UTILITY CONSUMER PARTICIPATION BOARD

October 3, 2011

MINUTES

A meeting of the Utility Consumer Participation Board was held Monday, October 3, 2011 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; Conan Smith; Paul Isely (via telephone); Jacqueline Jones; Susan Licata Haroutunian. Members absent: None.

Others present: Michelle Wilsey, Board Assistant; James Ault, Michigan Electric & Gas Association; Don Keskey, Michigan Community Action Agency Association (MCAAA);Brian Coyer, MCAAA; Ron Callen, MCAAA; Pam Ferris, MCAAA; David Shaltz, Residential Ratepayer Consortium (RRC);John Liskey, Citizens Against Rate Excess (CARE); Ken Rose, CARE; Christopher Bzdok, Michigan Environmental Council (MEC); Shawn Worden, LARA Budget; Wes VanMalsen, LARA Purchasing and Grant Services; Donald E. Erickson, Assistant Attorney General; Kwafo Adarkwa, ITC;Chuck Marshall, ITC; Richard Coy, Clark Hill; Ed Haroutunian

Chairman MacInnes welcomed everyone and invited new board member Susan Licata Haroutunian to introduce herself. She is an attorney (40 years in practice). She was appointed pursuant to recommendation by the Attorney General. She replaces Marc Shulman. MacInnes then called for general introductions of attendees at the meeting.

II. Agenda

Smith moved, second by Jones and motion carried to approve the consent agenda as printed.

III. Presentations

MacInnes noted that given that the board members are new, he felt there was a need for general board education on matters of relevance to the UCPB. Three presentations were arranged for this meeting.
The first speaker was Rick Coy, Attorney, Clark Hill. Mr. Clark provided a presentation on the history and purpose of Act 304 and the creation of the Utility Consumer Participation Board. His comments are available in the transcript of the meeting dated 10/3/2011.
The second speaker was Dr. Kenneth Rose, CARE. Dr. Rose provided a discussion on issues relevant to the development of capacity markets and the MISO proposal pursuant to FERC Order 1000. Copies of presentation slides were distributed to the board. His comments are available in the transcript of the meeting dated 10/3/2011.
The third speakers were Kwafo Adarkwa and Chuck Marshall, ITC Holdings. They discussed transmission, FERC Order 1000 and MISO's MVP cost allocation model. Their comments are available in the transcript of the meeting dated 10/3/2011.

IV. Business Items

1. AG Memorandum of Advice

MacInnes asked Don Erickson to discuss the memorandum of advice requested by the Board on questions relating to the spent nuclear fuel issues and the Low Income Energy Efficiency Fund. Erickson explained that the memo tried to lay out the parameters of Act 304, the nature of the kinds of cases and the kinds of costs that are eligible and to provide examples to give the board some ideas of projects that are and are not compliant with

the statute. He explained that the Act does not allow for funding much beyond power supply costs and gas costs defined in Act 304. As a result, it is necessary to find a tie between the limitations in Section 6m and a proposed project that you're going to fund. He commented that as a practical matter, if you're dealing with a Michigan utility, the cost of building pipelines, the cost of building generation, the cost of building distribution doesn't qualify for grant funding. It wouldn't matter whether the utility was proposing a hundred-mile line for a billion dollars or if they were proposing $10,000, the cost unfortunately doesn't fall within the scope of Section 6m. Purchasing of the product or outcome, such as a contract for fuel or capacity however, may qualify. He explained that the first part of the memo outlines the statute itself. The second part examines the history of spent nuclear fuel costs. He explained that spent nuclear fuel costs are PSCR costs when the utility is directly paying fees to the Department of Energy for the disposal of spent nuclear fuel. However, the Michigan Public Service Commission has ruled numerous times that the remedies and relief sought are beyond the scope of Commission authority. According to Erickson, the MPSC has repeatedly ruled that they can't conclude that those spent nuclear fuel costs are being incurred unreasonably and imprudently, that they have concluded that federal law requires payment of those fees, and that both the Michigan Public Service Commission and the courts have ruled that if you don't pay, if the fees aren't paid, there are serious risks to licensing of the power plants and there are serious risks to losing a place in the queue. The board has to consider whether repeating the arguments without new circumstances merits funding. The next part of the memo addresses what is commonly referred to as nuclear decommissioning costs. He described nuclear decommissioning costs. Erickson noted that the problem with nuclear decommissioning is it's all recovered in base rates and it's not a power supply cost. He doesn't believe these can be funded with UCRF funds.

