

UTILITY CONSUMER PARTICIPATION BOARD

February 4, 2013

MINUTES

A meeting of the Utility Consumer Participation Board was held Monday, February 4, 2013, in the Ottawa Building, 4th Floor Training Room, Lansing, Michigan.

I. Call to Order

Jim MacInnes called the meeting to order at 1:06 p.m. Board members present: Jim MacInnes; Paul Isely; Conan Smith and Ryan Dinkgrave. Members absent: Susan Licata Haroutunian.

Others present: Michelle Wilsey, Board Assistant; David Shaltz, Residential Ratepayer Consortium (RRC); John Liskey, Citizens Against Rate Excess (CARE); Connie Groh (CARE); Bob Burns, Citizens Against Rate Excess (CARE); Don Keskey, Michigan Community Action Agency Association (MCAAAA); Pam Ferris, Michigan Community Action Agency Association (MCAAAA); Christopher Bzdok, Michigan Environmental Council (MEC); Wes VanMalsen, LARA Procurement and Budget Services; James Ault, Michigan Electric & Gas.

II. Approval of Agenda

MacInnes proposed approval of the agenda including the consent items. Smith moved, second by Isely and motion carried to approve the agenda with the consent items.

III. Business Items

a. Care Grant Request

Liskey updated the board stating that CARE grant request is in essence a resubmission of the original grant proposed at the August 27, 2012 meeting. He stated that the original request for the six reconciliation cases had been proposed at \$76,000, and \$76,000 was also proposed for the plan cases. He indicated that the board had reduced the proposed amount for the plan cases from \$76,000 to \$65,000. While accepting the board's decision for the reduction, Liskey noted that CARE would prefer the full proposed grant amount of \$76,000. Liskey stated that the cases have not been filed and that no specific issues could be listed.

Liskey gave a brief historical on the success of the cases. He noted that with the UPPCO case, uncollectibles in the amount of \$856,000 were discovered that were included in the power supply cost. CARE challenged various hedging strategies, stating these would be the issues they intend to look into. CARE will continue to investigate issues such as management decisions related to WEPCo's Elm Rd. facilities. Specifically, in 2011 Elm Rd. Unit 1, a new facility, was offline 40% and WEPCo had to go into the MISO market to buy replacement power. CARE believes WEPCO, not residential rate payers, should pay the additional cost due to their mismanagement.

MacInnes raised the issue of WEPCo working with Wolverine Power Supply Co-operation, Inc. on the upgrade of the Presque Isle 400 megawatt coal plant. He asked if CARE would be looking at that relationship and related capital expense for items such as upgrade of emission controls. Liskey responded that those expenses would be part of the next plan case. He suggested CARE would review the issues with their experts and determine if they could address the issues in a PSCR case and resources.

MacInnes stated that it would be of interest to the board to understand plans for repowering the 40 yr old Wolverine Power plant (i.e., how long the plant will operate, what will be going on, and how costs are going to

be passed to the ratepayers). Wilsey suggested looking at WEPCo's five year plan in the next plan case to see if there are any issues or impacts projected for the Wolverine Power plant project.

Smith requested clarification on budget items and amounts as to where CARE intends to use additional monies if an amount greater than previous year is granted. Liskey indicated the additional expenditures would likely be allocated to the I&M case because it is a nuclear facility, and they have had some outage, replacement power, upgrade and retrofit issues. MacInnes asked what plans were to fix the facility? Liskey did not know what the specific plans were as he wasn't in that case.

b. MEC Grant Amendment Request

I&M Power Discussion

Prior to addressing the MEC grant amendment request, Bzdok offered insight to the previous question from Smith and MacInnes regarding I&M Power retrofit.

Bzdok stated that MEC did participate in that case, collaborating with a similar consumer advocate organization in Indiana. It was not a UCRF funded case intervention. Bzdok offered that it was referred to as a life extension project. Essentially it was a long list of projects they told FERC they would do for the 20-year relicense life extension. In essence it appeared to Bzdok that they were just replacing a lot of old parts. Bzdok noted that steam generator work was involved and they were upgrading their control systems from analog to digital.

