

## UTILITY CONSUMER PARTICIPATION BOARD

August 27, 2012

### MINUTES

A meeting of the Utility Consumer Participation Board was held Monday, August 27, 2012 in the Ottawa Building, 4<sup>th</sup> Floor Training Room, Lansing, Michigan.

#### I. Call to Order

Jim MacInnes called the meeting to order at 11:07 a.m. Board members present: Jim MacInnes; Paul Isely; Susan Licata Haroutunian, Conan Smith. Members absent: None.

Others present: Michelle Wilsey, Board Assistant; David Shaltz, Residential Ratepayer Consortium (RRC); John Liskey, Citizens Against Rate Excess (CARE); Sebastian Coppola (CARE); Robert Loube (CARE); Ken Rose (CARE); Joydeep Mitra (CARE); Don Keskey, Michigan Community Action Agency Association (MCAAA); Pam Ferris (MCAAA); Christopher Bzdok, Michigan Environmental Council (MEC); James Clift (MEC); Shawn Worden, LARA Procurement and Budget Services; James Ault, Michigan Electric & Gas Association (MEGA).

#### II. Approval of Agenda

MacInnes introduced the consent agenda. Wilsey noted a correction of the spelling of Dr. Joydeep Mitra's last name on p. 2 of the minutes. Isely noted the December meeting date listed at the bottom of the agenda should be December 3, 2012 not December 1, 2012.

Haroutunian moved, second by Isely and motion carried to accept the consent agenda with the spelling and date corrections discussed.

#### III. Business Items

##### a. 2013 Grant Applicant presentations

Jim MacInnes asked Wilsey to offer a recommendation for proceedings. Wilsey recommended the board proceed as follows: 15-20 minutes presentations from each prospective grantee followed by Q&A. Once discussion is concluded, the board recess for a break to evaluate and formulate recommendations for grant approvals. The board reconvene to offer motions for approvals. She recommended order of presentation as MCAAA, CARE, MEC, RRC. MacInnes asked the board if there were any objections to the recommendation. Hearing none, he called for presentation from MCAAA.

##### MCAAA Grant Presentation

Keskey explained that in the electric cases, MCAAA proposed to continue working on the overall issue of affiliated transactions. Both Detroit Edison and Consumers Energy are subsidiaries of vast holding companies, including CMS Energy for Consumers and DTE Energy for Detroit Edison. Examination of affiliated transactions resulted in MCAAA uncovering an emerging issue involving the refined emissions fuel projects (REFs) in which DTE formulated some fuel company subsidiaries to purchase the coal from Detroit Edison's inventories and then process it with the stated goal of trying to reduce emissions. However, this program results in huge tax credit benefits flowing back to DTE affiliates rather than consumers. MCAAA has asserted that this is an unlawful and unreasonable diversion of what should otherwise be a reduction to Edison's coal costs under Act 304. There are provisions in Act 304 that indicate legislative intent to prohibit affiliates being engaged in coal handling and processing.

According to Keskey, this is an example of how the affiliated company structure can be utilized to divert benefits or revenues to affiliates while letting the customers pay for the costs whenever there are adverse costs, or failing to credit customers under Act 304 for what should be a coal cost offset.

MCAAA raised this issue in U-16434. Keskey noted that the PFD and the Commission agreed with MCAAA's position that there was inadequate information to support Edison's approach. The issue was litigated again in Edison's 2010 PSCR U-16047-R, and in Edison's 2012 plan case U-16892. It is a major issue in the ongoing reconciliation case, U-16434-R, and will be again in the new plan case. This is a ten year program, and it will likely take the Commission several cases to reach resolution on the issue.

MCAAA also noted that they would look at other affiliate transactions. They are interested in examining those charges that Edison incurs from MISO that are avoidable. For example, instances where Edison may operate its facilities where they incur a penalty may be due to a lack of planning for avoiding congestion charges, it could be planning their maintenance of their plant at the wrong time, avoiding opportunities to obtain more revenues, incurring costs, from their standpoint, under their control and under MPSC jurisdiction of costs that could have been avoided. This is related to the refined emissions fuel coal situation and the fact that the coal cost component of electric generation is perhaps \$6.00 per ton higher than it otherwise would be if Act 304 had captured those benefits. How would that affect the MISO transactions? Does it affect the MISO transactions? Does it prevent Edison from obtaining more revenues, or is it increasing costs?

MacInnes asked if Keskey had calculated the avoidable costs or offsets to the cost of coal he was describing in dollars per million Btu. Keskey responded that he had not but would be able to provide the board with some calculations to better illustrate the potential magnitude of the costs. Keskey noted there was some difficulty getting the information from the books of the unregulated fuel companies. MacInnes noted that there must be some data they are basing their proposal on and that information/calculation would be beneficial to the board's understanding and evaluation of their application.

Wilsey noted that Case U-16892 was not included in MCAAA's 2013 application. No budget sheet was provided for that on-going case.

Keskey noted that with regard to Consumers Energy electric cases, MCAAA has most currently been involved in U-16890, U-16432-R, which is the reconciliation case for 2011; U-16045-R, which is a reconciliation case for 2010, and of course a new case filed in March.

These electric cases have involved in part gas, because gas is used for generation. Here MCAAA has challenged the high transportation costs for gas being supplied to the Zeeland plant and the use of an independent gas agent to do all of the purchasing for Consumers Energy when in fact they have their own gas department and they have their own pipelines and gas storage fields that are nearby.