Erickson then went on to discuss low-income energy efficiency funds (LIEEF) and recent developments in the State of Michigan reducing assistance for LIEEF. The MPSC program to fund LIEEF programs was challenged on statutory authority. The kind of funding for low-income energy assistance is not a power supply cost incurred by the utility. It is aid to the customer to pay the bill. And so the problem for the board is that any legal challenges or efforts with regard to low-income energy efficiency programs fall into the base rate category and outside the power supply cost category. He suggested the board could look to the legislature to expand uses of the UCRF. Haroutunian clarified that it was Erickson's opinion that the LIEEF issue required a legislative fix. He agreed that would be a first step.

Isely excused himself from the meeting.

Smith asked Erickson if it can be shown that the absence of LIEEF actually drives up costs for Consumers, wouldn't it then be a 304 issue? Erickson responded that it wouldn't drive up power supply costs for consumers. It might drive up on collectible expense, and so the total bill might go up, but it doesn't drive up power supply costs, which is the question with regard to funding. There was additional general discussion. Participants in the meeting requested copies of the memo. Wilsey noted it was a writing to the board requested from counsel. There was no objection to distributing the writing from counsel. Wilsey noted it was a matter of public record. MacInnes agreed it could be distributed.

MacInnes called for a short break at 2:40 p.m.

2. 2012 Phase 2 Grant Review

Residential Ratepayer Consortium

David Shaltz, counsel for RRC described the organization. He explained that the proposal before the board is for participation in gas cases only (not electric). The proposal includes four GCR plan cases and four gas cost reconciliation cases (GCR) of the four largest gas distribution companies in Michigan; those are Consumers

Energy Company, Michigan Consolidated Gas Company, SEMCO Energy Gas Company, and Michigan Gas Utilities Corporation. Together these four companies comprise over 99 percent of the residential customers in the State of Michigan. He noted that the GCR costs comprise 60-70% of the customer gas bill. That is why these cases are so important on the gas side. He noted the cases RRC is proposing are cases required by Act 304 to be conducted each year. He explained the RRC approach to the cases begin with a basic audit to identify all potential costs issues, conduct discovery to determine which issues will provide the best return for the clients. Because the GCR plan cases do not start until December, it is difficult to identify issues in advance. The proposal is based on RRC experience with these companies and the issues they believe are most likely. The big issue in all the gas companies are the utilities' use of fixed-price purchasing guidelines to make part of their purchases for their customers. The contracts were adopted to deal with volatility in the market. However, prices have moderated and companies are responding differently. RRC is working to change the programs to reduce prices to customers. The range of prices and balancing stability with market realities were discussed. Also, the impact of customers leaving the system due to pricing differences on remaining GCR customers, serving as supplier of last resort, utilities uses of storage, and pipeline capacity management were among issues discussed. In order to address the concern over the lack of specificity in the grant proposals due to the timing of the cases, RRC offered to review the cases once they were underway, and if they believe less resources are required to participate, report that to the board and return excess funds so that they can be reallocated to other needs. MacInnes noted that if, in the course of their work they find more resources might be needed to be successful in a case, then the board is amenable to hearing that as well. Shaltz indicated that previous boards were reluctant to grant additional funds. MacInnes said, for himself, if a plan is presented based on the merits of the case, he is willing to consider it.

Jones asked what was the period of time for which the price was fixed? Shaltz indicated it was up to four years based on the price of gas relative to NYMEX futures. However, the reliability of the futures diminishes more than one year out. There is also an upward bias in the projections. MacInnes asked if he felt there were opportunities to get reductions for ratepayers. Shaltz responded that there were two opportunities to do that – in the GCR Plan proceeding where you can get the company to modify its plans for purchasing gas or you can actually attack an assumption or something they're planning to do and the Commission decision results in a reduction to the GCR factor. The other place to get that done is the reconciliation case. If the company didn't follow its GCR plan or if it did something that was just blatantly unreasonable and imprudent, that's where you can go for cost disallowances.