Bzdok noted the attorney general contested the Certificate of Need (CON). The attorney general took the position that this set of life extension projects did not constitute the type of generation investment that was eligible for a CON. The certificate of need is a pre-approval based on an integrated resource plan of the expenses that are forecasted. The Commission did find that it was eligible for a CON. Per Bzdok, the attorney general and MPSC staff were also litigating an issue related to a contingency fund, and there were questions on what level of contingency should be preapproved. The ALJ did grant a reduction which was generally upheld by the Commission.

MEC was mainly litigating an issue about the nature of the showing of what needed to be done in order to support the integrated resource plane to obtain the CON. The company took the position that with a nuclear plant, maintenance projects are the most economic plan for a generation investment. Bzdok noted that it didn't excuse them under the statute from doing all the mandatory analyses of all the other potential options and doing them with a level of rigor. He stated that MEC's goal was precedential and that when other similar cases come up, the Commission did establish a plan for examination and analyses of diverse options. Bzdok offered the Board a list of the life extension projects that was compiled in for the Indiana consumer advocate organization. MacInnes accepted stating he would like to see what is involved in extending a license 20 years.

Wilsey sought clarification on whether the I&M issues discussed were relevant to this PSCR Reconciliation case and were a factor for the use of additional funds. Liskey offered that it would not be in the 2011 reconciliation. Voluminous discovery for I&M power, in part due to the nuclear facility, was where any additional funds, if granted, would be expended.

MEC Grant Amendment Requests

Bzdok explained that the request presented to the board falls into two categories. The board may defer a decision on the second category but the intent is to present grant requests for the rest of year for review and consideration by the board. The first category is the two 2012 PSCR reconciliation cases for Consumers and for Detroit Edison, and the second category are renewable energy cases of two types.

On the PSCR reconciliations, a detailed memo is provided to give the board information on the case and the strategy and issues involved, and the results expected. The PSCR reconciliation funding requests are for the same total amount as made in MEC's original application submitted last July. However the amount allocated for Consumers Energy case has been reallocated to Detroit Edison.

MEC feels they have maximized the benefit for ratepayers out of the Biomass Merchant Plant (BMP) request for excess fuel and variable costs that Consumers can collect in PSCR cases under the statute. MacInnes noted it would be interesting to see the fuel cost pricing. Bzdok said they examined it down to facility level and they fell into a broad range of reasonableness. Essentially, MEC does not expect BMPs will be a subject of additional effort based on the results of the last case.

Increased emphasis on the Detroit Edison case is driven by some previous success, and a very large under-recovery that Detroit Edison generated in 2011. Detroit Edison has refused so far in their plan case to answer questions about their under-recovery or over-recovery in 2012. MEC is studying a pattern where their net purchases over sales expense comes in higher than they project by a significant amount, and their generation comes in lower than they project by a significant amount. This involves figuring out dispatch, outages, etc. MEC believes there are significant dollars involved and therefore, have requested more resources for the Detroit Edison case.

On the renewable side, the board has previously approved UCRF funding for MEC participation in renewable cases. Bzdok noted that the attorney general has made a determination that Act 295 cases are PSCR eligible because of the expenses recovered through the PSCR and is considered to be power supply cost under the statute. MEC's initial application was for funding for the two renewable energy reconciliation cases. They will examine the surcharges in those cases and the accumulated balance of reserve funds that they pre-collect for those cases in reconciliations. That is why MEC anticipates these to be the primary cases within this cycle.

MEC also received a discovery response from Detroit Edison in the current renewable energy reconciliation case that indicated that their renewable energy biennial review is going to be filed earlier than previously thought. MEC expected it to be in December of this year (two years after the last order in a biennial review), but it's going to be filed in early June (two years after the order in the very first renewable energy plan case). So it will be filed within this fiscal year.

Smith asked Bzdok if there was any potential synergy between the work of MEC and MCAAA on PSCR cases. Bzdok said it has not been discussed specifically but testimony that MCAAA submits and testimony submitted by MEC focuses on different issues. Smith noted that the board has questioned the relative efficiency of having multiple grantees on a single case. While there is some justification and benefit for diversity of views, testimony, experts, etc. and there wasn't a track record of conflict or overlap, Smith feels it's in the board's interest to make sure that when the board approves investments for multiple grantees in a common case, that there is awareness and consideration of what synergies can develop from that. He asked Bzdok for any thoughts about how to enhance that system?

