the forecast that may result in overcollection can be addressed in the PSCR reconciliation proceeding for this case. Commission held that claims regarding excess decommissioning collections should be addressed in that proceeding, the application for which was filed on July 10, 2008 in Case No. U-15611. Commission did not support MEC-PIRGIM proposal for NOx allowances.

*Grantee Summary:* CECO filed this case on September 28, 2007. MEC/PIRGIM filed a petition to intervene on November 14, 2007, which was granted by the ALJ at a November 21, 2007 pre-hearing. The case has continued in 2008, with discovery, the filing of testimony by the parties, including MEC/PIRGIM, and substantial briefing by the Parties. The Commission issued its order on November 13, 2008. Issues in this case included some focus on the sharing of profits made on the sale by CECO of pollution control allowances, the overstated and outdated nature of CECO's sales and load forecasts, and the need to advance refunds to ratepayers of surcharges collected from ratepayers for the Big Rock nuclear Plant decommissioning trust but that CECO did not deposit into the trust during the years 2001-2003.

#### **U-15245 Rate Case CECO**

*Independent Summary:* MPSC Order 6/10/2008. Parties admitted to the case include CECO, Kroger Co., MCV, Energy Michigan, MPSC staff, ABATE, Constellation New Energy, AG, NEMA, Forner, Dow Corning and hemlock Semiconductor, MEC-PIRGIM, Michigan Retailers Assn, AARP, Michigan Municipal League, Michigan Townships Assn, various municipalities, Cadillac Casting, Inc., Eagle Alloy, Inc., Foundry Association of Michigan, Unification For Urban Equality. Testimony filed by CECO, ABATE, MPSC staff, AG, Dow Corning and hemlock Semiconductor, Kroger Co., MML, Energy Michigan, Constellation New Energy, National Energy Marketers Assn., MEC-PIRGIM, Forner. Case continued from 2007. MEC/PIRGIM objection to distribution of Ludington land sale proceeds was dismissed by the Commission as moot due to a previous decision. MEC/PIRGIM, MPSC Staff recommended disallowance of a portion of the Palisades transaction costs. ALJ recommended disallowance of \$1,716,793. Commission upheld proposed disallowance. MEC/PIRGIM opposed

distribution of transaction costs of Palisades to ratepayers. Commission rejected proposal. MEC/PIRGIM argued that the proposed funding level of the EE program should be higher and argued that the incentive was extreme given the small size of the program. MEC/PIRGIM also recommended that Consumers integrate the projected energy efficiency and conservation effects in its five-year PSCR forecasts included in its PSCR plan applications. Commission deferred EE program due to pending legislative changes. MEC/PIRGIM raised a number of issues related to nuclear legacy issues. Consumers withdrew its request for authority to recover the Nuclear Legacy Investment Surcharge. Commission found that case No. U-14992 did not address the filing of a reconciliation of the Big Rock ISFSI decommissioning costs and other nuclear and transaction-related expenses. The Commission therefore found that Consumers shall file an application for the reconciliation of all Big Rock related transactions, including a review of all final sales proceeds, transaction costs, and DOE related decommissioning costs by October 1, 2008. Commission further required Consumers to file its reconciliation of costs associated with enhanced security by March 1, 2010. MEC opposed proposal to eliminate all residential space heating rates and tariff language that sets forth insulation requirements that were prerequisite to receiving the residential space heating rate. MEC/PIRGIM proposed a mandate that Consumers file revised tariffs requiring all new home construction to meet applicable state and local building codes for energy efficiency as a prerequisite for receiving gas or electric service. Commission rejected proposal. MEC-PIRGIM filed petition for rehearing 7/10/2008. Commission denied rehearing on October 7, 2008. MEC-PIRGIM filed Claim of Appeal on 11/5/08 (COA #288706). Appeal pending.

*Grantee Summary:* CECO filed this case on March 30, 2007. MEC/PIRGIM filed their petition to intervene on May 4, 2007. The ALJ granted MEC/PIRGIM's motion to intervene on May 31, 2007. Extensive discovery, motions, hearings and other proceedings were held in 2007. This included an application by CECO filed on July 3, 2007 for interim rate relief. The Commission issued its order on June 10, 2008. On July 10, 2008, MEC/PIRGIM filed a petition for rehearing and reconsideration of the Commission's order.

MEC/PIRGIM participated extensively in all hearings, and in all briefing for permanent rate relief. The impact of MEC/PIRGIM in this case is that MEC/PIRGIM's evidence, motion to compel and other activity, resulted in CECO removing from its rate case its request for a rate of return on nuclear legacy issues, an amount of \$13 million annually (confirmed by the Commission's June 10, 2008 order, p.4). the Commission also granted MEC/PIRGIM's relief in part by referring nuclear legacy to another case. The Commission required CECO to file a reconciliation case dealing with nuclear legacy issues, including the Big Rock issues (and a Palisades reconciliation). These matters are now pending in MPSC Case No. U-15611, in which MEC/PIRGIM has fully participated.

In U-15245, MEC/PIRGIM also challenged CECO's inclusion in its rate base of a sizeable liability (approximately \$160 million) owed by CECO to the US DOE for SNF contract fees related to nuclear energy generated and sold by CECO on and before April 7, 1983. While CECO already recovered this liability from Michigan ratepayers in electric rates by the early 1990's, CECO has never deposited the principal and accumulating interest on said liability into the federal Nuclear Waste Fund (NWF), a deferral option allowed under the Nuclear Waste Policy Act of 1982. MEC/PIRGIM challenged this liability as being inappropriate for rate base treatment as it is not an asset and has already been prepaid by ratepayers. The MPSC avoided addressing this issue. MEC thereafter filed an appeal of this issue to the Michigan Court of Appeals in November 2008 in Court Docket #288706.

MEC/PIRGIM's evidence and briefing also assisted in providing ratepayer savings on a related issue (in conjunction with the position of the Staff) that CECO's inclusion in rates for the annual cost of \$716,000 for a letter of credit purchased by CECO from a bank to guarantee that CECO will pay the DOE for the DOE liability which CECO owes to the NWF, will in fact be paid. The MPSC order removed this expense from rates. An ancillary phase of this case involved additional proceeds resulting from the nuclear plant sales and transfers approved in U-14992. The MPSC order in this case (u-15245) required CECO to file a report concerning the proceeds obtained from the sales/transfer transactions approved in U-14992. CECO's July 10, 2008 report confirmed that \$109 million in additional proceeds remained to be refunded to ratepayers. In July 2008, the Attorney General and MC/PIRGIM filed motions to enforce prompt refunds of these proceeds. Ruling pending.

