

UTILITY CONSUMER PARTICIPATION BOARD

August 4, 2014

MINUTES

A meeting of the Utility Consumer Participation Board was held Monday, August 4, 2014, in the Ottawa Building, 4th Floor Training Room, Lansing, Michigan.

I. Call to Order

Jim MacInnes called the meeting to order at 12:43 p.m. Board members present: James MacInnes, Chairperson, Paul Isely, Vice Chairperson, Susan Licata Haroutunian, Conan Smith (teleconference), and Ryan Dinkgrave. Member absent: None.

Others present: Michelle Wilsey, UCPB Board Assistant, Christopher Bzdok, Michigan Environmental Council (MEC), John Liskey, Citizens Against Rate Excess (CARE), Dan Scripps, Institute for Energy Innovation (IEI), Douglas Jester, IEI and CARE; David Shaltz, Residential Ratepayer Consortium (RRC), Don Keskey, Great Lakes Renewable Energy Association (GLREA), James Clift (MEC), LeAnn Droste, State of Michigan Department of Licensing and Regulatory Affairs (LARA), Shawn Worden, LARA, Allan Pohl, LARA, Michael Moody, Attorney General's Office, James Ault, Michigan Electric and Gas Association (MEGA).

a. Approval of Consent Agenda

MacInnes offered the following additions to the consent agenda: business Item (h), CARE transfer request relating to UPPCO and WPS and (i) discussion on board assistant contract and statement of work. Dinkgrave moved, second by Isely and motion carried to approve the consent agenda as amended.

II. Business Items

a. State of Michigan budget process and current fund balance of the UCRF

Pohl briefly discussed the State budget process, focusing on appropriations and spending authority. He further explained the UCRF funding. He noted that until approximately 2006, the spending appropriation for the board was \$550,000 to fund grants and administrative expenses with a separate amount appropriated to the AG office. In 2006, the board sought approval to increase the spending authority to allow more funding for grants from the unspent fund balance. In 2007, the spending authorization was increased to \$950,000. The annual revenues remained approximately \$500,000 and unspent funds were drawn down. So essentially from 2007 until right. According to Pohl, "... now, we've exceeded the available fund balance that's -- for board awards. We've actually spent about a million and a half more than revenue that was attributable to the board..." Pohl requested the board not award any additional funds in FY2014 and no more than \$342,000 in grants in FY2015. He explained that it is a one-year fix, but then funding will again be at the current revenue of approximately \$550,000.

There was extensive discussion of the budgetary process, Act 304 funding of the AG office, financial reporting by LARA to the board, historical allocations, balance sheets, interpretation of the Act 304 statute regarding unspent funds (ie., reserve), communication between the AG and Board, the current Act 304 financial status of the board and AG office, and proposals for understanding and resolving the "deficit" issue. Complete details of the discussion are available in the meeting transcript, pp. 4-67.

Following the discussion, MacInnes suggested the Board, AG and LARA formulate some kind of amortization plan as an interim solution, while the issue is being worked out. He noted Pohl's request that no additional

awards for the 2014 grant year would be granted. Pohl noted that any amortization would reduce future available revenues. MacInnes acknowledged his point. He directed Wilsey to work with the other parties to develop a proposal for the board for handling 2015 grants, including amortization and accounting of past spending, prior to the next meeting scheduled August 25, 2014. Liskey noted that in a recent settlement with UPPCO, there was an agreement to contribute \$25,000 to the board that should be credited to this fund. Moody noted that only the board can accept gifts per the statute, not the AG.

b. RRC Grant Request for 2013-2014 GCR Reconciliation Cases

Shultz reported that he was advised prior to the meeting that the board may not be able to award funds for any further 2014 grant requests. He therefore, received approval from his client to move forward in the four GCR reconciliation cases on a pro bono basis at present, and instead, will include a request for funding and approval of these cases in their 2015 grant request. He deferred presentation on the request to the next meeting.

c. GLREA Supplemental Grant Request and Request for Grant Extension--UCRF Grant
14-05