Bzdok noted that he would have to consider the synergy question. However, there is complementarity with different parties in the case. He gave the example from the Consumers PSCR reconciliation case. The MEC expert was focused on the comparative modeling that Consumers did relative to the dispatch mode of the Zeeland plant, whether it was base load or cycling, and that's an issue where he spends a lot of his time, and then if another party has an expert who's providing testimony on other issues, it's almost like you've divided the issues, you know, to some extent, and then there's, and then there's some complementarity in the briefing.

Bzdok noted that complementarity evolves, it is not by design. Smith asked if there would be a way to plan it more intentionally. Bzdok noted that there is consultation with the attorney general going into a case. They are open to this with any party. Smith asked Bzdok if MEC would be uncomfortable if the board added a contingency clause for a strategic meeting for UCRF funded parties in a common case. Bzdok noted that he would be comfortable with an affirmative coordination clause as a condition of a grant. Wilsey noted the REF issues in the Detroit Edison case is an area where the board may want to consider such a contingency. Smith indicated that he would be comfortable with reporting back via the chairman to satisfy the contingency. Bzdok noted they have increased the detail of their reporting, so that affirmative coordination could be included in that as well. MacInnes noted that it would be similar to the MISO reporting pursuant to that grant approval.

Isely asked if it was possible MEC would have more information on the biennial reviews given the filing is expected after the April UCPB meeting? Bzdok responded that he doesn't affirmatively know of any additional information they will have prior to the April meeting. MacInnes asked if they would have any additional information on their new wind projects, the Huron wind project for instance? Bzdok responded, yes.

Bzdok explained that in this reconciliation case, MEC has focused on two main things; one is transfer price, and the other is surcharge revenue and revenue requirements of the utility. In regard to transfer price, MEC feels Detroit Edison's move to adopt the MPSC Staff's transfer prices after a certain point was good. MEC has urged the commission to adopt the Staff's model for the entirety.

MEC is also reviewing what actual revenues from surcharges will be compared with actual revenue requirements of Detroit Edison. Revenue requirements and projections of costs for projects are more difficult to study in PSCR cases but are contestable in the biennial review. MEC is aware that prices on contract generation are far below projections. Detroit Edison has not updated its projections for its own projects. In the biennial review MEC will be able to study updated projections or contest plans for building more expensive generation v. buying it under contract. Capacity factor, transfer price, depreciation rates all comes together in the biennial review. That is why MEC has shifted most of the funding from the renewable reconciliations to the Detroit Edison biennial review.

MEC is also requesting funds for the Consumers biennial review. That is a placeholder. Consumers is charging residential customers almost \$30 per year less than Detroit Edison for renewable energy. So that is why the focus remains on the Edison cases and the biennial is the most important if they had to pick from the four.

MEC initially requested and was granted some funds in the Consumers Reconciliation case however, most of the funds were used in the Edison case. MEC did file a briefing in the Consumers case to monitor and pursue any positive precedents from the case.

c. MCAAA Grant Request – Application for the 2012 PSCR Reconciliation Cases, 2012 GCR Reconciliation Cases

Keskey stated that MCAAA is seeking a supplemental grant for four cases. Two of them are in the PSCR areas and two of them are in the gas areas.

The DECo reconciliation case is for 2012 (U-16892-R). Keskey stated that the major focus in the last four cases on this issue is the REF issue. He stated that MCAAA has filed extensive testimony on U-16434 (plan case 2010); U-16047-R (reconciliation case 2010); U-16892 (plan case 2011); and U-16434-R (reconciliation for 2011). He feels MCAAA has had a major impact on the REF issues.

In response to MCAA witness testimony, the utility filed hundreds of pages of documents, including 800 pages of contracts. This resulted in additional surrebuttal and additional proceedings on that case (U-16434-R – 2010 reconciliation case). This is the first year the intervenors can capture refunds, offsets because the tax credits generated by the REF program were started around 2010. He offered that with each reconciliation case the remedies for the ratepayers can be captured for this 10-year tax credit program.