MCAAA also proposes to examine MISO costs and what kinds of approaches Consumers could have undertaken to avoid costs with proper operation. There are also some questions regarding the impact of the Palisades plant on Consumers Energy's costs and its relationship to MISO, the cost of replacement power; are they losing the liability and the efficiency of the plant under the Purchase Power Agreement they entered into after the sale of the plant, are there any penalties for outages under the PPA and are they being enforced? Other affiliate issues related to Consumers and CMS Energy will be explored through discovery.

MCAAA also will monitor other issues with Consumers such as the costs (historical v. projected) used to set the base PSCR and GCR factor in rate cases.

With regard to the gas cases, MCAAA has been involved in numerous GCR cases for both MichCon and Consumers Energy and in their rate cases for gas as well on issues that directly affect Act 304 costs. Affiliate transactions are again a focus such as transactions with the MichCon subsidiary, Michigan Gathering and Transportation Company. They have had success working with other parties as a team to achieve positive results. In previous cases on the MGAT issues, the Commission ultimately ruled that MichCon had to reduce its purchases from affiliates to the City Gate price compared to the price that they were using.

With MichCon, MCAAA opposed the merger of affiliate Saginaw Bay Pipeline because it was proposed at a higher than book cost, they were losing some transportation revenues, and the annual cost would be about \$4 million to ratepayers. The Commission agreed with our position that MichCon should not merge that subsidiary into its own operations. This issue also had a direct relationship to the most recent GCR case because they entered into a contract with ANR and then charged it to the GCR case, and they said they did that because their merger of the Saginaw Pipeline was not approved. MCAAA expects that to this to be an issue raised again in the upcoming rate and GCR cases for MichCon.

MCAAA anticipates that MichCon is planning on again pursuing the acquisition of gas producers in Michigan, and will scrutinize those transactions in terms of price reasonableness. MCAAA specifically opposed a MichCon proposal giving favored status to its affiliate purchases. Their proposal was to include them in their fixed-price program and to have the ability to defer the receipt of the gas, which automatically costs a premium. MCAAA believed this demonstrated that MichCon's fixed-price program has resulted in buying far too much gas under fixed-price contracts rather than at the market. This is an issue pursued by other parties. MCAAA expects substantial progress on this issue in the most recent case.

With respect to Consumer Energy gas, MCAAA proposes to pursue affiliated interests, gas storage practices, purchasing practices for transportation. Specifically they are trying to determine if Consumers is, in effect, cross-subsidizing Gas Choice Customers compared to GCR Customers by the way they allocate storage, firm transportation, etc.

MacInnes asked if MCAAA quantifies or analyzes the potential costs or savings related to the issues outlined as a means to prioritize their work? This would help the board allocate limited funds. Keskey responded that the Palisades PPA issue is new. They do not know the number yet but are doing the research and discovery. Other issues continue to evolve as well. MacInnes noted that calculating some estimates and parameters would help the board with evaluating MCAAA's grant requests. Keskey responded that MCAAA's track record in the recent has resulted in ratepayer savings of hundreds of millions of dollars. He noted that the REF issue is worth hundreds of millions because it's a ten-year program. The generation of Palisades, was about 12, 15 percent of Consumers Energy base load generation, and it was very cheap generation.

MacInnes noted that a brief summary of the issues and estimated costs/savings, some range would be appreciated.

Smith asked Keskey which cases MCAAA felt would have longer-term systemic policy change? Keskey responded that the REF issue was one example that would determine whether the commission would allow things like tax credits, refunds, etc. to be monetized through affiliates rather than benefitting customers. It also will influence whether costs of unregulated subsidiaries that are losing money can be rolled in and paid for by

regulated customers. Keskey also referenced the allocation of portfolio for fixed price purchasing v. spot purchasing prices between GCR and GCC customers in a declining market as another example.

Haroutunian asked what part of this intervention is about challenging the utilities versus persuading the Commission to change its policy view or position on an issue? Keskey responded that it is important to not only recommend adjustments under Act 304, but to also advocate policies under Act 304 that serve the goals and the objectives of that statute, and in some cases, advocate that the Commission change their policy or position given evolving circumstances.

He noted the Commission has sometimes changed its policy or position. For example, on the MGAT purchases of affiliated MichCon gas, they switched from a jurisdictional rate, which is higher, to the more market-based City Gate price. They also changed positions on spent nuclear fuel, where they took the accumulated spent nuclear fuel fees out of rate base for Consumers Energy a couple years, even though they had had it in rate base for 20 years.

MacInnes asked the grantees for their opinion of the efficacy of allocating the money between rate cases, PSCR plans, GCR plans, and PSCR and GCR reconciliation cases? Keskey explained that Plan and Reconciliation cases are intertwined in his opinion. For example, you have a duty to present issues in a plan case in order to reserve them for the reconciliation case. He presented examples where they challenged similar issues raised in various cases. He noted MCAA generally requests less funding for rate cases but that there are Act 304 issues in rate cases. Rate cases are also essential to understanding the Act 304 cases better because you are able to see the utility's base case presentation.

### **CARE Grant Presentation**

Liskey presented the CARE request in two parts: (1) PSCR issues and (2) MISO and federal issues.

#### **(1) PSCR Presentation**

Experts Coppola and Loube assisted with the presentation of the grant request for intervention in PSCR cases.