Keskey presented the request for \$30,300 in additional grant funds for cases U-17095-R CE PSCR Recon and U-17097-R 2013 DTE PSCR Recon and a 14 month extension for the cases. He requested the board consider approval of the request as hearings were coming up in about eight days, and there's no more expert funding for the expert to present his testimony. Keskey commented that he was unclear as to the funding situation. He also discussed the possibility of carrying this request over to the FY15 grants. Wilsey noted that the board could consider extension of the grant with or without approving additional funds. The grantee could include these cases in FY15 grant but, if approved, would have to close the FY14 grant prior to the funds being available. Keskey noted that an option may be to transfer existing funds from legal to expert and requested that the board consider authorizing a redistribution of funds within an approved budget from one line item to the other.

d. MEC 14-03 Grant Amendment – Budget Transfer

Bzdok presented the MEC request to transfer \$3,143 from U-17322 2012 DTE RE Reconciliation Case to the 2013 DTE RE Reconciliation Case. He noted that in their report, they provided the board with an update on activities in renewable energy cases. They are seeking to transfer funds from the reconciliation, which is ongoing. The hearing was held, arguments were included in the report to the board, and they are waiting the PFD.

An order was issued in the renewable energy depreciation case. They provided an analysis in which they determined the order was worth about \$35 million over the next 15 years, or about 15 percent reduction in surcharge reduction for all customer classes.

Essentially the request is to move the money from the one case which was remaining into the next case to try to keep pressure on these issues. This is a relatively modest transfer to allow MEC to enter the cases and to discern issues and future direction.

e. MEC 14-03 Grant Amendment – Additional Funding

Bzdok requested deferral of the request until there is more clarity on the board's funding.

f. CARE and MEC Joint Submission for August 4th UCPB Meeting

Bzdok reported that the request presented to the board is a joint request between MEC and between CARE. He requested direction given the financial situation of the board. MacInnes and Isely requested a brief overview of the request. Bzdok noted, at the last meeting of the board, there was extensive discussion of

the new cost-of-service case statute and also about the companion bill that was allowing for participation by intervenors funded by the UCPB in those cases. The statutes have passed. He provided a brief explanation of the history and provided perspective on the impetus for the statutes. He described previous cases, and workgroups in which cost of service had been an issue and the potential impact on residential customers based on that experience. In the Consumers case, the shift from industrials to residential customers was in the \$50 million range. A report from Douglas Jester on the industrial work groups' proposals indicated shifts of costs to residential customers in Consumers of 51.5 million and in DTE of about \$70.3 million.

In addition to the cost shift, there's an expectation that rates are going to be reallocated and there's potential for significant redesign of rates as well. This proposed intervention is consistent with the Board's priority to support efforts both to protect residential customers and also to attempt to advocate policy issues that could help do things like shaving peaks and being more responsive to variable costs and other options. These cases are an opportunity to engage on those things rather than just reallocating all of these costs, and then considering other options at some indefinite point down the road.

The goal is to defend against the reallocation of the costs and to focus on these larger policy and rate design issues. The workplan includes this two-prong, offensive and defensive approach. The CARE team will lead the offense strategy on the rate design and policy issues, and MEC will lead the defense with the cost allocation expert and primary litigation team. CARE's legal team will also be involved in strategy.

Jester explained the perspective is that if we're going to continue shifting costs over on to residential ratepayers, it is imperative to give them opportunities to avoid those costs by acting differently and rationally.

MacInnes asked about AMI availability. Jester responded that in the case of DTE, it's well above 50 percent; in the case of Consumers, they're just beginning, but they're both expecting to have it fully deployed in 2017. MacInnes asked if the approach would be to work with that information as it becomes available to help residential ratepayers make better energy decisions? Jester responded, yes. Moody noted this might be a good area for cooperation with the AG office.

MacInnes suggested parties attend the upcoming National Governors Association Peak Shaving event and provided details and contact information.

Isely asked what the timing is on the proposal and cost of service cases? Liskey responded that under the statute, the Public Service Commission is required to initiate cases for DTE and Consumers 60 days after the enrollment of the bill, which is around August 16 or 17. Then the utilities have 60 days to submit their initial plans, which is mid October. The ALJ would then hold the hearing to decide on intervenors and other preliminary items.

g. 2013 UCPB Annual Report

Wilsey presented the draft annual report for comment. Isely moved, second by Haroutunian and motion carried to approve the draft report for comment and review.

h. CARE Transfer Request

This is a request to transfer \$7,000 from the UPPCO 2013 reconciliation case to the Wisconsin Public Service Corporation 2013 reconciliation case. CARE expects the UPPCO case to settle. At the same time, CARE discovered some issues on the WPS case which require more discovery. An issue of concern relates to a concept called "take or pay". This is a type of long-term contract utilities often enter into for railroad

transport or coal purchase that requires them to purchase the minimum amount or incur a penalty. CARE discovered over \$680,000 that is being sought in this WPS case that we would like to find out more information. The expense was denied by the Wisconsin Commission, and it's now being sought here in the Michigan case.