Keskey stated that because the fuel companies were established as subsidiaries under the parent company DTE rather than under DECo, the tax code permits tax credits to be captured through a separate subsidiary regardless whether it was a separate subsidiary under the unregulated parent company or the regulated utility. Keskey noted that MCAA has asserted that this tax credit is immense, stating that in 2010 \$6.33 per ton times billions of tons, would be a substantial cost reduction to the coal cost (directly flowed under Act 304), which in turn would allow coal plants for Edison to be more competitive in the MISO market.

Keskey offered that MISO is starting to generate more energy from natural gas and nuclear rather than coal. This in turn has caused utilities like Edison and Consumers to cycle their coal plants or renegotiate coal contracts (perhaps even paying penalties for renegotiating the contracts). Keskey holds that the monetized tax credit revenues should offset the coal costs, which would affect MISO transactions (an indirect impact of Act 304). He further objects to the substantial cross-subsidization, which violates the Code of Conduct and decades of utility law and regulation. He provided examples of the parties in the coal supply chain that are also involved in that coal acquisition for DECo. Their objective in the Edison case is to continue to investigate these kind of cross-subsidization and interaffiliate abuses that can occur. MacInnes asked Keskey if he could provide some organization charts about the relationship between these entities. Keskey responded that they had included some organizational charts in their filed testimony. MacInnes asked him to pick one that you think has a lot of potential opportunity for ratepayers and walk the board through it. It could be included in board education.

The next case discussed was the Consumer reconciliation, 16890-R. In the recent plan case U-16890, MCAA pursued issues such as capital costs for transportation of gas in Consumers PSCR filing, and the statute expressly disallows that. Capital costs should be recovered in base rates. Another issue the case will deal with is that in the year 2012, Consumers had the option to buy the Zeeland pipeline. According to our expert CPA witness, this was the least cost option for Consumers. They deferred the purchase for another 5 years and continued to pay the transportation demand charges.

MCAA is also examining the 15-yr purchase power agreement (PPA) Consumers has with Palisades nuclear plant, and the long-term contract with the MCV gas plant. Gas and nuclear are the least expensive fuels. The Palisades Energy PPA and the MCV PPA comprise 25 percent of the energy and capacity that goes to Consumers Energy for the benefit of MISO transactions. The question is how well they are performing under the PPAs in terms of the cost of the energy that they pay under these PPAs with the revenues they get back from MISO to Consumers' credit.

MacInnes asked if it is a variable-cost PPA or is there a fixed rate? Keskey responded that capacity is a fixed cost, and energy is variable. Keskey explained that for MCV they focus some on the variable costs and some on the capacity costs, and on the nuclear side, there are capacity costs and energy costs. Consumers can earn a margin on their transactions credited from MISO on the energy piece of gas and nuclear, but when you add their capacity costs and their energy costs together, the witness said that they were negative. Even in 2012 when MISO was generating as much natural gas as it could, Consumers is incurring a negative margin when you add their PPA costs compared to what they're getting from MISO, which is a little disturbing when it's 25 percent of your base. Keskey indicated there were several issues, including outages, that required further investigation.

MCAAA would continue to investigate the PPA issues raised in the plan case. They also want further understanding of the Consumers Energy plan to build or expand their gas cycling plant capacity.

On the gas cases, U-16482-R is the reconciliation from MichCon. The schedule is expanded or extended for the filing of testimony to February 26, so there's time for us to build on the issues that we had focused on in the plan case. We've looked at the MGAT pricing with affiliates and the fixed versus index pricing, gas storage levels, use of contingent base gas for avoiding price spikes where possible. MCAAA also participated in the MichCon base rate case, U-16999, which was settled. Keskey credits their intervention for two or three good provisions put into the settlement. MCAAA now wants to make sure that the settlement in the base rate case aligns with the cost impacts of the GCR.

With respect to the Consumer Energy gas case, U-16485-R, the testimony date for filing was January 31. MCAAA does not plan to file testimony on January 31, but would like to participate in the case. MCAAA believes they can have an impact in the rebuttal phase. Keskey described issues that they could address in the case. He explained that MCAAA wanted to put a little bit more emphasis on the MichCon case, and if necessary, transfer funds later.