Liskey stated that CARE is requesting approximately \$76,000 for PSCR plan cases and the same amount for the reconciliation cases. CARE will focus on the plan cases today with the expectation the board will consider the reconciliation grant request in a later approval phase.

Liskey provided the board with a sample of discovery questions used in PSCR cases to explain how issues are identified. Once this information is gathered, it is possible to begin to specify what issues may be most relevant in a particular case and to determine an estimated benefit to consumers. In certain instances there is a particular issue, such as monetizing Renewable Energy Credits (RECs), that has been identified previously and will be pursued and quantified once the utility files its case.

Liskey noted CARE has achieved positive results for customers. He noted that in the UPPCO plan case, CARE successfully advocated for removal of a \$3 million dollar expense to meet the EPA compliance from the plan case. CARE also identified and is challenging an \$856,000 bad debt bankruptcy charge that the company included in a reconciliation case. That charge could not be identified until the case was filed by the utility.

MacInnes noted he understood the challenge but suggested that for the items grantees know they are tracking, they provide an estimate. Once filings are reviewed and issues identified, a brief (one-page) analysis with key issues and estimated savings be prepared for the board. This would assist the board in tracking issues and

progress. The board understands the cases will evolve and things will change. However, the board wants to be engaged in the process to understand opportunities and to allocate resources wisely.

Seb Coppola discussed the grant requests related to Upper Peninsula Power Company (UPPCo) and Wisconsin Public Service Company (WPS). These companies are both owned by Integrys.

He highlighted some of the key accomplishments CARE achieved in Wisconsin Public Service Company cases. For example, he discovered certain costs related to environmental rules changes built in to the PSCR were not incurred because the rules changes were not implemented. Elimination of these costs resulted in savings of \$780,000 or approximately \$20 per year for the average customer. Similarly, with the UPPCO case, we again discovered there that they had anticipated certain transmission costs that were not going to be incurred. Elimination of those costs saved customers about \$3 million in total and lowered the PSCR factor by half. CARE was the only party in the UPPCo case to pursue the \$856,000 uncollectible issue. The Commission staff agreed that it was not a recoverable expense based on CARE discovery. The case is in settlement but CARE is optimistic the result will be positive for customers. Combined, those three cases represent approximately \$4 1/2 million in savings for customers based on an investment of less than \$15,000 in UCRF funds.

A continuing issue CARE will pursue in the small/medium utility cases is between running coal plants versus buying gas in the spot market, which is primarily natural-gas driven. The utilities are putting forth forecasts that they're going to buy more natural gas and supply power from natural gas versus running the coal plants. A lot of that is driven by the cross-border pollution rules that the EPA has put forth. Just recently the Court of Appeals rejected the EPA plan and now the EPA has to redo those rules.

CARE plans to examine the hedging of their supply portfolio and the effect on their cost recovery factor. This is an on-going issue, particularly with WPS. MacInnes and Coppola discussed current gas prices and pressures such as reductions in production and exploration given extremely low natural gas prices. Hedging makes sense, CARE is concerned with the degree to which it is used. A general discussion of determining and modeling risk and hedging practices followed. Coppola pointed out that they are not trying to place a bet on the price of gas but rather to minimize volatility. Coppola noted that in WPS and UPPCo they continue to monitor accrued renewable energy credits (RECs) and the company's plan to monetize them. Coppola noted the hedging issue for WPS is an exposure of approximately \$15 million for customers. Renewable Energy Credits, in total, for the WPS and UPPCo is about a million and a half dollars.

Liskey then presented CARE's intervention in PSCR cases for Indiana and Michigan Power (I&M Power), Wisconsin Electric Power Company (WEPCo), Alpena Power and Northern States Power. The latter are smaller companies and the cases typically are reviewed and settled. Approximately \$1,300 is budgeted for each case.

He noted that in the two larger company cases - I&M Power and Wisconsin Electric Power Company, outage issues have been a concern. Those issues emerge in the reconciliation phase of the cases. He cited extended outages at the Cook nuclear plant, and new WEPCo plants have had multiple outages.

Robert Loube is the primary expert working on the cases. He noted forecasting was an issue in the WEPCo case. Specifically, CARE found WEPCo had made a very high forecast of their natural gas prices when they submitted their plan. Given declining prices CARE advocated for the use of a more forward-looking forecast. WEPCo agreed to use the forward-looking and, for the first time, the company agreed to rerun their production costing model. It made a significant reduction in the total plan forecast. Hedging issues discussed previously are also a focus in the cases. In regard to the outage issues in the new units mentioned by Liskey, Loube explained that CARE is asking the commission to credit the replacement costs. In the reconciliation plan, the

company is citing the subcontractor as responsible. CARE is examining the procedures for supervising the subcontracting and prudence of the company's action. In the Cook power outage, the company had insurance to cover some of the replacement costs. In the settlement, they agreed to pass some of those savings to the consumers. The nuclear plants carry business interruption insurance and at this time the coal plants do not.

Another issue CARE is examining relates to multi-state ownership of some of the companies by companies based in Wisconsin. These companies roll in their renewable resource plan into the base rate while Michigan uses a tracker system. As a result of these different methodologies, Michigan customers are paying for Michigan renewable resources and for Wisconsin renewable resource portfolio decisions. However, Wisconsin customers are not paying for Michigan renewable resources. CARE is trying to point out this asymmetry to the Michigan Public Service Commission in an effort to remove the cost of the Wisconsin renewable portfolio from Michigan consumers PSCR. This will be an on-going process.