### **U-15244 Rate Case DECO**

*Independent Summary:* MPSC Order 12/23/08. Parties admitted to the case include: DECO, Kroger Co., Constellation New Energy, Inc., ABATE, MPSC staff, NEMA, Michigan Retailers Assn., AG, AARP, the Ecology Center and City of Ann Arbor, Utility Workers Local 223, MichCon, MEC-PIRGIM, Energy Michigan, Squires, Sierra Club. Testimony filed by DECO, MPSC staff, ABATE, MEC-PIRGIM, Ecology Center and city of Ann Arbor, Energy Michigan, Attorney General, Constellation New Energy, Kroger Co., Case continued from 2007. In 2008 MEC contested assertion that Fermi has been extremely successful in managing its fuel expenses particularly in regard to disposal fees paid to the Department of Energy in support of Yucca Mountain. MEC/PIRGIM argues that the Commission should require Detroit Edison to file “a full and complete case” regarding the company’s spent nuclear fuel (SNF) fee costs. MEC/PIRGIM asserts that the Commission has a duty to review Detroit Edison’s SNF costs and to impose appropriate remedies. MEC/PIRGIM’s last recommendation is that Detroit Edison should explain to the Commission its reason for building another nuclear plant. MEC/PIRGIM argued that Detroit Edison’s programs were inadequate and “failed to address energy efficiency in this case” and that this constituted “a complete failure to incorporate what is well-established as the least expensive utility system resource available, i.e. energy efficiency programs.” MPSC Order 12/23/08 requires an annual report on the status of Detroit Edison’s litigation against the DOE starting July 1, 2009 to the Commission’s Executive Secretary. The annual reports shall be filed in Case No. U-15244. Section 6s(1) of 2008 PA 286 require application for certificate of necessity for construction of new electric generation facilities, so no action by the by the Commission in this case on nuclear plant construction justification. Commission determined EE issues were moot in light of the passage of 2008 PA 295. Additional orders pending.

*Grantee Summary:* On February 20, 2008, DECO filed a substantial amendment to its case filing and rate request. A second pre-hearing was held on March 20, 2008, at which time a new case schedule was determined. Several months of discovery then ensued. On July 15, 2008, the Staff and Intervening Parties filed testimony and exhibits of expert witnesses in response to DECO’s case (which included 4 expert witnesses sponsored by MEC/PIRGIM). Hearings were held on August 27-29, 2008. Initial briefs were filed on October 10, 2008. MEC opposed DECO’s request for a control premium adjustment related to its parent company’s acquisition of MCN, parent company of MichCon, in excess of market and also book value (an issue discussed under case U-13808). (This presentation and all briefing on this issue was undertaken on a pro bono basis and not charged to Act 304 budgets). MEC/PIRGIM presented updated testimony and proposed remedies concerning SNF disposal issues, including recommendations for a trust fund and for reporting on the status of DECO’s federal damages action against the DOE.

### **U-14702-R 05-06 PSCR Reconciliation DECO**

*Independent Summary:* MPSC Order 4/22/08. Parties admitted to the case included: DECO, MPSC staff, ABATE, MEC-PIRGIM, AG. Testimony filed by: DECO. The only activity on the record for MEC-PIRGIM is the correction of MEC-PIRGIM attorney names in the PFD.

*Grantee Summary:* On January 4, 2008, the Attorney General and MEC/PIRGIM filed exceptions to the PFD. (MEC/PIRGIM’s exceptions requested an errata correction to the ALJ’s PFD which had contained certain factual errors concerning MEC/PIRGIM, which the ALJ corrected by an errata to the PFD issued on January 10, 2008). The Commission issued its final order on April 22, 2008. The order rejected a proposed disallowance of \$4.4 million asserted by the Attorney General relating to a technical equipment failure at a utility plant that resulted in additional outage expenses. MEC/PIRGIM limited its role in this case primarily to review and monitoring and did not take a position on the Attorney General’s adjustment.

### **U-15001 2007 PSCR Plan CECO**

*Independent Summary:* MPSC Order 4/22/2008. Parties admitted to the case included: CECO, MPSC staff, ABATE, MCV, MEC-PIRGIM, AG, Ada Cogeneration Limited Partnership and Michigan Power Limited Partnership. Testimony filed by: CECO, MPSC staff, AG, MEC-PIRGIM. MEC, AG, Staff

advocated that \$62,133,244 in revenues associated with SO<sub>2</sub> allowance sales benefit PSCR customers. The commission found that this issue should be addressed in Case No. U-14701-R, which was issued simultaneously the order. MEC objected to proposed recovery of \$1,314,619 in costs associated decontamination and decommissioning (D&D) fund. The Commission held that it addresses this issue in Consumers' 2006 reconciliation proceeding, Case No. U-14701-R, which was issued simultaneously with the order. MEC/PIRGIM filed leave to appeal on 10/23/2008, (COA #287696).

*Grantee Summary:* Expert witness for MEC/PIRGIM presented testimony concerning MEC/PIRGIM's position that 100% of proceeds that CECo received for the sale of SO<sub>2</sub> pollution control allowances should be credited to ratepayers, which includes a total of \$62.1 million in proceeds from both pollution allowance sales and EPA auctions. MEC/PIRGIM also sponsored testimony recommending a disallowance for a CECo claimed expense for a fee paid to the federal decontamination and decommissioning fund on the basis that CECo was double recovering for some of the same fee expenses, both through the PSCR clause, and also in the securitization process undertaken in 2001 pursuant to the provisions of 2000 PA 141 and 142. A second hearing was also held on July 20, 2007. On August 10, 2007 the parties including MEC/PIRGIM filed initial briefs. On August 24, 2007, MEC/PIRGIM filed its reply briefs. The ALJ issued a Proposal for Decision on September 28, 2007. MEC/PIRGIM filed exceptions to the PFD on October 22, 2007. On November 2, 2007 MEC/PIRGIM and other parties filed replies to exceptions. The Commission issued its final order on April 22, 2008, on a combined evidentiary record including Case U-15001 and U-14701-R. A description of U-14701-R is included in this report.

#### **COA Docket 278798 (Appeal U-14702 2006 PSCR Plan DECO)**

*Independent Summary:* COA Order 11/20/2008. Michigan COA upheld order of the Michigan Public Service Commission (PSC) that approved the 2006 power supply cost recovery (PSCR) plan filed by The Detroit Edison Company (Detroit Edison). The court ruled that the appellants failed to demonstrate by clear and satisfactory evidence that the order issued by the commission is unlawful or unreasonable. It did not rule out the possibility that the commission could require a DSM or conservation program. It explained "MCL 460.6j(7) provides in pertinent part that '[t]he commission may also indicate any cost items in the 5-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or power supply cost recovery factors established in the future.' Nothing in this section specifically mandate that the PSC require utilities to create DSM programs, or require the PSC to reject a utility's 5-year forecast on the basis that the utility has not started such a program. As with most of appellants' citations, this provision recognizes a power that the PSC can arguably use to influence the utility's behavior. It does not render the PSC's decision not to use that power clearly unreasonable or unlawful."

