

## UTILITY CONSUMER PARTICIPATION BOARD

October 1, 2012

### MINUTES

A meeting of the Utility Consumer Participation Board was held Monday, October 1, 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 11:10 a.m. Board members present: Jim MacInnes; Paul Isely; Susan Licata Haroutunian, Conan Smith and Ryan Dinkgrave (via teleconference). Members absent: None.

Others present: Michelle Wilsey, Board Assistant; David Shaltz, Residential Ratepayer Consortium (RRC); John Liskey, Citizens Against Rate Excess (CARE); Connie Groh (CARE); Don Keskey, Michigan Community Action Agency Association (MCAAA); Christopher Bzdok, Michigan Environmental Council (MEC); Emerson Hilton (MEC); Wes VanMalsen, LARA Procurement and Budget Services; Shawn Worden, LARA finance; James Ault, Michigan Electric & Gas Association (MEGA); Ed Haroutunian.

MacInnes welcomed new board member Ryan Dinkgrave. Dinkgrave, from Royal Oak, serves as a manager with FocusHope non-profit in Detroit. He made a few brief introductory remarks.

#### II. Approval of Agenda

MacInnes introduced the consent agenda. Isely moved, second by Haroutunian and motion carried to approve the consent agenda as presented.

MacInnes had questions for Keskey arising from the August 27, 2012 minutes related to the issue of tax benefits flowing back to DTE affiliates rather than to consumers. MacInnes asked Keskey to comment on any new developments or information.

Keskey responded that the issue was litigated in case U-16434. The Commission agreed with MCAAA position that for the 2010 Plan Case year there was not enough information to approve Edison's approach. The issue was again litigated in U-16047-R, 2012 DECO Reconciliation case, the 2011 DECO Plan Case U-16892 and the 2011 DECO Reconciliation Case U-16434-R. Decisions are pending in the first two cases and testimony is due in the latter case at the end of October.

Based on estimated testimony of MCAAA expert Bill Peloquin along with examination of recent SEC 10K and 8Q reports filed by Edison MCAAA estimates the revenue diversion around \$60 million a year. Edison's position is that it's not increasing the Act 304 cost, therefore, it's O.K. for us to divert revenues or offsets from the cost of coal to affiliates. MacInnes asked if they were actual revenues or tax credits? Keskey responded that they are tax credits are received by the affiliates. Affiliates either use them against their own tax liability for the parent unregulated company, or sell membership interests in the fuel companies to third-party unregulated persons who can benefit from the tax credits. MacInnes asked if the subsidiary would be wholly owned, or could be a third-party subsidiary, or could be a third-party organization? Keskey responded that the fuel companies are actually subsidiaries of another subsidiary under Detroit Edison, all unregulated. The fuel companies are able to sell the revenue stream of the tax benefits on an immediate basis and monetize the funds. MCAAA's position is that they can get the tax benefits, but for ratemaking purposes, it should be counted

as an offset to coal costs, just like any other refund to coal costs. He noted that there is also a provision in Act 304 under the reconciliation provisions that restrict use of affiliates for coal handling and processing of coal. Act 304 is not limited to only examining cost increases. The purpose is to assess and minimize the cost of fuel for customers. Edison will cite compliance with its code of conduct but that does not substitute for statutory review under Act 304. So in terms of the revenue diversion impact, MCAA estimates it is about 60 million a year from their own reports. If they monetize the stream of revenues for ten years the offset is going to be a lot more. Detroit Edison in its most current case, has claimed an under-recovery of 148 million. This revenue diversion is a big piece of that. If you recognize that revenue diversion the \$148 million under-recovery would be substantially less, or possibly a surplus.

**III. Business Items**

**a. RRC Grant Modification Request – Transfer of Funds**

Shaltz explained that RRC is requesting a transfer of funds in Grant UCRF 12-04 to cover activities in the 2012-2013 GCR plan cases. He noted a typographical error in the copy submitted. At the top it says 2011-2012, and instead should read 2012-2013.