In addition to the issues discussed above there are small issues like make-whole payments. These are calculations and payments made when a plant like the Prescott plant is run as a must-run plant in order to maintain the voltage in the different areas of the Upper Peninsula. CARE is reviewing how the particular calculation is made.

In the small-carrier cases, CARE worked with NSP to update their forecasts and achieved savings for customers. With Alpena, CARE is examining their contracts with Consumers. Most of the energy Alpena has is a purchase from Consumers, so the reasonableness of the contract is a central issue. CARE also is looking at firm power purchases from local coal generators versus whether it would be cheaper to buy more firm power from Consumers.

Liskey provided background on the federal issues that are a part of the CARE grant application. In June of 2009, the Michigan Supreme Court classified transmission expenses as a PSCR expense. For the past 2-3 years, CARE has been representing Michigan consumers on cost allocation on the MVP project and the capacity market proposal. Based on this experience and recent decisions made with regard to transmission, they are pursuing a change in strategy. CARE feels the best use of resources would be to get involved with MISO. The application before the board involves CARE experts, Dr. Rose, Dr. Mitra and Robert Burns participating in selected committees at the decision-making level of MISO.

In regard to permissibility under Act 304, statute says that you can use these funds for participation in "federal administrative proceedings". While this is not FERC, it is MISO, in 2007 FERC ordered all the RTOs to have open planning processes to interest groups, stakeholders, etc. CARE has been in a dialogue with staff of the attorney general's office to determine if there is any concern with permissibility. Communication with the office was shared with the board.

Dr. Ken Rose discussed CARE's past involvement in the FERC proceedings. His view was that their impact filing comments were limited. His assessment was that CARE may have done better if we moved upstream in the process because both the resource adequacy and the cost allocation cases that went before FERC were based on a nearly complete plan provided by MISO. The opportunity to influence the plans was as they were being developed for actual filing with FERC. This takes place through the MISO committees. Key committees that CARE would like to participate with are identified in their grant application. Their objective is to represent Michigan consumer interests throughout the entire MISO process and to possibly file with FERC on selected issues. MacInnes noted that the fact Michigan has the highest tariffs in MISO territory may evidence the lack of representation in the process. Dr. Mitra also noted that Multi Value Project has only a very small piece of expansion in Michigan, in the thumb area. These facts fuel the on-going, contentious debate of costs/benefits.

The experts and board briefly discussed other projects, the MVP modeling, production costs and prices, and the values/benefits of savings periods, and the impacts on wholesale prices that are passed through to consumers.

One primary committee CARE would like to participate in is the planning advisory committee. It is a very important committee in MISO. The transmission planning process provided to FERC is a big part of their business. There's really not a lot of consumer participation – not just from Michigan, but across MISO. The Illinois Citizen Utility Board and the Wisconsin Citizen Utility Board participate a little. There is no direct participation from Michigan. Even the commission's involvement is mostly through the Organization of MISO States(OMS), so they get a voice with all the other commissions with MISO, but again, not specific to Michigan. MacInnes asked if CARE would have a vote. Rose explained that there are seven sectors and CARE would be in the public interest group sector with other consumer representatives. Each sector selects a board representative, so CARE would not be guaranteed a board seat at all. CARE would work toward that but by serving on the committee they would be able to participate in all of the meetings and present information and advocate for Michigan's interest. CARE feels that is where they can have an impact. CARE would also receive critical information from active participation in the process.

CARE also proposes to participate in the Supply Adequacy committee. Rose believes CARE had some impact on the capacity market and supply adequacy plan with their filing at FERC but again, the whole plan was fully developed before it was given to FERC by the supply adequacy committee. So, they may have had more impact if they had been involved in the development process. MacInnes noted that plan was in the 7<sup>th</sup> Circuit Court. Liskey expects a decision from the Court will take at least one year. There was general discussion on the possible benefit of having participants at the table that can understand and appreciate and, where necessary, critique the methods as well as expand the debate to include impacts such as the rates consumers will pay (versus just production costs).

Smith asked Liskey what was distinctive about small- and medium-sized utilities as compared to the larger utilities like Edison and Consumers that requires attention in these cases. Liskey responded the geography of these utilities is unique in the Upper Peninsula because they are oftentimes tied to a Wisconsin utility, and so those issues are different than Consumers or Detroit Edison. The renewable energy portfolio of Wisconsin flowing into our rates is an example. Even more importantly is the fact that CARE is the only consumer representative in the case. Smith noted the issue of precedents set in cases for smaller utilities. Liskey noted a recent example was related to the inclusion of the \$856,000 uncollectible expense due to the bankruptcy of a paper mill. The Commission had not squarely decided the issue in a case before. Had that not been opposed and gone through it may have established an adverse precedent for other utilities to claim similar expenses. Consider Detroit Edison territory and a bankruptcy like General Motors. CARE expects the case to result in a positive precedent because of their advocacy. Smith asked how CARE stays informed with developments in the large utility cases?

Liskey responded that he remains in contact with the attorney general staff working on the cases and CARE's expert, Seb Coppola also works with the AG as an expert witness in other related cases. Coppola noted he generally works on SEMCO and MGU GCR cases and the issues, such as hedging, do carry into the electric cases he works on for CARE. There is information sharing and insight gained from working across cases. Also, they stay in communication with other grantees and interveners.