*Grantee Summary:* MEC/PIRGIM filed an appeal in the Michigan Court of Appeals from the Commission's orders in U-14702. The COA ultimately affirmed the Commission's orders in an unpublished decision dated November 20, 2008. During the pendency of this Court case, the Michigan Legislature adopted 2008 PA 286 and 295 which provided for the implementation of energy optimization programs similar to that advocated in this case.

#### **COA Docket 274471 (Appeal U-14701 2006 PSCR Plan CECO)**

*Independent Summary:* COA Order 10/21/08. COA affirmed Commission decision. COA Order 12/23/2008. Question raised by MEC was whether the PSC erred in not requiring the utility to include planning programs as part of its PSCR plan. Court upheld decision and result in *In re Application Of Consumers Energy Co Cost Recovery Plan, supra*, and find that the appellants have not met their burden of proving by clear and satisfactory evidence that the order here is unlawful or unreasonable. MEC/PIRGIM Motion for Reconsideration denied.

*Grantee Summary:* Oral Arguments were held before the Court in February 2008. The court affirmed the Commission's orders in MEC and PIRGIM, 281 Mich App 352, dated October 21, 2008. During the

pendency of this Court case, the Michigan Legislature adopted 2008 PA 286 and 295 which provided for energy optimization programs, a remedy sought in this case before the Commission.

**MSC Docket 136433, COA 264860 (Appeal U-13917 2004 PSCR Plan CECO)**

*Independent Summary:* COA Order 4/1/2008. Three consolidated appeals that arose from the Public Service Commission's February 28, 2005, order in response to Consumers Energy Company's application for approval of a power supply cost recovery (PSCR) plan, and for authorization of monthly PSCR factors for 2004. MEC/PIRGIM challenged the decision of the Commission to allow Consumers to recover, through its PSCR clause, its costs relating to disposal of spent nuclear fuel. They also supported the Attorney General's objections to allowing Consumers to raise its PSCR clause despite statutory rate caps. The court did not support the objections raised and affirmed the order in its entirety.

*Grantee Summary:* In this CECo case, MEC/PIRGIM challenged CECo's inclusion of over \$6 million in annual PSCR costs related to a non-performing contract governing spent nuclear fuel (SNF) fees and SNF disposal; MEC/PIRGIM sought better protection of the fees or assignment of fee costs to the utility rather than the ratepayers.

MEC/PIRGIM in this case also challenged CECo's use of \$12.4 million per year in Big Rock nuclear plant decommissioning surcharges in 2004 for Act 304 fuel and purchase power costs, an issue which is called "backfilling".

The MPSC orders dated February 28, 2005, and denying rehearing on August 1, 2005, were appealed by MEC/PIRGIM to the Michigan Court of appeals in its Docket No. 264860. On April 1, 2008 the Michigan court of appeals affirmed the Commission's orders that had denied MEC/PIRGIM's requested relief on the two issues discussed above. MEC/PIRGIM appealed the Court of Appeals decision (and Commission orders) to the Michigan Supreme Court in its Docket No. 136433, which denied the appeal in September 2008.

**COA Docket 287696 (Appeal U-14701-R CECO 2006 PSCR Reconciliation)**

*Independent Summary:* COA decision pending. MPSC Order 4/22/08. Commission rejected position of MEC/PIRGIM to refund 100% of the proceeds from the sale of excess SOx and NOx allowances should be credited to ratepayers in this reconciliation and adopted Staff's proposed 70/30 sharing mechanism. Commission rejected MEC/PIRGIMs position that 100% of the gain on the sale of the Ludington land sale should be credited to ratepayers and adopts Consumers' 50/50 sharing proposal. Commission rejected MEC/PIRGIM's objection and adopted Consumers proposal to recover as part of its 2007 PSCR plan costs a claimed \$1,314,619 shortfall between its estimated decontamination and decommissioning (D&D) fund assessments recovered from ratepayers and the amount actually paid to the Department of Energy (DOE). On August 12, 2008 the Commission denied MEC/PIRGIM's petition for rehearing. On 10/23/08 MEC/PIRGIM filed Claim of Appeal to Court of Appeals #287696. Decision pending.

*Grantee Summary:* CECo filed the case on March 30, 2007. MEC/PIRGIM filed the direct testimony and exhibits on three major issues involving MEC/PIRGIM's position that : (1) 100% of proceeds from the sale or auction of pollution control allowances should be credited to ratepayers, consistent with CECo's practice of charging 100% of said costs to ratepayers; (2) that 100% of profits made on the sale of land by CECo that was supported by ratepayers should also be credited to rates; and (3) that the Commission should correct for a double recovery of fee charges in rates that CECo obtained for the federal decommissioning and decontamination fund. On April 22, 2008 the Commission issued its order which rejected MEC/PIRGIM's position with respect to the profits on land sales, and the D&D fund issue. The MPSC allowed CECo to retain 50% of the of the profits made on the sale of land that has been held in rate base and supported in rates. The MPSC also allowed CECo to retain 30% of the proceeds realized from the sale of SO2 pollution allowances, or the sum of \$17.6 million. In so doing, the commission rejected CECo's request to retain 50% of the SO2 pollution control allowance sales, while rejecting MEC/PIRGIM's position that 100% of the proceeds should be credited to rates. MEC/PIRGIM's position on this issue likely assisted in the commission's reducing the amount CECo

could retain to 30% of the SO<sub>2</sub> allowance sales proceeds (\$17.6 million out of \$58.7 million) rather than 50%, for a cost savings to ratepayers of \$11.7 million. On May 22, 2008, MEC/PIRGIM filed a petition for rehearing and reconsideration of the Commission's April 22, 2008 order, to reassert that 100% of the proceeds from the pollution control allowances should be credited to rates. On August 12, 2008, the commission issued its order denying the petition for rehearing. On September 10, 2008, MEC filed an appeal to the Court of Appeals in its docket 287696. The case is pending.

**US Supreme Court 08-246, MSC Docket 134474, COA 264859 (Appeal U-13919 2004 PSCR Plan IM Power)**

*Independent Summary:* MSC Order 5/27/2008. Motions for reconsideration and stay were denied. Petition for a writ of certiorari filed with US Supreme Court, Docket 08-246. Petition denied 11/3/08. *Grantee Summary:* In this case governing IM power's 2004 PSCR rates, MEC/PIRGIM challenged IM Power's inclusion of approximately \$2 million in annual PSCR contracts related to a non-performing contract governing spent nuclear fuel fees and disposal. MEC sought better protection of the fees or assignment of fee costs to the utility rather than the ratepayers. The MPSC ruled against taking any action and MEC appealed the Commission's order to the Court of Appeals. On April 24, 2007, the Michigan Court of Appeals issued its decision *In re Application of IM Power*, 275 Mich App 369 (2007) affirming the Commission's orders. MEC/PIRGIM thereafter filed an appeal from the Court of Appeals decision (and Commission orders) to the Michigan Supreme Court in its Docket No. 134474. The Michigan Supreme Court denied MEC/PIRGIM's application for leave to appeal on January 22, 2008. MEC/PIRGIM thereafter filed a motion for reconsideration in the Michigan Supreme Court. In May 2008, the Michigan Supreme Court issued its order denying reconsideration. MEC filed an application for certiorari in the United States Supreme court, which was denied on November 3, 2008.