The requested transfer of funds represents a minor shift of hours primarily from the MGU and SEMCO cases to the MichCon case. Over the course of the year, MGU and SEMCO cases have moved toward settlement and have not needed to be fully litigated. On the other hand, the MichCon case has expanded due to contentious litigation of the fixed-price purchasing issue.

After briefs were filed, parties did express an interest in sitting down and trying to find a settlement to the case, which is a little bit unusual in these cases. RRC is hopeful that a positive resolution will be reached through settlement.

In terms of the transfer, the request is a reallocation within the four cases approved for intervention by the board and the funding is within the current budget authorized for the cases.

MacInnes asked Wilsey for comment. Wilsey explained that the cases and activities were consistent with the grant approved by the board. The adjustments requested were reasonable alignments given the evolution of the cases.

Haroutunian moved, second by Smith and motion carried to approve the RRC budget amendment as presented.

		Current Grant Amount	Transfer Amount	Amended Grant Amount
Transfer To (Increase funds)	MichCon Plan Case U-16921	\$ 27,954.00	\$ 6,363.00	\$ 34,317.00
	Consumers Plan Case U-16924	\$ 25,772.40	\$ 181.80	\$ 25,954.20
Transfer from (decrease funds)	MGUC Plan Case U-16920	\$ 18,136.80	(1,999.80)	\$ 16,137.00
	SEMCO Plan Case U-16924	\$ 18,136.80	(4,545.00)	\$ 13,591.80

**b. MEC Grant Amendment Request – Addition of Attorney**

Chris Bzdok explained that MEC Amendment Request seeks to add attorney Emerson Hilton as legal counsel representing MEC in grants approved by the board for fiscal year 2012 and 2013. Hilton’s qualifications, experience and role were presented and discussed. Bzdok noted that the request for Hilton’s addition as attorney is contingent on his successful admission to the Bar of Michigan.

Wilsey clarified to the board that the addition was an amendment to both the 2012 and 2013 grants for MEC. Smith moved, second by Isely and motion carried to add Emerson Hilton as an authorized attorney to MEC’s 2012 and 2013 grants, contingent upon his admission to the Michigan Bar.

Keskey asked if the board would take up his request of September 28. MacInnes allowed him to present it briefly. Keskey explained that an expert worked on a case in June and didn’t submit an invoice. Keskey transferred the funds away in a previous budget transfer request. He now wants to transfer the funds back into the case that he originally transferred them from.

MacInnes noted that the transfer request was submitted late Friday and he did not have the opportunity to review it. He noted that the board had submission guidelines of two-three weeks to allow for review. He expressed concern with the last minute requests and indicated he would prefer to take up the issue at the next meeting. He asked the other board members for comment. Smith noted that there were two issues in Don's memo. This issue regarding re-transferring the funds to cover Mr. Peloquin's hours seemed a fairly straight-forward issue. He noted he would be inclined to reverse the previous decision redistributing these 2012 grant funds to allow compensation of the experts.

The second issue seems more complicated and may involve pancaking or stacking of grants across grant years. There may be a remedy but it could be taken up in December. Keskey commented on the issue. His concern is that funds will remain on September 30, 2012 but cannot be expended past that date if no action is taken to extend the grant or award 2013 funds.

MacInnes asked why this was not brought timely to the attention of the board to allow a reasonable opportunity for review and analysis? The board has a responsibility to evaluate these issues carefully. MacInnes asked Wilsey for comment. She explained that vetting issues during the course of a meeting is ineffective and can lead to errors. There might be options such as administrative extension that could be evaluated. MacInnes said some research is necessary to make an intelligent decision on this. Wilsey concurred and said at minimum there should be consultation with LARA. There was discussion as to administrative possibilities, whether this issue has been admitted as an agenda item, history of pancaking and financial accounting issues, and extensive discussion and clarification of issues concerning and clarifying the request with MCAAA. MacInnes suggested MCAAA work with Wilsey and LARA on administrative resolution if possible and clarification of any issues to present to the board at the December meeting. Smith indicated he wanted to place a motion for approval to the board for the reversal of the transfer request made previously. Motion by Smith, second by Haroutunian and motion carried to reverse the original transfer of \$1,971.76, with the \$1,951 for the expert budget and the \$20.76 administrative expense credited back to the source budget. Wilsey noted her only other concerns regarded timing and issues with LARA since the request and decision on the request were made after the end of the fiscal year. MacInnes commented that making decisions without complete information and knowledge was not a board practice he favored and cautioned against this in the future.