MacInnes asked CARE to speak to the question of allocation of resources among rate cases, PSCR plan cases, reconciliation cases, etc. Liskey responded that CARE has never sought funding for a general rate case due to resource constraints and the fact that other interveners have pursued many of the relevant issues.

The meeting adjourned at 12:53 for a 10 minute recess.

### **MEC Grant Presentation**

Bzdok introduced James Clift, Policy Director, MEC to open the presentation. Clift provided an overview of the Michigan Environmental Council. Bzdok presented the MEC grant application in two parts: (1) a summary of the requests and (2) the objectives behind the requests. Bzdok explained that the MEC requests for the next fiscal year total \$282,800. That is approximately \$30,000 more than requested the previous year but it's to fund more cases.

MEC requests are for intervention in the PSCR plan and reconciliation cases for Detroit Edison and Consumers as well as an anticipated general rate case for each of those two utilities, and the renewable energy reconciliations for those two utilities.

If the board considers the request in phases based on expected filing dates, phase one would include the PSCR plan cases and the general rate cases. Those represent about \$162,000, or 60 percent of our total request. Phase two would include the PSCR reconciliations and the renewable reconciliations. Those cases represent about 40 percent of our total request. Due to the volume of cases and needs that we see this year on the matters we are involved in, MEC is not requesting UCRF funds for energy optimization cases. The cases are important and on-going but based on an assessment of priorities and resources, MEC is not placing a request at this time. If resource needs change or more compelling issues arise, a grant request may be presented to the board in the future.

MEC's primary objectives in these cases are to reduce the cost of supplying both conventional and renewable forms of energy with benefits to residential ratepayers. The focus of the UCRF funded intervention is to pursue issues where the interests of residential ratepayers and the environment align. Past work and results are presented in the grant package. While specific issues are identified after the case filings, there are items that span cases and grant years.

Phase one cases are principally conventional energy cases. Renewables are in phase two because those cases are going to be filed in calendar year 2013.

In the energy conventional cases MEC is concerned that the costs of coal are rising, primarily due to transport. Experts point out that there will be upward pressure on commodity costs as exports increase. A major export deal has been in the news recently so it is a process underway. The costs are the highest at the oldest coal plants. The cost of operations, maintenance, cap X, environmental adders, are all rising or expected to increase. Environmental adders are an issue in the Consumers '12 PSCR plan for example and data for that case is provided in our application. MEC believes it is essential the Commission look at escalating costs associated with the total operation cost of these units. MEC believes the costs are increasing in absolute terms and also relative to the costs of other types of generation. MEC is advocating that the utilities in the five-year forecasting needs to be pushed and the Commission needs to be pushed to the extent we can influence that in moving towards a more integrated approach, a more risk-management-based approach, a more diverse approach to meeting these requirements.

MacInnes asked Bzdok, in regard to the general rate case, to explain how the the issues related to the emission controls and the nonfuel issues, etc., qualify under Act versus the cost of energy.

Bzdok explained that they qualify in terms of the looking at the overall cost of generation. MEC's primary issue regarding emission controls is less about the merits of putting a flue gas desulfurizer on this plant and more about what is the overall cost and whether that is the most prudent plan to make that investment in that unit given all of the costs that are associated and foreseen over the next five years compared with the other options that are available.

MacInnes clarified by asking if MEC's view was that it was permissible to look at O and M costs, cap X, maintenance, in the same purview and the fuel costs. Bzdok responded that the look at the details and how they influence the whole picture.

In terms of Act 304, it is focused on the resource planning that is being done in the rate cases and in the five-year forecasts, and how does the utility's existing resource portfolio compare in terms of generation costs to the customer with other potential options that they have available. That could include purchased power, gas, renewable, demand-side management. MacInnes asked if that could include the building of a new coal plant or gas fired plant – the actual capital costs? Bzdok said MEC is not confronting those issues at present.

There are no plans that I'm aware of for a new coal plant by either of the utilities. Detroit Edison had a new combined cycle gas plant for 2015 in its five-year plans but that may no longer go forward. Without a proposal to examine it is difficult to respond to whether it would be eligible for UCRF funding.

However, MEC can report that in Consumers case -- based on the 2011 Reconciliations and information from the 2012 plan year to date, Consumers ownership of the Zeeland plant and their decisions to ramp up generation at the Zeeland plant and to cycle some of the coal plants are resulting in PSCR savings.

The supplemental plan that Consumers filed early 2012 for this year had a lower overall power supply cost than the original plan that they filed using the more business as usual approach in the fall of 2011. In the cross-exam in Detroit Edison case U-16892, two witnesses told me that they're maintaining the maximum PSCR factor to date, because they're not seeing any PSCR savings despite the low market energy prices and despite the low gas prices, because they are not getting benefit because from their plants. This overall approach that I'm talking about is showing up in differences relative to PSCR-specific costs when you put the utilities side by side. Figuring out why is the challenge.

MEC is more involved in the five-year forecasting because we feel that is a higher priority, it relates to the transition of the industry and there is more benefit for the investment. MacInnes asked if the PSC was heading in the direction of more integrated resource planning?

Bzdok responded that legally in Michigan, it is a requirement under Public Act 286, any time you're making an investment of \$500 million or more in either new generation or non-environmental upgrades to existing generation to look at all of the possible options.