**US Supreme Court 08-573, MSC 134674, COA 264131 and 264099 (Appeal U-13808 PSCR Rate Case DECO).**

*Independent Summary:* Petition for a writ of certiorari filed with the US Supreme Court, Docket 08-573. Decision pending. *Grantee Summary:* The Michigan Court of Appeals issued its combined decision from several appeals in *In re Application of Detroit Edison Company*, 276 Mich App 216 (2007) reversing the Commission order with respect to the control premium issue, and remanding that issue to the Commission. Thereafter, several parties have filed appeals of the Court of Appeals decision to the Michigan Supreme Court, including MEC/PIRGIM's appeal in Michigan Supreme Court Docket 134674. On September 19, 2008 the Michigan supreme court denied the application for leave to appeal. MEC then filed a petition for certiorari in the United State Supreme court in October 2008. Decision pending.

**Grant Recipient: Residential Ratepayer Consortium**

**UCRF-08-02**

**U-15450 GCR Plan 2008/09 MGU**

*Independent Summary:* MPSC Order 8/12/08. Participants admitted to the case include: MGU, MPSC staff, RRC, AG. Testimony filed by: MGU. Base GCR factor request of 8.4576/Mcf in initial application was revised upward to 11.3068 including a roll-in of underrecovery of \$12,283,445. Settlement agreement reached between RRC, Staff, MGU.

*Grantee Summary:* The RRC filed its Petition to Intervene and was admitted as a party to the proceedings at the February 14, 2008 prehearing conference. The RRC then conducted its audit MGUC's filing by filing discovery requests and examining the discovery responses provided by MGUC to the RRC's interrogatories and those of other parties. The parties then engaged in settlement discussions. As a result, the RRC in concert with the other parties reached an agreement on:

setting the GCR factor together with a methodology for setting the GCR Factor in the balance of the GCR period if natural gas prices decrease, and

gas purchasing practices to be used by MGU during the GCR period. The MPSC approved the settlement agreement on August 12, 2008.

#### **U-15451 GCR Plan 2008/09 MichCon**

*Independent Summary:* MPSC Order Partial Settlement Agreement 8/26/2008. Participants admitted to the case included: MichCon, MPSC staff, MCAAAA, RRC, AG. Testimony was filed by: MichCon, RRC, AG, MCAAAA. RRC advocated variable use factor for forecasting and supported its use by Consumers. It advocated changes in CTN pattern and load exposure, storage profiles, and WTN purchases. Opposed use of term fixed basis by MichCon. Understands that “Storage Utilization Study” and the “10-Year Weather Normalization” will be addressed in a collaborative effort for the 2009-10 GCR Plan Case and the next general rate case. Settlement agreement adopted protocols advocated by RRC on WTN sendout, limited term fixed basis supplies, and collaborative on other issues. Final decision pending.

*Grantee Summary:* The RRC filed its Petition to Intervene, was admitted as a party to the proceedings at the February 5, 2008 prehearing conference and filed its discovery requests with MichCon. On April 16, 2008, the RRC filed its testimony which contained the following findings and recommendations:

The Company’s proposed use of a quartic polynomial model to develop its monthly sales forecast is consistent with the methodology advocated by the RRC in Case No. U-15042 and results in more accurate results than those projected in prior GCR Plans.

The Company’s method of projecting Colder Than Normal (CTN) requirements should be modified to more accurately measure MichCon’s actual Heating Degree Days.

The Company’s planning for Warmer Than Normal (WTN) requirements should be changed to more closely reflect statistical probability.

MichCon should abandon use of term fixed basis for supplies that are scheduled to begin more than six months into the future because of the poor historical performance of this methodology.

The RRC endorsed MichCon’s plan to address its storage utilization study and 10-year weather normalization via a collaborative process with all the parties over the second half of 2008 and in advance of the Company’s next general rate case.

On June 6, 2008, MichCon filed its Rebuttal testimony and Exhibits, Thereafter, the parties engaged in settlement discussions. As a result, the RRC in concert with the other parties reached an agreement on:

- setting the GCR factor for the GCR period;
- implementing gas purchasing guidelines during the GCR period that incorporate revisions advocated by the RRC;
- changing the Company’s planned normal weather purchase pattern for November 2008 through March 2009 to achieve the storage profile recommended by RRC witness Hollewa;
- changing the Company’s sendout in Warmer-Than-Normal weather consistent with the RRC’s recommendations;
- changing the Company’s volume of fixed basis supplies consistent with the RRC’s recommendations; and
- participating in an ongoing collaborative process for addressing additional issues affecting future GCR proceedings.

The Commission approved the settlement agreement on August 26, 2008.

#### **U-15454 GCR Plan 2008/09 CECO**

*Independent Summary:* No Orders yet issued in the case. Participants admitted to the case include: CECO, MPSC staff, MCAAAA, RRC, AG. Testimony filed by: CECO, AG, RRC. RRC argued that Consumers plan for operating its storage in CTN weather is incomplete. Also recommended changes in gas purchasing guidelines, and changes in data and reporting.

#### **U-15041-R 2007/08 GCR Reconciliation CECO**

*Independent Summary:* No Orders yet issued in the case. Participants admitted to the case include: CECO, MPSC staff, RRC, AG, MCAAAA. Testimony filed by: CECO. In 2008 RRC filed petition to intervene, appearances, and discovery requests. Testimony not due until 2/3/09.

### **U-15042-R 2007/08 GCR Reconciliation MichCon**

*Independent Summary:* No Orders yet issued in the case. Participants admitted to the case include: MichCon, MPSC staff, RRC, MCAAA. In 2008 RRC filed petition to intervene, appearances, and discovery requests. Testimony due date was not yet scheduled.

### **U-15043-R 2007/08 GCR Reconciliation SEMCo**

*Independent Summary:* No Orders yet issued in the case. Participants admitted to the case include: SEMCO, MPSC staff, RRC, AG. Testimony filed by: SMECo. In 2008 RRC filed petition to intervene, appearances, and discovery requests. Testimony due date was not yet scheduled.

### **U-15040-R 2007/08 GCR Reconciliation MGU**

*Independent Summary:* No Orders yet issued in the case. Participants admitted to the case include MGU. MPSC staff, RRC, AG. In 2008 RRC filed petition to intervene, appearances, and discovery requests. Testimony due 2/10/09.

