

UTILITY CONSUMER PARTICIPATION BOARD

June 6, 2011

MINUTES

A meeting of the Utility Consumer Participation Board was held Monday, June 6, 2011 in the Ottawa Building, 4th Floor Training Room, Lansing, Michigan.

I. Call to Order

Alex Isaac called the meeting to order at 1:12 p.m. Board members present: Marc Shulman; Alexander Isaac; Conan Smith; and Sister Monica Kostielney. Members absent: Harry Trebing. Others present: Michelle Wilsey, Board Assistant; David Shaltz, Residential Ratepayer Consortium; Don Keskey, Michigan Community Action Agency Association; John Liskey, Citizens Against Rate Excess; Chris Bzdok, Michigan Environmental Council; Don Erickson, Assistant Attorney General; Shawn Worden, LARA Finance; and Wes VanMalsen, LARA Purchasing and Grant Services; Lori Penn, Court Reporter. Chairman Isaac called for introductions.

II. Consent Agenda

Shulman moved, second by Smith and motion carried to approve the agenda as presented.

Shulman moved, second by Kostielney and motion carried to approve the consent agenda as presented.

III. New Business

1. MEC Grant Amendment Request UCRF 11-04

Bzdok summarized the three grant amendment requests submitted by MEC. He noted all of the amendment requested are transfers of existing funds with no new grant funding requested.

The first request is to transfer \$10,100 of funds remaining from the Consumers renewable energy reconciliation case to the 2011 PSCR plan case to support the briefing process which we are now undertaking. MEC is working very closely and in collaboration with the attorney general on that case. Dispatch is a major issue. The 2009 reconciliation PFD, to which exceptions are pending, recommends a dispatch study be done by Consumers in connection with its next plan case, but we feel it must be pursued in this present case as well. MEC is also examining a gas transport contract that we feel is really a contract to purchase the gas pipeline that was discovered during the case review.

The second request is to transfer \$3,330 of remaining funds from the Edison 2011 PSCR plan case the Edison 2010 PSCR reconciliation case. The available funds will allow some continued evaluation of briefs in the plan case.

The third item is to transfer \$10,100 from the renewable energy portion of the Consumers PA 295 biennial review to the Detroit Edison PA 295 biennial review. Much of our objective relative to the Consumers renewable energy costs has been in many ways achieved, and the residential surcharge which was initially proposed in the original case at \$3.00, approved by the Commission at \$2.50, Consumers have incorporated positions that are similar to ours on many of the issues we've been raising, and their surcharge residential is now down in the .70 cents range. The Detroit Edison biennial review was just filed last week, and the residential surcharge is again requested at \$3.00. MEC would like to evaluate the request and apply some of the same arguments and objectives of the Consumers case to the Detroit Edison case.

Member Shulman asked Don Erickson if there were any comments that the attorney general may have with regard to this request, including whether it they are duplicitous of any of the types of proceedings that the attorney general may be involved in. Erickson responded that the attorney general is involved in the 2011 Consumers PSCR plan case, and that many of the positions that the AG is taking are similar and analogous, although actually both the attorney general and MEC have different issues that have been raised by their experts.

Smith moved, second by Kostielney and motion carried to approve MEC grant amendment request to UCRF 11-04 for a transfer of funds in the total amount of \$10,100 to CEC's 2011 PSCR Plan Case Case No. U-16432 from CEC RE Reconciliation case (to be filed June 30, 2011). The *total* authorized budget for these cases is unchanged.

Approved Budget CECO 2011 PSCR Plan Case U-16432	\$55,550
Amendment Transfer Request 6/6/2011	\$10,100
Total Amended Budget	\$ 65,650
Approved Budget CECO RE Reconciliation	\$ 19,997
Amendment Transfer Request 6/6/2011	\$-10,100
Total Amended Budget (if approved)	\$ 9,897

Shulman asked Bzdok, based on what the attorney general said, whether he feels that there are, even though the attorney general is working on these issues, some of the concerns that your organization has that are separate and cannot be represented by the attorney general's position in this case? Bzdok responded affirmatively. He noted that a significant part of MEC's interest and involvement in these cases is finding synergies between the ratepayer costs and the environmental objectives. MEC is often aligned with the attorney general on cost issues but their positions may differ on other issues, sometimes testimony is complimentary, sometimes they bring different perspectives or analysis. Examples were provided.