Then there are certain ratemaking and accounting approvals that the utility can get if they can show the Commission that this is the best plan for the customer, for the ratepayer to meet the articulated generation need. MEC is involved in the I&M Power Case using other funds because it is the first one of its kind. It's unclear if the Commission will adopt formal IRP but the decision-making is more in that direction. Clift commented that there is more interest and discussion in best practices that will keep costs down.

Bzdok noted that Consumers is moving in a positive direction relative to the natural gas generation resource it has. That raises questions about the seven classic units, the old units that they've announced they're going to

mothball January 1, 2015. They are the most expensive units. How can prices be held down for customers as they are phased out.

Detroit Edison has retracted requests for retirement studies to MISO on all their old units, except for Harbor Beach, which is a very small plant. They are talking about extending the lives of old coal units. MEC has concerns that the technologies they plan to use will result in higher PSCR costs and that the strategy may be tied to a REF project. Based on their announcement, MEC expects it will be a matter in the upcoming rate case. He roughly estimated the REF value of \$60 million. MEC filed a motion that the attorney general signed on to as a joint motion to reopen that case because there was an investor presentation filed with an SEC 8K Form after our hearing closed where there was a projection of an earnings contribution to DTE of \$30 million this year from the REF project and \$50 million each year for the next eight or nine years. If this is the magnitude of earnings contribution to the parent company from the project, there should be more on the table for customers.

MacInnes noted that he knows there is a great deal of uncertainty and the estimates may prove wrong, but he would like to know the calculations supporting the selection of issues for UCRF grant requests.

Bzdok explained that another issue MEC has pursued in the past is the fact that sales are declining in Detroit Edison's five-year forecast but their plans are to continue the same level of generation. The argument made by Edison in the last rate case was that declining sales with their own customers would be offset by increased sales on the wholesale market. That was based on certain projections about their cost of generation, whether certain rules were going to be in effect or not, and certain projections about wholesale energy prices. Clearly the latter are not meeting what their projections, so whether they will continue to project the same level of generation will be an interesting issue in upcoming cases.

Clift further commented that MEC is seeing sales going down, but we don't see actions by the companies that would have a significant impact on their revenue requirements going down at that same level or actions by the company to reduce its long-term costs for residential ratepayers.

Smith asked if MEC expected a steep increase because of the capital costs that DTE will incur with the revamping of their plants and reconfiguration of their portfolio? Bzdok responded that MEC believes that will drive rate increases more than the company indicated in its last rate case filed. More information about plant upgrades should be included in the next rate case.

Bzdok addressed the question of the relative importance of UCRF funding in rate cases, plan cases and reconciliation cases. In MEC's experience in the Detroit Edison and Consumers Energy, reconciliations typically have the least amount of money at issue, but there are sometimes significant issues at stake. There are issues that get vetted in the reconciliation, that do not get vetted anywhere else. Issues discussed with the board previously regarding biomass merchant plants, fuel and variable excess costs, are reconciliation case issues. The SEMCO demand charge was an issue that is explicitly in the statute authorized to be vetted in the reconciliation. Also, sometimes a utility will bring an issue forward in both plan and reconciliation. The REF projects are an example. If you do not pursue an issue through both you can lose gains made in the Plan case. Renewable energy reconciliations are a different creature entirely because surcharges, accumulated reserve balances, transfer prices are all specifically called out for the Commission to adjudicate in a reconciliation, so they have a planning aspect to them that doesn't exist in the PSCR reconciliations. Renewable cases arise in phase two and will be discussed more at that time.

Bzdok noted that if the board has to reduce overall requests due to resource allocation, in the MEC proposal, the first phase cases are a higher funding priority and to consider more reductions to phase 2 cases if necessary.

Isely asked Bzdok to explain areas of overlap with other grantee requests in the cases. Bzdok explained that there is some overlap with the attorney general and MCAA in large cases. Generally they are pursuing different issues in the same case. Some of that overlap is synergistic, each party will examine or do analysis on a piece of evidence or obtain discovery from a particular angle or perspective. Sometimes that information, analysis intersects and will bolster a position on an issue. Parties may cross a witness on each other's evidence. This may result in standing together on an issue, which MEC just did with the attorney general in the joint motion to reopen mentioned previously. While most issues are distinct, at times the overlap is beneficial. Wilsey noted both MEC and MCAA propose pursuing the REF issue in their grant requests. Bzdok noted the attorney general is pursuing this issue as well. Each party is pursuing this issue from a different perspective. Any overlap will be beneficial. What MEC is emphasizing with both these utilities in the PSCR cases is the five year forecasts. So the REF is only one aspect of the intervention.

MCAA noted that they discovered and initiated the issue of the REF in U-16434 (Detroit Edison 2010 Plan Case). The potential amount of money at issue is extremely large. If it is 60 million a year as roughly estimated by Bzdok and it is a 10-year program, the magnitude is in the range of half a billion dollars. The precedent is also very important. The Commission will have to make a decision on the issue relatively soon. Once they make a decision they will likely hold to that decision for the ten-year program. Keskey noted that given the cost benefit ratio for consumers on this issue, there is not a negative cost of duplication. Also, in a recent case, Keskey noted that the MPSC Staff did not present any testimony or independent analysis on the issue but they did file a brief in support of the REF. If Staff is not giving testimony or providing expert analysis on such a major foundational issue involving Act 304, then it is important to have multiple intervenors participate in the case. MacInnes noted the Commission's constrained resources.