## **Grant Recipient: Michigan Community Action Agency Association**

### **UCRF Grant #08-03**

#### **U-15451 GCR Plan 2008/09 MichCon**

*Independent Summary:* MPSC Order 8/26/2008. Participants admitted to the case include: MichCon, MPSC staff, MCAAA, RRC, AG. Testimony was filed by: MichCon, RRC, AG, MCAAA. MCAAA testified that MichCon received a revenue windfall in the approximate amount of \$568 million from the rise in natural gas prices (due to hurricanes) and the use of LIFO accounting methodology. MCAAA was concerned that windfall revenues would be captured for the benefit of equity holders, not GCR customers. MCAAA advocated use of “emergency base gas” or other exception to LIFO ratemaking that would be implemented in times of emergency or crisis. Opposed MichCon position that the net economic benefits of holding older than normal reserves were negative. Opposed “one time inventory adjustment value” that captures of a portion of the windfall benefit applicable to MichCon’s LIFO storage gas inventories. Proposed investigation/study into MichCons accounting method and gas storage practices. The ALJ finds that MCAAA’s request and proposal is beyond the scope of Act 304. The ALJ rejects MCAAA’s arguments that MichCon’s model used in the net economic benefits study is flawed. The ALJ further rejects MCAAA’s request to prohibit LIFO accounting under Act 304 provisions. Order 8/26/08 approves partial settlement agreement, addressing all issues in the case, except for certain proposals by MCAAA concerning gas storage ratemaking and the establishment of a new GCR maximum base factor if MichCon files to reopen this case before the issuance of a final Commission order. MCAAA filed exceptions on 10/6/08. Order pending.

*Grantee Summary:* MCAAA filed its Initial Brief on August 7, 2008, and its Reply Brief on August 22, 2008. MCAAA filed Exception to the Proposal for Decision (“PFD”) of the Administrative Law Judge on October 6, 2008. In this case, MCAAA advocated that the Commission should undertake further investigation and review of MichCon’s accounting methods, and particularly of its use of last –in–first–out (“LIFO”) accounting methods, in contrast to alternatives such as first-in-first-out (“FIFO”), or average cost accounting as means to address the higher volatility in gas costs recorded by MichCon, and the higher overall cost of gas charged to the GCR customers, as compared to those utilities using the alternative accounting methods. MCAAA also advocated that the Commission should further explore various options for providing mechanisms to offset high gas cost price spikes that occur during emergency situations, such as hurricanes. This could include recognizing, through accounting amortizations, the high “latent windfall” existing in MichCon’s gas storage inventories, which were recorded on its accounting books at costs far below the market prices for gas. MCAAA’s presentation on

these issues in this case was preliminary in that further efforts on these issues should be undertaken in the upcoming cases by preparing and presenting such studies and approaches.

**U-14717-R 2006 GCR Reconciliation MichCon**

*Independent Summary:* MPSC Order 4/22/08. Participants admitted to the case include: MichCon, MPSC staff, MCAAA, AG, RRC. No testimony filed MCAAA in the case. Settlement agreement reached by all parties in the case. Net underrecovery was reduced from 18 million to \$9,320,988.

*Grantee Summary:* MCAAA filed its intervention on August 22, 2007 which was granted by the ALJ on August 30, 2007. Following formal discovery, the parties (not MCAAA) filed intervenor or Staff testimony on or before February 14, 2008. The parties thereafter engaged in settlement discussions which resulted in a settlement agreement approved by the Commission on April 22, 2008.

**U-14716-R 2006 GCR Reconciliation CECO**

*Independent Summary:* MPSC Order 7/29/08. Parties admitted to the case included CECO, MPSC Staff, RRC, AG, MCAAA. No testimony filed by MCAAA in the case.

*Grantee Summary:* MCAAA filed its intervention on August 22, 2007 which was granted by the ALJ on August 29, 2007. Following formal discovery, the parties (not MCAAA) filed testimony of expert witnesses on December 20, 2007, which was followed by rebuttal testimony by CECO on January 24, 2008. The parties filed briefs on March 13, 2008, with reply briefs filed on April 2, 2008. A Proposal for Decision (“PFD”) was issued on April 29, 2008, which was followed by exceptions filed on May 13, 2008 and replies to exceptions filed on May 23, 2008. An MPSC order is pending. MCAAA limited its participation in this case to a review and monitoring role, and did not file briefs or exceptions.

**U-14401-R 2005/06 Gas Cost Recovery MichCon**

*Independent Summary:* COA Order pending. Claim of appeal filed by MichCon 12/27/2007. MCAAA participating in the case in support of MPSC rate adjustment. Brief filed 6/19/2008.

*Grantee Summary:* Hearings and briefings were conducted in 2007, which MCAAA fully participated in. The Commission issued its order on December 18, 2007, which made a downward rate adjustment of \$7.6 million related to the manner in MichCon undertook certain gas purchasing practices. MichCon subsequently filed an appeal of the Commission’s order to the Michigan Court of Appeals in *Michigan Consolidated Gas v MPSC et al*, Docket No. 282741. MCAAA is a party Appellee in the Michigan Court of Appeals, defending the Commission’s downward rate adjustment. The Court of Appeals case is pending.

**U-15454 GCR Plan 2008/09 CECO**

*Independent Summary:* No Orders yet issued in the case. Participants admitted to the case include: CECO, MPSC staff, MCAAA, RRC, AG. Testimony filed by CECO, AG, RRC. MCAAA filed initial brief generally asserting that a primary objective in Act 304 cases is to encourage a reduction in gas cost volatility to customers, price stability and, and acquisition practices assuring reliable gas supplies at reasonable costs overall (regardless of momentary changes in natural gas markets). MCAAA further asserted that a corollary of this position is that a utility plan should incorporate provisions and practices aimed at wholly avoiding the purchase of gas during temporary and unrepresentative price spikes that occur due to emergency situations, such as hurricane conditions. No other briefs or testimony filed by MCAAA in 2008. Case is on-going at 12/31/2008.

*Grantee Summary:* MCAAA participated in the July 15, 2008 hearing, and filed an initial brief on August 5, 2008. The MCAAA did not present direct testimony in this case.

**MSC 136207, COA 267194 (Appeal U-14403 2005 GCR Plan CECO)**

*Independent Summary:* COA Order issued 1/15/2008 affirming Commission order of October 6, 2005 and November 30, 2005. MCAAA filed an appeal with the Michigan Supreme Court. 7/29/2008 appeal was denied.

*Grantee Summary:* The Court of Appeals issued its decision in *In re Application of Consumers Energy Company*, 278 Mich App 547 (2008) on January 15, 2008. Thereafter, MCAAA filed an appeal of the Michigan Court of appeals decision (and Commission orders) to the Michigan supreme Court in its docket 136207, which the Court denied by its order dated July 29, 2008, 482 Mich 895.

#### **COA 282741 (Appeal U-14401-R MichCon 05/06 GCR Plan Reconciliation)**

*Independent Summary:* MichCon filed an appeal of the Commission order dated 12/18/2007. MCAAA is participating in the appeal defending the Commission's downward rate adjustment. Case is pending.