Keskey noted MCAAA was very active in the most recent base rate cases for both MichCon and Consumers, and we were involved in both of the GCR plan cases. This would be the opportunity to follow through on the issues that we had in those cases and try to pin down numbers and results. A reconciliation case is where you look at that period of time, and it's still very timely to do that, particularly in the MichCon case, and some in the Consumers case as well.

MacInnes asked Keskey if for the PPAs for MCV and the nuclear plant, he could provide the board with a summary of the major terms of the PPA once they do the review. For example – price, capacity payment, term, amount fixed, amount variable, index for the gas pricing, etc. It should fit on one page for each PPA. Keskey responded that he could do that.

At 2:26 p.m., there was a 20-minute recess

Grants Awarded

Motion by Isely, second by Smith and motion carried to approve the CARE 2013 Grant Request for the 2012 PSCR Reconciliation cases for the utilities requested in the total amount of \$65,000. Smith noted he was particularly interested in the sufficiency of funding for the nuclear case. He asked Liskey to provide feedback to the board after a detailed analysis of the case.

Motion by Isely, second by Smith and motion carried to approve the MEC 2013 Grant Request for the 2012 PSCR Reconciliation cases for CECO and DECO in the total amount of \$ 70,700 contingent on a strategy meeting with other grantees involved in the case with the goal of maximizing use of UCRF funds and to avoid unproductive duplication. Results of strategic meetings involving UCRF funds will be reported to the board.

Consideration of the CECO/DECO 2012 RE Reconciliation cases and 2013 Biennial Plan Reviews are deferred to the next regular meeting.

Motion by Isely, second by Dinkgrave to approve the MCAAA 2013 Grant Request for the 2012 PSCR Reconciliation cases for CECO and DECO in the total amount of \$ 50,096 and for the 2012 GCR Reconciliation cases for CECO and Michcon in the total amount of \$ 12,524 contingent on a strategy meeting with other

grantees involved in the case with the goal of maximizing use of UCRF funds and to avoid unproductive duplication. Results of strategic meetings involving UCRF funds will be reported to the board.

Budgets may be reallocated for approved amounts and approved cases by the grantees.

IV. Public Comment –

a. MISO Update - Liskey thanked the board for the grant awarded to CARE, stating that the Chairman of the Michigan Public Service Commission and the MPSC staff are very appreciative of the help CARE provides in the MISO arena. Liskey stated that they have been invited to make a presentation to the full Commission at the first public hearing of the governor's six public hearings across Michigan. Ken Rose will make the presentation to the Commission on February 14, 2013. MacInnes requested a copy of the presentation, and Liskey agreed and offered that it was the same presentation that Rose gave the Board.

Liskey stated that it is essentially draws attention to the fact that Michigan's congestion is causing ratepayers hundreds of millions of dollars, and with all the issues at MISO, CARE would like to impact that one in particular.

There was a brief discussion regarding the presentation that Rose gave, and mention of the slide which the governor showed, of red areas in Michigan and to the south, the objections of MISO transmission projects and the potential other transmission needs of Michigan. In general CARE commented that the state seems to be short on transmission lateral lines and as well as lines importing into the state. Transmission lines that are there tend to pull power out of the state during peak hours and not really import in. The inter-ties are insufficient for us in that they seem to actually drain the state of power. MISO is starting a discussion with PJM on strengthening the inter-ties. That is another issue related to reducing congestion. MacInnes noted that based on the operations research work, that even though many of the MVP lines are outside the state, there are benefits and reduced costs for Michigan. CARE expert agreed to a certain extent but felt the inter-tie issue was crucial. CARE also noted that congestion isn't just about building transmission lines, it's about figuring out how you can possibly find those energy efficiency plans, geo-locate projects so that you can relieve congestion. MacInnes commented that it would be a big help if Consumers built the combined cycle plant in Saginaw. CARE is pursuing these issues and has a partial vote in the Public Advocate Sector. Specifically, CARE took the position that End Point (EP) node prices need to be publicly available. This would allow geo-location of energy efficiency projects. There was further discussion of EP and Commercial Pricing (CP) nodes in Michigan.