Michigan Environmental Council (MEC)

Chris Bzdok explained that MEC involves itself in electric cases on power supply issues where there is an interest overlap between customer costs and protection of the environment. He explained that MEC was requesting approval of our proposals for the Consumers Energy and Detroit Edison PSCR reconciliation cases and the Consumers Energy and Detroit Edison renewable energy reconciliation cases. They are particularly concerned with coal generation by utility companies. Costs are increasing; the commodity contracts at least for Consumers are expensive, transportation costs continue to trend up, operation and maintenance is up, capital expenditures is up. They are concerned with the process of buying coal, other related decisions, and alternative options. They work to reduce the price of alternative options such as natural gas. They atre also engaged in some traditional PSCR issues. He described the issue of coal nominations. In regard to renewable energy reconciliations, the power supply issue that we're very interested in with Detroit Edison is Detroit Edison's attempted change in the transfer price. A portion of the cost of power from renewable energy is flowed through to the PSCR, it's paid for through the PSCR, but it's not established in the PSCR, it's established in the renewable energy cases. Consumers Energy and Detroit Edison, in part due to the efforts of MEC, are finding the costs of their RE programs are lower than anticipated. Consumers has lowered the surcharge, which benefits residential customers because they pay two-thirds of those surcharges. Detroit Edison trying to lower

its transfer price and keep its surcharges maxed out. Bzdok noted that another issue in PSCR Reconciliations MEC is pursuing is the margins that Detroit Edison is earning from the sale of power into the wholesale market. Detroit Edison's projections for the next 5 years indicate that their generation requirements for sales to their own customers are going down and they will not recover to current levels until 2020, yet they propose to continue to operate old, expensive, inefficient coal plants. They intend to sell excess power into the wholesale market and claim it is a benefit to customers. But they had not been able to provide information the first time we brought this issue forward, which was in their rate case, about what kind of a margin are they receiving, because they have all sorts of different costs. How are they setting that price, what's the margin they're receiving, what are the other costs their customers are incurring to continue this system? If you're selling power into the market but you're not recouping the cost of that, you're not benefiting your customers, you're benefiting solely the company, and we think there's a divergence of interest there.
MacInnes noted that MEC was making a strong case for the DECo renewable energy reconciliation case but, he asked, what further benefits did they think could be achieved with regard to the CECo RE reconciliation case they were requesting funding for? Bzdok said it was funding to maintain involvement. It was too soon to know what may happen there.

Michigan Community Action Agencies Association (MCAAA)
Don Keskey distributed copies of a memo prepared and distributed to the board in August for the benefit of the new board member. Hel also distributed a chart of what he thinks comprises phase 1 and phase 2 cases for grant review purposes. He noted phase 2 cases have nothing to do with spent nuclear fuel issues. He indicated that the phase 2 cases are the new GCR plan cases for Consumers Energy and MichCon which are to be filed on December 31, and then there's the new Consumers Energy gas rate case had which was filed on September 12 and was unforeseen, and that's U-16855. With respect to the electric cases, we had estimated in our grant proposal some residual ongoing costs for the Detroit Edison rate case which is ongoing, there may be rehearings and subsequent refund proceedings in that case. And then the bottom two items, 10 and 11, are the new PSCR plan cases filed by Consumers Energy and Detroit Edison Company, U-16890 and 16892. And those were the budgets we asked for in our original grant proposal. An explanation of the issues was included in our August 12 memo. Keskey noted that MCAAA has been involved in these issues traditionally. They have obtained adjustments for various issues like affiliated interest. The ALJ in a recent plan case for Detroit Edison ruled on one of our affiliated interest issues in our favor on the coal handling issue.