*Grantee Summary:* The Commission issued its order on December 18, 2007, which made a downward rate adjustment of \$7.6 million related to the manner in which MichCon undertook certain gas purchasing practices. MichCon subsequently filed an appeal of the Commission's order to the Michigan Court of Appeals in Michigan Consolidated Gas v. MPSC et al, Docket No. 282741. MCAAA is a party Appellee in the Michigan Court of Appeals and filed a brief defending the Commission's downward rate adjustment. The COA case is pending.

#### **U-15506 General Rate Case CECO**

*Independent Summary:* MPSC Order 12/23/2008. Participants in the case included: CECO, ABATE, MPSC staff, Michigan State Utility Workers Council, Utility Workers Union of America, AFL-CIO, AG, Lakeshore Energy Services, LLC, MCAAA, NEMA. Testimony filed by: CECO, ABATE, AG, MCAAA, MPSC staff. MCAAA provided testimony to encourage the Commission to take steps to promote energy efficiency in conjunction with this proceeding and to address the proposed revenue decoupling mechanism (RDM) proposed by Consumers Energy Company (CECO) in this application. Suggested design modifications to the RDM plan developed by Consumers. UCPB declined to grant additional funding for testimony on the RDM mechanism in this case. MCAAA also testified in opposition to inclusion of any SNF related costs. Settlement agreement approved 12/23/2008. Reduced gas rate increase from \$91.1 million to \$22.4 million. Terms of the settlement agreement included a requirement that Consumers Energy Company submit a revenue decoupling proposal in its next rate case that includes testimony on the economic feasibility, possible design, and one or more proposals for the implementation of rate decoupling.

*Grantee Summary:* MCAAA filed a petition to intervene in the case on March 20, 2008, which was granted on March 20, 2008. MCAAA filed expert testimony and participated in extensive settlement discussions. MCAAA presented recommendations to modify CECO's proposals regarding rate decoupling. In addition, MCAAA filed expert testimony opposing CECO's request to include a portion of CECO's expenses related to spent nuclear fuel (SNF), which related entirely to CECO's previous activities in the electric (nuclear) generation business. MCAAA opposed CECO's inclusion in gas rates of any charges related to SNF, which has nothing to do with CECO's gas business. MCAAA also opposed inclusion of SNF expenses in gas rates because CECO sold or transferred all of its nuclear generation, SNF, and SNF storage facilities as of April 11, 2007, and is no longer in the electric generation business. This case ultimately resulted in a settlement agreement, approved by Commission's order dated December 23, 2008, in which CECO's requested gas rate increase in excess of \$90 million was reduced to approximately \$22.4 million. All references to the inclusion of SNF costs were removed from the case settlement and no part of the settlement included SNF costs.

#### **Grant Recipient: American Association of Retired Persons of Michigan**

#### **UCRF Grant #08-04**

#### **U-15415 2008 PSCR Plan CECO**

*Independent Summary:* MPSC Order 11/13/2008. Participants admitted to the case included: CECO, MPSC staff, ABATE, Michigan Power Limited Partnership, Ada Cogeneration Limited Partnership &

Cadillac Renewable Energy, LLC, MCV, AARP, MEC-PIRGIM, AG. Testimony filed by: CECO. MEC-PIRGIM, AARP. AARP proposed resource acquisition process including energy efficiency resources and voluntary demand response options as enhancement to CECO procurement proposal. Commission held that requirement to institute planning changes to incorporate energy efficiency is beyond the scope of Act 304 proceeding. Commission cited alternative forums for arguments. AARP's recommendations rejected.

**PSCR Plan 2008 U-15417 DECO**

*Independent Summary:* MPSC Order 7/29/08, PFD 8/26/08. Final Order pending. Participants admitted to the case include: DECo, MPSC staff, ABATE, Energy Michigan, AARP, MEC-PIRGIM, AG. Testimony filed by: DECo. AARP, AG. AARP proposed that DECo develop a resource plan that analyzes the potential of demand-side management, demand response and traditional resources. Also recommended that DECO develop an RFP-based solicitation process for resource acquisition including energy efficiency resources and voluntary demand response options. Proposed that DECo should assess and analyze the energy efficiency and demand response potential in its service territory and update the analysis that was done. AARP recommended that DECO initiate energy efficiency and demand response programs that offer customers energy efficiency options and reduce their energy bills. Opposed DECO revised 2007 underrecovery from 1 million to 43 million. PSCR factor of 9.23 mills per kilowatt-hour (kWh) was requested and then revised to 11.22 mills per kilowatt-hour (kWh). Both AARP and MEC/PIRGIM supported the inclusion of energy efficiency programs as part of Detroit Edison's PSCR plan. AARP contends that the Commission must address the 2007 amendments to PURPA, which require that state commissions consider adopting a standard that would mandate utilities to integrate energy efficiency resources into utility, state and regional plans and adopt policies establishing cost-effective energy efficiency as a priority resource. ALJ struck AARP testimony from the record. Regarding the energy efficiency issues raised by AARP and MEC/PIRGIM, the Commission points to Sections 71 through 97 of 2008 PA 295, which require, among other things, that electric and gas providers submit to the Commission energy optimization plans. This will be the appropriate forum for AARP, MEC/PIRGIM, and others to intervene and argue the merits of proposed energy efficiency plans. Commission granted motion for early hearing and temporary order. AARP filed exceptions on 9/11/2008. Final order pending.

**4. FINANCIAL REPORTING AND GRANT ADMINISTRATION**

*4.1 Calendar Year 2008 Remittances*

The following information is compiled and provided by the Michigan Department of Energy Labor and Growth (DELEG) for purposes of the Annual Report.

Public Act 304 of 1982 requires annual remittances to the Fund from any regulated utility company serving at least 100,000 customers. The total size of the fund is set at \$500,000 multiplied by a factor "set by the Board at a level not to exceed the percentage increase in...The consumer price index for the Detroit standard metropolitan statistical area...between January 1981 and January of the year in which the payment is required to be made." Since enactment of Act 304, total remittances have been as follows:

1982	\$630,600	1995	\$791,900
1983	\$653,400	1996	\$813,000
1984	\$582,250	1997	\$834,050
1985	\$569,600	1998	\$851,728
1986	\$592,650	1999	\$864,600
1987	\$596,050	2000	\$899,000
1988	\$615,250	2001	\$930,650
1989	\$650,450	2002	\$946,150
1990	\$683,450	2003	\$981,150
1991	\$715,300	2004	\$988,350

1992	\$728,650	2005	\$1,013,299
1993	\$745,838	2006	\$1,052,150
1994	\$760,266	2007	1,069,450
		2008	1,096,950

Remittances due from the six utilities serving at least 100,000 customers are calculated from the proportion of each "company's jurisdictional 1981 operating revenues...compared to the 1981 total operating revenues of all energy utility companies" contributing to the fund. This proportion, initially calculated in 1982 and recalculated in 1996, remains constant, and was applied to the six remitting utilities in the amounts shown in the table below.