Isely noted MEC had requested the same amount of funding for both the Detroit Edison and Consumers Energy rate cases yet Bzdok had described more activity with respect to Detroit Edison. He asked for Bzdok to elaborate on the requests.

Bzdok explained that the two cases differing is that in the Consumers case they have reached some agreement on directional issues and will be dealing with transitional matters such as gas prices, environmental regulations, etc. over the next five years. The rate case covers a projected test year but it is driven by forward planning for a longer period of time. MEC may have to re-litigate some issues based on new evidence from Consumers.

The Detroit Edison case is more about directional issues such as generation requirements, planning and how that was driving their spending. Bzdok expects it will be similar to the first Consumers case. However, it is difficult to predict the amount of work each case will demand.

MacInnes noted that he had received some comment from a commissioner that the general rate cases, to the extent that Act 304 would permit that, may demand more resources and would be of more help than PSCR reconciliation cases for example.

### **RRC Grant Presentation**

David Shaltz presented the Residential Ratepayer Consortium grant request. He explained that RRC is making the same type of requests in this year's grant application that they have made in the past.

They propose to participate in the GCR plan and reconciliation cases of the four major gas companies in Michigan. Given the board's preference to consider requests in phases, the cases that would be phase one are the GCR plan cases for 2013 and 2014, which will be filed in December 2012. The phase two cases are the GCR reconciliations for 2012 and 2013, which are filed at the end of June 2013.

RRC believes these cases are important for a number of reasons.

GCR cases are actually named in Act 304 as cases that the Commission must issue decision on and evaluate the filings of these utilities. The UCRF was created for consumer participation in these cases and meant to facilitate that participation. These are also all cases listed in the board's UCRF application.

RRC has selected the four largest gas companies in Michigan, because their service territories include about 99 percent of the residential gas customers in Michigan. The gas supply costs in these cases affect 65 percent of the costs that gas customers pay each year.

One of the questions the board raised earlier is having enough information to really understand how the grantees are making their decision. Because there's such a gap in time between when the board makes grant decisions and when these filings become available, is to take the approach that we're going to do a general management and performance audit of the filing based on what we know is going on in the market. It is difficult as others have pointed out to be specific about a filing that has not been made. RRC would be willing to provide copies of discovery and analysis of cross-examination and how we're going to select issues for testimony, and what we're going to brief in a case, similar to the materials provided for clients. Shaltz expressed concern that FOIA may compromise their position in a case.

The second part of the presentation provides information on the issues they anticipate may be in the cases. The central issue that everyone is facing is the fact that natural gas prices have stabilized. On-shore production of natural gas right now is about 20 percent of U.S. production; in the next 10 to 15 years, it could go up to 40 to 45 percent. On the other hand, there's conflicting information about people starting to shut in wells and there not being a drop in rig activity. So one of the things that will be presented in these cases is how the utilities are presenting this information in their five-year plans. The most comfortable thing for the utilities to do would be in their five-year plans to project a rising price environment, which is their past practice. Given the relative stability this is an opportunity to present evidence and raise the issues of supply reliability and cost minimization. The latter concept was not considered over the last five or six years as the primary focus was protecting consumers from volatility. One of the outcomes is that now the commodity cost to the customer bears no relationship to the market prices.

Now that there is relative price stability in the market, I think it's important for advocacy to go forward to make the case to the Commission that they've got to start looking at whether the utilities are not only securing adequate supply, but whether they also making decision to lower prices.

A positive development is the evolution of the fixed-price purchasing programs. Part of the RRC's advocacy over the past few years has been to dismantle these programs which the utilities were relying too heavily on to make gas purchases. As a result, we had prices that were way out of line with market. The first two companies that we were successful with, SEMCO and MGU, now have their fixed-price purchases down to 20 percent of the portfolio. As a result, they have the lowest GCR factors in Michigan right now, about \$4.00 range, and that's going to go down further with each passing year.

This year Consumers Energy for the first time said that they would stop making fixed-price purchases unless prices got to a very low historical benchmark, so that's a great development. It will be important to monitor their next filing to understand their plan in the future. Michigan Consolidated Gas Company is a challenge. They're still going forward with 75 percent of their overall supplies bought at fixed prices over two years out in the future. That two-year-out market doesn't look anything like what the actual market prices of gas are when you get there.

Another concern is the increase in the gas Customer Choice program. Because the GCR factor has been so high, it has been very easy for alternative gas suppliers to come in and price below the GCR rate. More than a half million customers on gas Customer Choice. That represents about 15 percent of all the customers at about 60 percent of the annual throughput natural gas for residential customers. As this program grows, it means that more of the costs of providing supplier of last resort protection for them if they decide to come back gets shifted to the GCR customers. In the MGU cases we've been in, we were successful in implementing a reservation and demand charge that's paid by the GCC customers. Given the decrease in sales for both Consumers and MichCon, it may be necessary to advocate for more protection for GCR customers. Reduced demand is a major issue all of the gas and electric companies are experiencing. Load attrition and loss of customers presents supply planning problems for these utilities. For example, on the gas side, if your load is declining, what storage is needed to meet the needs of your gas customers, or should you be selling more of the storage to third parties?

These issues need to be examined in terms of how the utilities react in the GCR plan year and how they treat them in their five-year forecasts. Other potential issues are listed in our proposal.