Keskey explained the SNF-related request in Phase 2, the electric rate case for Consumers, is on-going. They also filed their proceeds case. This involves the proceeds from their settlement at the Court of Claims as to $120 million that the DOE paid to Consumers Energy Company. CECo was required by the Commission in Docket U-16861, to propose refunds of a portion of those proceeds. From our various participation in cases, discussions with parties and our initial review of the filing, we believe that their refund that they would propose to refund to customers is highly deficient. They're proposing to refund 23.1 million out of the 120 million, and we believe that we can document that there's substantially more that ratepayers paid for and should be refunded.

This is relevant under Act 304 because it relates to the fact that the customers paid hundreds of millions of dollars through Consumers Energy's Act 304 clause for the SNF fees for a disposal program. This damage suit is a outgrowth of that. The $31,310 for the SNF issues under Phase 2 would be for both that issue in the rate case and in the new proceeds case. Keskey noted he had sent previous memos of some of the big successes we've had recently on this issue.

Keskey then provided rebuttal to the points made by the Assistant Attorney with regard to spent nuclear fuel and LIEEF funding. Keskey noted that the assistant AG admitted that the SNF costs are collected in Act 304. He noted that one of the primary remedies MCAAA sought in the Detroit Edison case, which the ALJ did not accept,

is not to have the ratepayers pay a hundred percent of that fee because they're not getting anything for it, they're not getting the disposal, and that Edison should show what further steps they're taking to be reasonable and prudent in enforcing their contract to seek protection of those fees, possible restitution, plus the damage suits, which all of the other utilities nationally are doing, they are preserving the right to seek restitution of the fees. So we're asking for a remedy that's under the scope of Act 304.

Keskey then commented that the attorney general's opinions, both formal and informal, have ruled that if you are dealing with a cost issue that would fall under Act 304 collection, you can seek remedies in any case; it can be a rate case, it can be a decommissioning case, it can be any case.

MCAAA is not challenging Edison's construction cost of anything. Keskey pointed out that the construction costs caused by DOE default is a matter for Detroit Edison to pursue against DOE in its damage suit. MCAAA is concerned that the ratepayer shouldn't pay billions in fees for a waste solution for a hundred years without any protection. With regard to a point made that the federal law requires the payment, Keskey responded that the federal law required the payment in exchange, reciprocal obligation the Court of Appeals said, for performance of disposal. When you don't have disposal performance under the contract or the law, your obligation to pay the fee doesn't go on indefinitely. The contracts provide remedies both in law and in equity and under the Court of Claims' jurisdiction. The federal law does not require the payment of the fees without conditions or protections or remedies.

Keskey noted the previous memos provided by MCAAA have indicated the tremendous successes we've had recently with the Commission on getting the SNF fee debt for Consumers Energy, for instance, removed in rate base, removed from rate of return, removed from operation and maintenance expense, denying a bank letter of credit cost for this, which have resulted in, I think it was U-15245, in outright savings of $14 million annually, in 15645, an additional $17 million annually, and the setting up of a trust that the Commission ordered in 15645 and reiterated and reconfirmed in U-16191 for those fee payments.

Keskey noted that now the proceeds case is starting, U-16861. This is a chance to further enhance refund remedies to the customers. So we're not finished. There's still things this board can do. And we have circumstances where now the federal government has totally repudiated its contractual obligation, not just delay. So we have a major change in circumstances, which is what we've been dealing with the last two and three years, and that's where we point to the role of board here under 6m is not for you to make the final decision of the Commission or the court, but to provide the representation to the ratepayers to advocate. The Commission may not buy our figure on that refund proceeds case, but our figure will be higher than the other parties, and the Commission may come out differently if we were not participating. And this is a minimal remedy compared to the hundreds of millions of dollars of fees the ratepayers paid in fees under Act 304.