At 2:42 p.m., there was a 25-minute recess

i. Board Assistant Contract

Wilsey explained that this would be the normal time of the year to consider the board assistant contract. Given the financial circumstances and her personal circumstances, she was seeking direction from the board. The financial constraints have been discussed. Her business and travel commitments have increased. In light of these issues she presented various options for the board's consideration:

1. Retain the current board assistant with a more limited scope contract focusing on analysis, education, special projects and not on routine administrative tasks such as minutes, agendas, etc.
2. Seek a new board assistant to handle the full scope of work currently in place.
3. Eliminate the board assistant and rely on LARA for board and administrative support.

Following discussion, the board directed Wilsey to prepare a proposal for a limited scope contract and initiate discussion with LARA on some appropriate redistribution of duties.

MacInnes called for any motions on the business items presented.

Dinkgrave moved, second by Isely, and motion carried to approve authorization for GLREA to redistribute approved funds in Case U-17317 and U-17319 between legal and expert line items as determined by the grantee, and to extend the expiration date of the grant 12 months. No new funds are granted at this time.

Dinkgrave moved, second by Haroutunian, and motion carried to approve the MEC request to transfer funds in the total amount of \$3,143.75 from the 2012 DTE renewable energy reconciliation case to the 2013 DTE renewable energy reconciliation case. No new funds are granted at this time.

Dinkgrave moved, second by Isely, and motion carried move to approve the CARE grant amendment request to transfer \$7,000 from UPPCO 2013 reconciliation Case U-17091-R to the WPS 2013 reconciliation Case U-17092-R.

III. Grantee Reports

IEI – Dan Scripps reported on IEI's involvement in DTE PSCR case for 2014, U-17319. Testimony of expert Doug Jester was submitted June 10 focusing on three issues. The first was wholesale market operations where we looked at the bids that DTE put into MISO for their expected demand in the day-ahead fashion, and found that at times the Company's day-ahead demand bids differed by more than two gigawatts from what they actually needed. However, there was no bias detected. They did note that for a relatively modest amount of money, maybe the Company could reduce its errors by 30 to 50 percent, and that could save ratepayers approximately \$10 million per year. They are not seeking relief but are asking the Commission to look more closely in the future to where the day-ahead bids are and whether they're doing as much as they could and should be doing to be accurate in those bids. The second issue that have been pursuing is

whether they are maximizing energy optimization, energy efficiency programs as a way of offsetting the need for power purchases, or power supply purchases. The potential savings are substantial. This was studied as part of the Governor's data-gathering effort. Some recent reports showed that pursuing cost-effective measures limited only by the utility realities, not limited by the statutory constraints, could generate an additional \$14 billion of savings between now and 5 2023. IEI is not asking for relief this year, but encouraging the five-year plans on a going-forward basis to go beyond simply sort of what they're required to get, the one percent per year under the current law, and looking more at what is truly cost effective. The third issue we've raised is distribution system voltage control. The findings of our expert is that voltage optimization could reduce total energy consumption by one and a half to two and a half percent and reduce peak loads by two and a half to four percent, so again, potentially significant savings using some relatively cost-effective measures that would not only improve the economic performance of the utility and lower or reduce rates for residential ratepayers, but 20 also help to modernize the distribution system. DTE submitted its rebuttal testimony on July 25. They took issue with IEI's position on the wholesale market operations, they did not address IEI's contentions on energy optimization or distribution system voltage control. They are awaiting briefs. PFD is scheduled for November 17.

The other case IEI is involved in is the Consumers case, U-17317. Testimony is not due until next week. IEI expects to be submitting testimony on the same issues. The proposed final decision date is January 9, 2015. The focus in these cases has been to identify a narrow set of issues within the scope of 304, with the potential to generate real savings for residential ratepayers and additional benefits in modernizing the energy systems of the utilities.