One of the questions raised earlier was whether advocates are trying to influence regulators' attitude or long-term view of these things. Yes, we are. The PSC Staff is under-resourced and that limits their ability to do independent analysis. It is a challenge to then persuade the Commission to change their view on big picture items without the staff input. It takes time. This also speaks to the question of duplication. All of the experts used by intervenors in cases are different – different professional backgrounds and disciplines. They may cross over some of the same issues but their perspective and analyses will differ. So you will get complementary presentations, sometimes having the exact same conclusion, sometimes not. For example, on the fixed-price purchase question in the last MichCon case, our witness made a case that basically fixed-price purchases at this point should go to zero given what's going on, the AG's witness came up with a figure of 24 percent using a different model. Others provided different numbers in the briefing. This provided the Commission with a range of numbers and rationale inform their decision. I have never been in a case where two witnesses have said the same thing for the same reason.

Smith asked Shaltz to comment on their monitoring of smaller cases. RRC monitors all the notices of hearings, and when the applications have been filed, we do a sort of summary review of those things. Those other gas companies in Michigan are really, really small. If they are in the Upper Peninsula, they have one pipeline supplier, they may have no storage. They generally do not have anything in common with the large gas distribution utilities that we deal with. But sometimes sometimes an issue will come up that is later presented for MichCon or Consumers and they cite the decision to justify their proposal. So you have to watch that carefully.

MacInnes took general comments before the break. Keskey reviewed some of the cases that may be considered in the initial decision-making process.

At 2:20 p.m., there was a 55-minute recess.

MacInnes noted an interesting study by Ceres, entitled, “Practicing Risk Aware Electricity Regulation, What Every State Regulator Needs to Know”. He explained that the report emphasized that not only is it important to take into account the levelized cost of electricity, but you also attribute a level of risk to the associated infrastructure investment.

The central point of the paper is that we are about to spend trillions of dollars over the next decade or so, and there's a lot of risk when you spend that kind of money, both in cost estimating for the power plants and other factors – like the risk of water for cooling, increased environmental regulation, other regulation, etc. So, the report presents the levelized cost of electricity, ranks the different alternatives for generating power, and then looks at it on a risk-adjusted basis. It is timely and relevant to the board.

## **b. Grant Approvals**

### **Michigan Community Action Agency Association (MCAAA)**

Isely moved, second by Haroutunian and motion carried to approve the approve MCAAA 2013 UCRF grant in the total amount of \$102,000 for the following cases: U-16434-R, the DECo PSCR Recon Case; U-16432-R, the CECo PSCR Recon Case; U-16999, the MichCon Rate Case; the new DECo PSCR plan case; and the new CECo PSCR plan case, subject to the following conditions: Notification to the board of any PFD or order in which the AG or MPSC indicates the issues funded are not Act 304 permissible; Approval does not include appeals, except for the cost of filing fees to preserve the opportunity, not a guarantee the board will approve funding for the appeal; And no UCRF funds may be used for intervention or filing of comments in federal proceedings without approval of a specific work plan by the board.

MacInnes clarified that grantees may redistribute funds for the cases based on the total amount approved by the board.

### **Citizens Against Rate Excess (CARE)**

Isely moved, second by Haroutunian, and motion carried to approve the CARE 2013 UCRF grant in the total amount of \$65,000 for the PSCR plan cases for the six small and medium utilities specified in the grant application. And to approve a 2013 UCRF grant in the total amount of 25,000 for participation in the MISO committee meetings proceedings, subject to reconsideration or revocation of unspent grant funds if any objections to the permissibility with Act 304 are brought to the attention of the board by the attorney general.

MacInnes noted that he is pleased the MISO participation was approved however, it is important the board understands the process and results especially to ensure that they're in compliance with Act 304.

### **Michigan Environmental Council (MEC)**

Isely moved, second by Haroutunian and motion carried to approve the MEC 2013 UCRF grant in the total amount of \$135,400 for participation in the following cases: The new CECo PSCR plan; the new DECo PSCR plan; the CECo general rate case; and the DECo general rate case.

### **Residential Ratepayer Consortium (RRC)**

No action was taken on the RRC application at this time. Isely noted that for RRC, we'd just like to make sure that you are aware the board is fully aware of the resources needed for the request, it is not taken up today, and has reserved funds to address these requests in the future.

Shaltz asked for guidance on the timing. The board holds meetings in October and December prior to the filing of the case.

#### **IV. Public Comment**

MacInnes encouraged grantees to provide as much specific information as possible with the requests, including the math and to come to the board with updates and additional grant requests if the issues merit the request.

Bzdok noted MEC would plan to provide updates following the actual cross hearing, but prior to the PFD in cases and again when final decisions are made in the case.

Smith noted he would like a joint presentation by grantees and the attorney general if possible on those cases in which multiple parties are participating. Wilsey suggested that could be scheduled for the December meeting. Bzdok noted there would be more information for the February meeting.

Disclosure of information and attorney-client information issues were discussed. Bzdok suggested speaking with assistant AG named Tom Quasarano. He specifically does FOIA and OMA and could assist the board in determining whether any exemptions to FOIA exist for strategic or sensitive information provided by grantees to the board.

**V. Next meeting** – MacInnes announced that the next meeting of the board was scheduled Monday, October 1, 2012, **11:00 a.m.**

**VI. Adjournment** – MacInnes adjourned the meeting at 3:26 p.m.

*Recorded by:*

*Michelle Wilsey, Board Assistant*

*Utility Consumer Participation Board*

Transcript available.