On the LIEEF issue, the curious thing about the Court of Appeals' July 21st opinion is that it affirmed the Commission order which provided that all ratepayers will pay to make the utility whole for a substantial portion of its uncollectible bills. That is welfare. They affirmed that part. The LIEEF portion, which is a much more modest part of the case, provides an affirmative program to address the causes for uncollectibles. By having weatherization programs, education programs, targeting of funding of what has been on a very highly efficient basis by MCAAA with less than seven-percent overhead to those families that the agencies throughout the state know are most in need, legitimate need, and cutting their consumption, making them able to pay their bills, that cuts the cost of the utilities' fuel expense and power purchasing expense, and even its loads as even in the federal allocations on transmission, and there are figures show there's been a huge cost benefit many times from the dollars you put in to the payback in saved energy costs that you're getting

back, and those costs are actual costs. So the curious thing about the Court of Appeals' decision is they would not affirm that part that does have an affirmative response to the problem, that they would affirm just a pure welfare program that does not address this. And the final thing I would mention about
this is that MCAAA has been able to leverage the dollars that it gets under the LIEEF with federal dollars, local dollars, state dollars, private dollars, so you're getting a lot of bang for the buck under this program.

The new gas rate case for Consumers Energy, which is a separate topic, deals in part with that issue. Smith asked Keskey to confirm that remedy MCAAA is seeking in the SNF cases is different from the remedy you sought in the past or that the AG alluded to perhaps? Keskey responded that previously it was a matter of delayed implementation. Since 2010, it is now a matter of federal repudiation and non-performance. There has not been a new case where the Commission has looked at the evidence of the changed circumstances. In a recent Consumers plan case, the ALJ did not accept our evidence, and the Commission said it doesn't look at these remedies in Act 304 case. However, my question to you is this: If they collect the money under Act 304, and you ask for a disallowance or a sharing of the fee costs that they're collecting under Act 304, how could that not be an Act 304 remedy? The Commission did not say we could not pursue the remedies in another case, like a rate case or a reconciliation case or any other case. And going back to the AG's opinions again, if the costs are collected under Act 304, you can pursue remedies. That's why we pursue remedies not only in rate cases at the Commission, but in court on the state level or the federal level or at FERC. Smith asked which cases in phase 2 grants address LIEEF issues? Keskey explained that MCAAA had not spent any UCRF funds on LIEEF issues in past grants. In Phase 1, there's no LIEEF issues, except that there could be, it could be brought up in 16794, but because it's on appeal in the Supreme Court, I don't know whether it will or not. Phase 2, there would be the new Consumers gas rate case, in which Consumers has raised it as an issue in their testimony where they still support LIEEF, but they say they would like to propose a new and innovative approach to reaching the same goals, and we would support reaching the same goals and input on that approach.
Smith asked if a utility raises this issue in a GCR case, isn't it inherently under Act 304 then? Keskey said that is the logic he is using with SNF fees. If the utilities themselves, according to various provisions saying the SNF fees costs passes through to ratepayers under 304, then how can the issue not be relevant in terms of exploring that cost and potential remedies. And the same is true with LIEEF. Keskey noted that with the LIEEF, though, utilities are raising the issues in the rate cases, not the Act 304 cases; but LIEEF, because of its uniqueness, affects the costs under Act 304 because it's a positive program to reduce energy consumption and waste and therefore lowers fuel costs and power costs. Smith noted that if and how the board will fund intervention in support of LIEEF is a question that will have to be grappled with over the next few months.

MacInnes asked if CARE had any issues for the board. Liskey responded that the plan cases have just been filed and the reconciliation cases will be filed in March. They will review the plan filings and return to the board in December.

Jones noted that there are some overlapping requests and asked grantees for input on how the board may best maximize its use of resources? Keskey responded that the experience is that the parties often have focused on different issues in the cases or they have supported in a different or unique way a position of another party. So they do cooperate in trying to save money for the ratepayers. Also, for example, in Consumers Energy and MichCon and Detroit Edison gas cases, there's such immense costs charged to Michigan ratepayers and so many citizens affected that you're getting very effective coverage on several different issues by having more than one party. The same is true with electric cases, of these big companies that are charging billions of dollars a year, the benefits can be not only on identifying and finding a direct issue with savings, but the prophylactic effect of discouraging the companies from putting all kinds of abusive costs in the clauses, which used to exist when they had the automatic clause that Rick Coy was talking about. So there's many different benefits. But the parties are very aware of not duplicating effort, and I think that experience has shown quite a bit of coverage of

different issues. Bzdok concurred with Keskey's comments. Shaltz added that when there are multiple grantees in a case, each brings a different analyses but it's usually complementary. Smith commented on the possibility of focusing more on strategic interventions, perhaps through common grants in the future.