Another area CARE is involved in is supply adequacy. CARE's comments basically focus on market monitoring. CARE is asking that the revised tariff language that's being put forward would include an independent market monitoring study that's independent of all the market participants, but also separate from the independent market monitor, who is actually an employee of MISO, and that we do performance assessments on the capacity auctions, and that information from that be available to the state attorney generals, the government agencies, and FERC. This mirrors the procedures and practices of PJM, so it should be highly controversial.

MacInnes asked CARE if they intend to get involved in the seams issue. Liskey noted they are not currently. Commissioner White may be addressing that issue. MacInnes noted that was critical to the transmission solution. MacInnes asked if it would be worthwhile to coordinate with ITC.

Groh discussed the planning advisory committee conference call from January 30, 2013. She stated that the big debate was regarding the future of gas pricing. Groh explained the MISO transmission expansion planning, stating that basically it is looked at under several scenarios, different for every single MTEP plan.

She stated that this year is MTEP 13 and the different scenarios they will use are business as usual, assuming everything continues as it is; robust economy, which assumes the recession is over and things start going really well; limited growth, in the event that we sink back into a recession or near recession; generation shift, which focuses on the retirements of various plants, and environmental, where the EPA gets really active and imposes more.

Models will be run on each of these scenarios, and a transmission plan will be made: “the transmission plan that is the best fit or the most robust against all these scenarios should offer the most future value in supporting the future resource mix.” During the annual cycle of approving transmission projects, the best fit scenario will be used to decide what project gets approved or what place in line it has.

MTEP 13 is close to be finalized, and MISO looked for a vote on January 30th. No vote was made because the Commission could not agree on how to model gas prices. Because the Commission could not agree on which scenario to use, an alternative plan was made. Every sector except the transmission owners wanted to amend the motion to approve MTEP. She indicated that the transmission owners were not in favor because the new proposal has an over/under of 20 percent higher, and that doesn’t capture adequately the possible volatility and it’s too arbitrary.

Groh stated currently there was a motion to amend the proposal that was voted on to substitute the new modeling proposal, and was passed seven to one, with only the transmission owners objecting. This is now out for vote, and Groh indicated that most people in (our) sector are quite vocal in favor of the new proposal, the end user’s proposal. She mentioned that the vote can be split.

Burns added that the old proposal, which the transmission owners support, gas prices start off at different prices for the scenarios presented. He mentioned that the new proposal uses current price of gas. He stated that they will use NYMEX for three years and then use the EIA, noting that NYMEX is unreliable after three years. Burns also noted that what is driving the gas market is the quest for wet gas and the condensates. He mentioned that if this continues, the price of gas will more than likely be depressed. He stated that there is a question as to how much gas there really is, how much can be recovered, and where is it, adding that will affect the gas in the MISO region. He speculated that they will be looking for storage if they have oversupply of gas, and he stated that Michigan is number one in the country for gas storage, mentioning that people are trying to buy up old fields in western Ohio for potential gas storage. He offered that in the short and medium terms, gas prices are going to track NYMEX and the EIA fairly closely, and in the long term (2035) it is too difficult to speculate. He stated that this will be looked at and updated every year, and they do a new MTEP every year. He indicated that scenarios will change as things change.

Liskey mentioned that in April he will ask to Board to consider if additional funds will need to be requested for the remainder of the year if the Board wants to be involved in the seams committee.

MacInnes inquired as to the future in terms of low growth in respect to the scenarios presented, and Groh responded stating they will use the EGEAS and PROMOD models. She indicated that they will look at all the scenarios before deciding on what MTEP 13 will use, and make predictions accordingly. She stated that the plan is truly to come up with a robust transmission plan that has taken all scenarios into consideration without speculating.

Further discussion was made on the outcomes of the scenarios, for example in the case of a robust economy, how would high growth impact natural gas prices. They will look at this in all cases of impacts for high, medium and low for future scenarios.

b. REF Organization Chart discussion- Bzdok gave a brief presentation of the REF Organizational Chart, noting that not all elements of the organization chart are included in this discussion, stating just the important players relative to this project.