RRC – David Shaltz reported on the DTE Gas Company case. Because of the extreme winter, companies exceeded their colder than normal planning parameters and were forced to go out in the market and line up pipeline capacity and incremental purchases. A company like DTE Gas that had very high levels of fixed-price purchased gas in their portfolio would have been expected come out of that the best. Based on RRC's preliminary analysis, DTE performed much worse than Consumers Energy which had the lowest level of fixed-price purchases. Consumers was much more aggressive in not relying on purchasing methodologies, but actually getting out there on a daily basis lining up capacity and incremental supplies. As a result, their cost per unit of gas is about 60 cents less than DTE Gas Company. RRC hopes that the evidence will convince the Commission to cut back on DTE Gas's high levels of fixed-price purchases.

Another surprising thing that that Company has done this year, was that they filed an amendment to their GCR plan, and a second amendment at the end of April reporting that they had an under-recovery of about \$85 million from the prior year. The other gas companies in Michigan, when they reported that, filed motions for temporary orders, we went to hearing, we briefed it, and the Commission ruled on whether they would get a temporary increase. DTE Gas announced that it was going to self-implement a higher GCR factor without any Commission approval. RRC filed a motion for a cease and desist order on the 16th of July, got a hearing last week, and the judge agreed with our analysis of the law that they couldn't do that, but the judge also decided that she didn't have the power to stop them, so now we're are going to the Commission to get the ALJ's order enforced. This occurred about 40 years ago and had to be settled in Circuit Court.

GLREA – Don Keskey reported that GLREA filed testimony in U-17319 asserting that the five-year forecast case of DTE Electric, was inadequate, incomplete and faulty because they assume a flat level of contribution from solar energy sources over the next five years, and this is not consistent with what we know is going on in the real world relative to not only the growth and net metering in Michigan and the room for further expansion under the statutory limits for net metering, but also the growth in the solar energy resource in

Michigan and elsewhere. GLREA highlighted some of the benefits of solar energy and the value of solar energy in providing diversity and hedging and how well it can align with Michigan's peak summer months when the reliability of solar energy is at its highest, and how well it aligns with the air conditioning load, which is caused primarily by residential customers. GLREA expects to focus on the same issues with respect to Consumers Energy testimony filing, due next week.

Keskey noted that in a recent review of testimony from the Indiana Michigan Power case in the State of Indiana, Indiana Michigan Power has proposed adding 17 megawatts of solar power within the next year, and they are planning 700 megawatts of solar energy by 2033. Their witnesses pointed out that the advantages of expansion to solar energy is that, first of all, they can get a 30-percent tax credit from the federal government; secondly, it provides hedging, it provides diversity, and they are planning a lot of their installations at points where the Company joins the grid so they can alleviate congestion. GLREA hopes that Consumers Energy and DTE Energy would pursue the same strategies. As a point of information, MacInnes commented on the duck curve and how it relates to the solar strategy and considerations raised by GLREA. Keskey further noted that the MPSC Staff's renewable energy report issued on June 30, 2014, also pointed out that the cost of solar has declined 50 percent since 2008 when the new Act was passed, so there's some of the costs of solar are going down quite rapidly as the scope of the industry expands.

MEC – Bzdok noted that he already reported on the depreciation case. He reported on a proposal for decision 16434-R, 2011 DTE PSCR reconciliation case. One of the issues was the reduced emission fuel project. This is the third proposal for decision in a row in which the administrative law judge recommended disapproval of that project. In the first case, that ALJ recommendation, which was MCAA and MEC both involved in, was overturned by the Commission. Then in U-17097, 2013 PSCR plan, a different ALJ found again that, the reduced emission fuel project violated, among other things, the code of conduct and was unreasonable as a matter of fuel acquisition and should be disallowed. In U-16434-R, 2011 reconciliation case, the ALJ again made detailed recommendations that the REF project violated the code of conduct and should be disallowed. He also accepted an argument by MEC that was in essence in the PSCR reconciliation statute, you are supposed to disallow the cost of fuel that's obtained from an affiliate when lesser cost fuel could be available from others on the market. MEC's argument was that there was evidence in the record that others tried to sell reduced emission fuel, REF fuel, to DTE, other tax credit vendors essentially, and that that didn't get anywhere. So the ALJ recommended a disallowance of \$705,000 based on the savings at the St. Clair plant if they would have accepted bids from another REF vendor besides their own affiliate. DTE came in 170 million over on their net purchase and sales expense, which was a substantial factor driving an under-recovery for the year of \$96 million. The ALJ is recommending a disallowance of \$148 million. MEC is defending that before the Commission now. DTE has filed exceptions on the REF issue and on the net purchase and sale issue, and we filed a reply to that, and we'll see what the Commission does with that.