<u>Source of Calendar Year 2008 Remittance Revenue</u>		<u>Distribution of Calendar year 2008 Revenue</u>	
<u>Utility</u>	<u>Amount Contributed</u>	<u>Amount Recipient Allocated</u>	
Consumers Energy	\$449,348	Attorney General (47.5%)	\$ 521,051
Detroit Edison Co.	311,182	Intervenor Grants (47.5%)	521,051
MichCon Gas Co.	275,210	Administration (5%)	<u>54,848</u>
Aquila Networks-MGU	23,765		
SEMCO	26,773		
Indiana Michigan Power	<u>10,671</u>		
<b>TOTAL</b>	<b>\$1,096,950</b>		<b>\$1,096,950</b>

Letters were sent to each utility on 4/03/07 and all remittances were made by 09/4/08.

In addition to the calendar year 2008 utility fees, interest was earned for the Fiscal Year ending 9/30/08. This was allocated proportionately between the Attorney General and the intervenor grants. The intervenor proportion totaled \$51,291.

#### 4.2 Fiscal Year 2008 Appropriation and Accrued Funds

Total funding available for awarding intervenor grants was \$902,500 for FY08 as shown below and \$902,500 FY09 authorization subject to budget approval.

Intervenor Grant Funding for fiscal year 2008:

Appropriation (Public Act 345 of 2007)	\$950,000
Less 5% for Administration	<u>(47,500)</u>
Appropriation Available for Intervenor Grants	\$ 902,500
New Revenue	\$521,051
Fiscal Year 2007 Unreserved Fund Balance	1,349,657
Fiscal Year Interest Earned from Common Cash Fund	<u>51,261</u>
Total Available if sufficient spending authorization	\$ 1,921,969

#### 4.3 Notification of Readiness to Proceed

The Act requires that the Public Service Commission not act on "an application for an energy cost recovery proceeding...until 30 days after it has been notified by the Board or the director of the Energy Administration...that the Board or the director is ready to process grant applications, will transfer funds payable to the Attorney General immediately upon [their] receipt...and will within 30 days approve grants and remit funds to qualified grant applicants." Additionally, the Act requires that "in order to implement the gas [or power supply] cost recovery clause....a utility annually shall file...a complete gas [or power supply] cost recovery plan...The plan shall be filed not less than 3 months before the beginning of the

12-month period covered by the plan." The electric utilities selected January 1, 2007 to December 31, 2008 as the 12-month plan period. Most of the gas utilities selected April 1, 2008 – March 31, 2009 as their 12 month period.

#### *4.4 Scope of Work*

Money from the Fund, less administrative costs, "may be used only for participation in administrative and judicial proceedings under sections 6h, 6i, 6j, and 6k [of P.A. 304] and in federal administrative and judicial proceedings which directly affect the energy costs paid by Michigan energy utilities." The Attorney General has issued formal and informal opinions to guide the Board regarding cost matters that may be covered by Act 304 grants. The Act describes several kinds of proceedings. Cases required by statute are:

Gas supply and cost review	Power supply and cost review
Gas cost reconciliation	Power supply cost reconciliation

Decisions in any of these four proceedings may be appealed to the appropriate courts.

Grant proposals were solicited for intervention in 2008-09 GCR Plan cases and 2007-08 GCR Reconciliation proceedings, 2009 PSCR Plan cases and 2008 PSCR Reconciliation proceedings and/or other cases relevant under Act 304.

#### *4.5 Application and Selection Process*

Act 304 limits eligibility for funding to non-profit organizations or local units of government in Michigan, places specific additional restrictions on applicants, and suggests criteria that could be used in the selection process.

Applications for grants were received from the Residential Ratepayer Consortium (RRC) and from the Michigan Environmental Council (MEC), Michigan Consumer Action Agency Association (MCAAA) and the Ecology Center. To the extent possible, full participation in supply and cost reviews and in cost reconciliation cases was desired by the Board. The grant proposals submitted by the applicants provided intervention in all the GCR and PSCR proceedings for the major utilities in Michigan. GCR dockets of smaller companies were monitored for any precedent-setting issues.

After analyzing the proposed intervention, quality of previous work, experience of the applicants and their legal counsel, and the scope of interests represented the Board determined that the RRC proposal should be fully funded. The proposal submitted by MEC was reorganized into separate grants and funded at a level less than the initial request. The MCAAA proposal was funded at a reduced amount with funding for case U-15506 denied. The Ecology Center proposal was tabled to the October 6, 2008 meeting pending additional work plan information. It was further discussed on October 6, 2008 but not funded.

### 5. UPDATE ON THE LEGISLATIVE REVIEW OF ACT 304

Section 6m(23) of Act 304 requires a three-year legislative review of the costs and benefits attributable to the Act. The House Public Utilities Committee convened a series of hearings in the spring of 1986 allowing each of the interested parties an opportunity to present issues related to the first three years' experience under Act 304. As a part of this review process, the Board identified several issues of importance to residential ratepayers.

In the fall of 1986, the Michigan Public Service Commission sought to resolve some of those issues by initiating a review of the various suggestions that were directed toward the Commission by the Board, intervenors, and the utilities. Recommendations resulting from this review were submitted to the Commission in the spring of 1987. The following discusses the issues initially identified by the Board

and their current status.

**ISSUE ONE:** The Public Service Commission should refrain from dismembering Act 304 by holding separate proceedings for certain energy cost issues. The shifting of these issues to non-Act 304 cases strains resources available for intervention on behalf of residential ratepayers. Intervenors may have difficulty getting status and funding in the non-Act 304 cases. If they are able to intervene, they may be required to duplicate prior Act 304 efforts in the new proceeding.

The Board is concerned that the wording of Section 6m(17) of Act 304 unduly limits the ability to award UCRF funds for non-Act 304 cases that have a direct impact on energy costs paid by residential electric and gas customers of Michigan utilities.

**STATUS:** While there has been improvement in the detail provided in the Commission's Notices of Hearing to alert the public that in the non-Act 304 cases, there may be issues that affect purchased gas or electric power supply costs, the Board remains restricted in its ability to grant funds outside of Act 304 cases. New options should be considered for protecting Michigan's residential customers in light of restructuring and escalating gas and electric rates. However, the restrictive language of this section restricts the Board's ability to solicit and award grants for innovative proposals. The urgency of this issue is heightened in 2007 with the energy legislation package under consideration in the Michigan Legislature. The effect of some aspects of this legislation will seriously compromise the ability for effective UCRF funded intervention on behalf of ratepayers.

**ISSUE TWO:** Numerous and lengthy delays in the Act 304 process were a serious problem up to 1991.

**STATUS:** The Commission has taken steps to reduce the delays with the goal of issuing orders within nine months of the filing. It has also initiated a staggered filing schedule for gas cost recovery cases. Since the Board cannot accept a utility's filing until 30 days after certification of readiness, early certification was needed to implement the staggered schedule. The Board supported the Commission's actions and in 1991, to allow for more staggering, the Board accelerated the entire grant award process by two months. Also in 1991, the Commission issued Proposed Guidelines for Completion of Cases (Order No. U-9832). In 1992, the Commission's new policy effectively solved the problem of delays in the Act 304 process. The Board commends the Commission for its actions.