Bzdok indicated that DTE Energy company is at the top of the chart with Detroit Edison, the regulated utility below. Next is DTE Energy Services, and below that is DTE REF Holdings (LLC). He indicated that there are three units in Michigan owned by DTE REF Holdings, Belle River (BR1, BR2, BR3), Monroe (M1, M2, M3) and St. Clair (StC1, StC2, StC3). Each of these units are separate LLCs, and each represents a separate REF unit.

Bzdok noted that in order for Section 45 tax credits for the clean coal tax credits to be generated, each unit had to be put in service in 2011. He stated that the units can be put in service and then taken off line and still be considered in service. At each site only one of the three units is actually considered to run long term. The others, he indicated, are not being used for anything at present. The speculation is that the other units, which are separate LLCs will be used to attract buyers for its use at another power plant. He further indicated that it is difficult to get clarity from the company as to the status of these other units.

Bzdok mentioned that Detroit Edison has contracts with each of these facilities called Refined Coal Supply Agreement (RSCA). The RSCA is the agreement that basically says the REF companies will supply coal to Detroit Edison.

Bzdok offered that DTE Energy Services (DTEES) or DTE REF Holdings sells an interest (99%) in these LLCs to a third party tax investor, who is basically buying the value of the tax credits discounted, and DTE gets the cash payment upfront. At this time, it is uncertain to the exact amount of the payments made to DTE.

Bzdok explained that under Section 45, various affiliates are allowed to buy and sell for each other. He also explained that other issues exist with regards to the creation of the LLCs and who holds the licenses to use the technology. Keskey add that there is speculation that the LLCs have been set up for the sole purpose to get the tax credits, monetize them for the benefit of the parent holding company.

Bzdok further explained the Refined Coal Supply Agreement is the agreement where the REF companies sell refined coal to Detroit Edison. The Coal Handling and Consulting is where Detroit Edison performs basically all the things that Detroit Edison used to do itself, e.g., getting bids for coal, acquiring the coal, getting the coal to the plant. They now contract to do that at cost for these REF LLCs. The Coal Inventory Purchase Agreement is an agreement where the REF companies buy the coal. Coal is transported to a certain point, and under the Coal Inventory Purchase Agreement, the REF companies buy the coal from Detroit Edison. They then pay Detroit Edison's costs to handle, acquire and transport the coal to the plants where they refine it. They refine it on the plant site under a Site License and Service Agreement, which is basically a lease for that portion of the property. One of the things that came out in cross is that the lease doesn't include the coal yard, so Detroit Edison stores all the coal for free, because it's just stored in the coal pile. They refine it and then just prior to the point of burning, they sell it back to Detroit Edison. The basic agreement has different structures depending on which of these companies it is. At St. Clair and at Belle River for example, the sellback is just for cost plus an REF adder. At Monroe, there's an actual discount, the coal is actually sold back for less than the REF company bought it from Detroit Edison for to represent the value. Tax credits cannot be generated unless you have coal to refine and then sell. Nationally, this is how these agreements tend to work.

Basically Detroit Edison, buys the coal, the title to the coal transfers to the REF companies, Detroit Edison does all the work at cost. There are questions raised under the Code of Conduct, if Detroit Edison is performing these services at cost, is that really market value? The ALJ asked questions like this in a recent case. Specifically, if the company was providing all these coal handling and consulting services for another utility, you would include

some kind of a profit margin in your bid, the market price would include some kind of a profit. He discussed other cross-subsidization issues as well. He indicated that it is the four agreements between these affiliates that comprise the main REF issues. Keskey noted that while money is being generated, it is not offsetting any coal costs. Future savings may occur if REF process does reduce emissions, but that is speculative. The utility argues this does not raise the costs under Act 304, but MCAAA's position is that there should be some credit or benefit for the reduced net cost of coal.

V. Next meeting – The next meeting of the board is scheduled Monday, April 15, 2013 at 11:00 a.m.

VI. Adjournment – The meeting adjourned at 3:49 p.m.

Recorded by:

Michelle Wilsey, Board Assistant
Utility Consumer Participation Board

Transcript available.