In U-17319, the DTE case, the board provided MEC with some funding that partially supported PROMOD modeling. One of the things we were able to show, not even with the modeling, but simply by producing some of the outputs of DTE's modeling which we now had access to, was that the Trenton Channel 7 and 8 units are -- month after month projected to be uneconomic. DTE has already announced it's going to retire Trenton Channel 8, so that's a step forward. There was an issue with Trenton Channel 7 involving an engineering connection between Trenton 7 and Trenton 9. MEC sought discovery on that. However, the Company has announced that they are going to now retire 7 in addition to 8. MEC can't claim causation from their showing in the public record and before the Commission that this unit is unprofitable every month, but certainly feel there's a strong correlation between their advocacy playing some role in the decision to retire that unit.

MacInnes raised the question of must-run designation and some of the arguments regarding the availability and cost of pipeline capacity for combined cycle units. Bzdok discussed these and determined that the costs and availability are very specific to the situation.

CARE – Liskey reported that with regard to the Wisconsin Commission filing a complaint at FERC seeking to reallocate \$26 million to Upper Peninsula ratepayers, CARE submitted comments and tried to rally others to do so. Last Tuesday FERC issued their opinion, and we lost. CARE will be meeting with the Governor's office and the Commission to figure out strategies going forward. It involves \$26 million related to the Presque Isle plant, and that does not include any additional expense needed to bring the Presque Isle plant up to the EPA standards.

Balfour Beatty is a London investment company, and they entered a purchase agreement for \$298 million to purchase the Michigan UPPCO facility. CARE initially sought grant funds from this board to intervene in the case, however, withdrew the request pursuant to the AG challenge of Act 304 permissibility. CARE entered the case on a pro bono basis because of the impact that it could have on the Upper Peninsula ratepayers, the UPPCO ratepayers, and we settled the case. The result was approximately \$26 million reduction in power supply costs going forward. As part of the settlement, the new Company agreed to commit \$25,000 to this board for future intervention.

There is also some speculation of a move to put a new gas plant up in the Upper Peninsula.

Douglas Jester reported on his activities within the MISO consumers sector as they begin to grapple with their position EPA Rule 111(d) and recommendations to MISO. He noted that the draft 111(d) rule requires utilities to do some combination of things fairly differently in order to reduce their carbon emissions. They can choose from a fairly large menu, but the big pieces are energy efficiency, improving the heat rate at existing plants, changing the dispatch order to run gas plants in preference to coal plants, and building more renewable capacity, and any of those done on a large scale will likely change the transmission requirements within the MISO footprint. So one part of this is simply for them to deal out forecasts of what the states and the constituent utilities are likely to do and then take that into their transmission planning process. The other part of it is that the rule allows, or the draft rule allows states to enter into carbon allowance markets, multistate markets, much like what's known as RGGI in the New England/Northeast area, so as to essentially put a price on carbon and then drive all of those other things, including this re-dispatch of gas versus coal. MISO has been contemplating that maybe they would essentially be the operator of the regional market for carbon allowances within some part, or all, of the MISO footprint. They have suggested that they need to do some studies, and have solicited input from the MISO stakeholders as to what those studies ought to look like. There is fundamental issue between those who think that MISO should do fairly detailed planning and those who think that MISO should be hands off and the states should do the planning. There will be a meeting at the end of August where there will be further discussions and then various working groups are working through aspects of this as well. The direction of the studies should be determined by mid-late fall.

Liskey reported to the board that CARE may have a case with approximately \$17,000 remaining that will close and revert to the fund.

IV. Public Comment

Ault commented that smaller companies paying UCRF surcharges is interesting. One of the reasons that those companies don't contribute is because of the low customer counts and they tend to settle their cases at the Commission without protracted litigation, which is expensive. So if you start funding major intervention, it potentially increases the costs on both sides.

V. Next Meeting – The next meeting of the board is scheduled Monday, August 25, 2014, 12:30 p.m.

VI. Adjournment – The meeting adjourned at 4:04 p.m.

Recorded by:

Michelle Wilsey, Board Assistant

Utility Consumer Participation Board

Transcript available.