**ISSUE THREE:** The Public Service Commission should adopt a more aggressive review of the utilities' five-year cost projections. Annual review of a utility's five-year forecast, as required by Act 304, is intended to provide an opportunity for future cost containment and increased efficiency.

**STATUS:** The Board encourages the Commission to continue to increase its scrutiny of the five-year forecasts and to create more rigorous filing requirements. Further the Board encourages the Commission to place greater emphasis on conservation and energy efficiency as part of reasonable and prudent supply planning, particularly in light of increasing energy prices and limited mitigation options for residential energy customers.

**ISSUE FOUR:** The Public Service Commission should disallow the recovery of costs that were not allowed prior to Act 304.

**STATUS:** This issue is resolved. Michigan courts have endorsed the Commission's designation of energy costs that may be recovered by electric and gas utilities under Act 304.

**ISSUE FIVE:** Information provided by the utilities should be standardized to reduce the time and effort required by intervenors spent in obtaining information needed for presenting cases to the Public Service Commission.

STATUS: Filing of standardized information was recognized as an area of need during the Public Service Commission's review in 1987. However, the Commission has issued no formalized requirement for standardized information, and there has been no increase in voluntary compliance by the utilities. This issue was examined again during 1989, but final recommendations were not reached on this issue. The Board continues its support for standardized filings as a means of reducing intervention costs and improving time frames for hearing cases. Further, standardized filing will improve the Board's ability to independently analyze the impact of UCRF funded intervention in Act 304 proceedings.

ISSUE SIX: There is a need for increased intervenor funding. The amount of funding available for intervention has been limited to the annual appropriation less administrative and operating costs incurred. The board does not have the advantage of a large number of in-house experts during the plan and reconciliation case proceedings. Adequate funding is needed to secure technical assistance of expert witnesses to aid in the process of case investigation, analysis and cross-examination.

STATUS: Fees charged by the most prominent expert witnesses have increased at a faster rate than funds available for intervention, resulting in a net decrease in expert witness testimony on behalf of residential ratepayers. If the Attorney General is not participating in a case, and therefore not available to jointly sponsor an expert witness, the intervenors are often forced to reject bids from the most qualified expert consultants due to the lack of funds. Additionally, utilities are becoming more active in sponsoring rebuttal testimony. The intervenors' legal counsel continues to donate time for carry-over cases.

This need for increased resources is heightened by recent, dramatic structural changes in the electric and natural gas industries. Those changes have a profound effect on the energy costs paid by residential utility customers. Without additional funding to support interventions in the various forums in which key decisions about those costs are being made, there is a real danger that the interests of homeowners and renters will not be advocated and that they will ultimately bear an unreasonable share of those costs. The Board specifically requested an increase in the UCRF annual appropriation for the 2006-07 fiscal year. The annual appropriation for 2007 was increased substantially using accrued, unspent funds from previous years. Increasing the spending authorization will be effective until the reserve is depleted.

Questions regarding this report should be addressed to:

Utility Consumer Participation Board  
Department of Labor and Economic Growth  
Attention: Ms. Robin C. Bennett  
P.O. Box 30004  
Lansing, Michigan 48909  
(517) 335-5968 Fax: (517) 373-3621

**APPENDIX I**  
**UCRF 2008-09 Grantees**  
**Membership Scope and Description**

**Residential Ratepayer Consortium (RRC)** is comprised of The Area Agencies on Aging Association of Michigan (AAAAM) and the Michigan League for Human Services (MLHS).

**The Area Agencies on Aging Association of Michigan (AAAAM)** is a nonprofit organization composed of 16 local area agencies on aging that serve Michigan citizens age 60 and older in all eighty-three Michigan counties. Based on 2000 census statistics, that represents 16.1% of the total state population. Local area agencies include:

1-A Detroit Agency on Aging

Serves Detroit, Hamtramck, Highland Park, Grosse Pointe, Grosse Pointe Park, Grosse Pointe Shores, Grosse Pointe Woods, Grosse Pointe Farms, and Harper Woods cities.

1-B Area Agency on Aging 1-B

Serves Livingston, Macomb, Monroe, Oakland, Washtenaw, and St. Clair Counties.

1-C The Senior Alliance, Inc

Serves Wayne County except areas served by 1-A

2 Region 2 Area Agency on Aging

Serves Jackson, Hillsdale, and Lenawee Counties.

3-A Region 3-A Area Agency on Aging

Serves Kalamazoo County.

3-B Region 3-B Area Agency on Aging (616) 966-2450

Serves Barry and Calhoun Counties.

3-C Region 3-C Area Agency on Aging

Serves Branch and St. Joseph Counties.

4 Region IV Area Agency on Aging

Serves Cass, Berrien, and Van Buren counties.

5 Valley Area Agency on Aging

Serves Genessee, Lapeer, and Shiawassee Counties.

6 Tri-County Office on Aging

Serves Clinton, Eaton, and Ingham Counties.

7 Region VII Area Agency on Aging

Serves Bay, Clair, Gladwin, Gratiot, Huron, Isabella, Midland, Saginaw, Sanilac, and Tuscola Counties.

8 Area Agency on Aging of Western Michigan, Inc.

Serves Allegan, Ionia, Kent, Lake, Mason, Mecosta, Montcalm, Newaygo, and Osceola Counties.

9 Region IX Area Agency on Aging

Serves Alcona, Arenac, Alpena, Cheboygan, Crawford, Iosco, Montmorency, Ogemaw, Oscoda, Otsego, Presque Isle, and Roscommon Counties.

10 Area Agency on Aging of Northwest Michigan

Serves Antrim, Benzie, Charlevoix, Emmet, Grand Traverse, Kalkaska, Leelanau, Manistee, Missaukee, and Wexford Counties.

11 U.P. Area Agency on Aging, UPCAP Services, Inc. Serves Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft Counties.

14 Senior Resources of West Michigan  
Serves Muskegon, Oceana, and Ottawa Counties.

**Michigan League for Human Services (MLHS)** has over 2,000 dues paying members, including more than 300 organizational members, with many of the latter having statewide constituencies.

**Michigan Environmental Council (MEC)** is a statewide nonprofit public interest and environmental organization consisting of over 71 public health and environmental organizations, having over 200,000 members.

**Public Interest Research Group of Michigan (PIRGIM)** is a statewide nonprofit consumer protection and public interest organization made up of approximately 10,000 members located within and throughout the state of Michigan.

**Michigan Community Action Agencies Association (MCAAA)** is a Michigan nonprofit corporation established on a membership basis. Its constituent members are Community Action Agencies (“CAAs”) operating in each county in Michigan.

**American Association of Retired Persons (AARP)** is a nonprofit membership organization dedicated to addressing the needs and interests of persons 50 and older with approximately 1.5 million members in the State of Michigan.