#### **IV. Board Education**

MacInnes noted that there seemed to be increasing interest in raising the 10-percent retail competition cap for the utilities in Michigan. The Michigan Chamber recently had a discussion by Representative Shirkey about slowly moving up the cap from the current 10% to as much as 30%. This is an area of possible board education.

Smith noted if the 25x25 proposal is successful it may have impacts on issues and decisions for the board, as did the 2008 legislation. He noted this may be another area for board education.

Wilsey also noted that the Michigan Forum on Economic Regulatory Policy is scheduled January 25, 2013 at the Kellogg Center, Michigan State University. It may be another opportunity to do a board retreat similar to last year. She asked board members to tentatively check their schedule to determine if they were available for an evening retreat Thursday, January 24 and attend the IPU Forum on Friday, January 25 (8pm-5pm).

Isely commented that he would like additional information on affiliated transactions. Keskey offered to provide some training together with his expert. Shaltz offered to recommend some professional consultants with expertise and research in the area. Keskey also offered to explain preventative "ring fencing" measures that some states have adopted and that MCAAA advocates for in Michigan. Wilsey indicated she would look into whether NARUC had done any recent multi-state research on affiliated transactions.

Wilsey commented that Shaltz, RRC had submitted a grant request that would be presented to the board in December. However, she asked if Shaltz could provide some background to assist the board's preparation for the request.

Shaltz noted that among the issues that they are investigating is an issue at FERC right now with respect to a proposal by Trunkline Gas Company, which is a major pipeline supplier in Michigan that wants to get out of that business and convert its pipeline to transporting other things than natural gas. It could have a major effect on Michigan.

MacInnes asked if the Governor commented on it? Shaltz responded that he did and opposed it. ABATE and most of the customer groups oppose it. It would really impact the entire procurement and operational plans of all the gas companies in Michigan if Trunkline did that.

There would probably be a transition period in which the utilities would have to restructure their transportation portfolios to find alternative suppliers of pipeline capacity. Critical questions would be, is there enough pipeline capacity out there, and then how is that going to affect overall cost to Michigan ratepayers? The concern is it would drive costs up because there's less supply, equal or more demand. These are matters RRC will investigate further.

Ault commented that he believed that the Michigan Public Service Commission intervened at FERC on the issue.

#### **V. Public Comment**

Liskey introduced Connie Groh. Ms. Groh is an attorney working with CARE on UCRF grants. She briefed the board on her background and experience.

Bzdok welcomed Ryan Dinkgrave to the board. He noted that MEC planned to provide the board with an update on two rate cases under 2013 grant with the board at the December meeting. Consumers Energy was filed and the filing is under examination. He announced that tomorrow proponents of the 25-by-25 measure will be

issuing a report on their view of the projected costs of that initiative and the impacts on utility rates going forward. He would make a copy available to Wilsey that can be distributed to the board if it was of interest. MacInnes asked Bzdok what findings were in the report? Bzdok responded that in his opinion, the report is well grounded, the assumptions are conservative, and that there are good reasons to believe that the rate cap within the ballot proposal can be met. He couldn't comment beyond that at this point.

**VI. Next meeting** – MacInnes announced that the next meeting of the board was scheduled Monday, December 3, 2012 at 1:00 p.m. He noted the later start time during the winter months.

**VII. Adjournment** – The meeting adjourned at 12:26 p.m.

*Recorded by:*

*Michelle Wilsey, Board Assistant*

*Utility Consumer Participation Board*

Transcript available.