MCAAA Presentation on Case U-16855

Keskey noted that this is a new gas rate case by Consumers. It will have a LIEEF issue or equivalent proposal. There are other issues such as the GCR base set in the case. There may be affiliate transaction issues that affecvt the cost of gas. This is the fourth case filed in four years. We certainly want to see what cost issues relate to or impact Act 304. MacInnes asked what percentage of the budget would be associated with LIEEF issues? Keskey estimated 20%. Jones commented that she would like to see grantees response to the AG memo in writing before further decisions on SNF and LIEEF are made. Keskey noted this issue has been covered for years and the proceeds case is on a fast track. The first hearing is October 28th, and there will have to be discovery and witness preparation, and you're dealing with a lot of money, it's $120 million. Jones asked what portion of the funding requested is needed to address the work described by Keskey? He noted that the budget from the board normally only covers a percentage of the work. They take on some of the work pro bono. Jones asked then technically, work could begin prior to the board making its decision. Keskey said he did not feel it was fair to assume some of the work would be done for free. The money may not last through the entire case but you've got to have enough certainty and enough confidence that you're getting some initial backing by the board and some funding to start the work. Wilsey noted that in effect what Keskey is saying is that a hundred percent of the funding for this is coming from the UCRF funds, there are no other sources for funds? Keskey responded, yes. MacInnes noted that there had been extensive review on this matter by the AG. They had been to the board twice and there had been lengthy discussion. The AG is the board's legal counsel. At present, he sees too much information here right now that says it does not make sense for us to pursue these SNF cases and the LIEEF case based on our legal counsel's advice. And our legal counsel said that if we were going to do this, we kind of better be sure we're doing the right thing; not that we couldn't do it, but he didn't advise that we do it. So, if we are considering granting funds for these purposes, the board better have very good reasons for doing so. Haroutunian commented that the board has limited means and those means can't be spent on futile efforts. If the fix for this problem is not with us, we're wasting our time and we're wasting our money trying to pursue that. MacInnes noted that these are important issues but it doesn't seem based on legal advice from counsel and the history of these cases laid out in the memo dated September 27, 2011 that, in his opinion, this is the way to go. Keskey said he would like the opportunity to respond to the memo. MacInnes said he would be given the memo and could respond. He also noted that it had been discussed at length over the last three meetings.

The meeting was adjourned at 3:53 p.m. for a break. The meeting was reconvened at 4:09 p.m.

2012 GRANT APPROVALS

RRC

Smith moved, second by Jones and motion carried to approve a grant to Residential Ratepayer Consortium in the total amount of $90,000 for participation in the 2012-13 GCR plan cases for Consumers Energy, Michigan Consolidated Gas Company, SEMCO Energy Gas Company and Michigan Gas Utilities. Smith noted note that the board was taking no action on the reconciliation cases at this time, and they could be discussed at some future meeting.

MEC

Smith moved, second by Haroutunian and motion carried to approve a grant to the

Michigan Environmental Council in the total amount of $111,200 for participation in the 2011 reconciliation cases for Consumers Energy and Detroit Edison, and for the renewable energy reconciliation cases for Consumers Energy and Detroit Edison.

MCAAA

Smith moved, second by Jones and motion carried to approve a grant to the Michigan Consumer Action Agency Association in the total amount of $50,000 for examination of affiliated transactions in the electrical industry in the following cases: 2011 CECo PSCR reconciliation case, 2011 Detroit Edison Company PSCR reconciliation case, and U-16472.

Shaltz asked if the board wanted the grantee to reallocate budgets based on the total amounts approved by the board. MacInnes responded affirmatively.

Bzdok excused himself from the meeting.

Keskey asked if the board had made a decision on MCAAA request for funding for the Consumers Energy gas rate case. MacInnes said the board decisions were offered in the motions made today.

V. Public comment – None.

VI. Next meeting - The next regular meeting of the UCPB is scheduled Monday, December 5, 2011, 1:00 p.m. Haroutunian moved, second by Smith and motion carried to adjourn at 4:16 p.m.