Smith moved, second by Kostielney and motion carried to approve grant amendment to UCRF 11-04 for a transfer of funds in the total amount of \$3,030 to 2010 DECo PSCR Reconciliation Case U-16047-R from the 2011 Detroit Edison PSCR Reconciliation Case U-16434. Both cases were approved in the grant UCRF 11-04. The *total* authorized budget for these cases is unchanged.

Approved Budget DECo 2010 PSCR Recon Case U-16047-R	\$7,575
Amendment Transfer Request 6/6/2011	\$3,030
Total Budget (if approved)	\$10,605
Approved Budget DECo 2011 PSCR Plan Case U-16434	\$ 7,575
Amendment Transfer Request 6/6/2011	\$-3,030
Total Budget (if approved)	\$ 4,545 (fully expended)

Isaac asked Wilsey to comment on the transfers. She noted that the only additional question she had relative to Bzdock's response to Shulman was whether he felt that the complementary testimony offered in this case by MEC is providing sufficient additional benefit to customers than could otherwise be realized by the AG without MEC testimony? Bzdok responded affirmatively. Erickson responded that the scope of our testimony

has been in part been mutually exclusive, in part has been interlocking, and there are issues that have been raised by MEC's expert that our expert did not raise. One of the problems we run into is the resources that are available. If we had a lot more money, we would all be covering more issues and in more depth. But I think that in fact, by having an overlapping, interlocking set of independent presentations, we probably cover the waterfront better. Whether or not we get any success depends on the PSC. But at least the issues are vetted more fully, because we really don't sit down and try to have our experts say, well, I'll say this and you say that, and as a result, I think we get a better independent product.

Smith moved, second by Kostielney and motion carried to approve grant amendment to UCRF 11-04 for a transfer of funds in the total amount of \$10,100 to the 2011 DECo Renewable Energy Plan Biennial Review Case from the CECo Renewable Energy Plan Biennial Review case. Both cases were approved in the grant UCRF 11-04. The **total** authorized budget for these cases is unchanged.

<u>Approved Budget DECo RE Plan BR Case</u>	<u>\$20,200</u>
<u>Amendment Transfer Request 6/6/2011</u>	<u>\$10,100</u>
<u>Total Budget (if approved)</u>	<u>\$30,300</u>
<u>Approved Budget CECo RE Plan BR Case</u>	<u>\$ 20,200</u>
<u>Amendment Transfer Request 6/6/2011</u>	<u>\$-10,100</u>
<u>Total Budget (if approved)</u>	<u>\$ 10,100</u>

2. MCAAA Budget Amendment Request UCRF 11-03

2a. Isaac asked Wilsey to summarize the amendment request. Wilsey responded that this request is to amend UCRF grant 11-03 to add the MichCon GCR Reconciliation U-16146-R, CECo GCR Reconciliation U-16149-R cases to be filed at the end of June and award corresponding budgets of \$4,949 for each case (total of \$9,898. The grantee proposes to continue to pursue SNF and affiliated transaction issues and Act 304 cost impacts related to same. She further noted that the amount of new funds requested, \$9,898 exceeds that remaining funds available for grants in this funding period. The total amount of available funds remaining for grants is \$6,178.

Keskey commented that what MCAAA proposes is to amend the request to reflect the remaining funds available, \$6,178, which is 62 percent of the request. These are gas reconciliation cases that will start when the company, each company files their application at the end of June.

Wilsey noted that funds to participate in these cases has been requested previously by the grantee. The board asked the grantee to defer that request until a later time closer to the start of the case.

I suggested the board consider whether this is the best use of the funds. One question is whether the remaining funds are sufficient to effectively initiate two new cases. This grantee has raised several concerns regarding insufficient grant funds and pro bono work in the past. Another consideration is whether there may be ongoing cases that may require additional funds prior to the end of the grant year.

Keskey responded that the purpose of the funding is to cover the initial review of the filing and then file the intervention and attend the prehearing meetings. Also, if funding allows, to issue discovery and participate in any settlement discussions. The deadlines for the filing of testimony will be later and could be funded in the next grant cycle. MCAAA he continued has been an ongoing participant in gas cases. Gas and home heating bills in the winter are extremely important to residential customers, and

which MCAAA is heavily involved in those situations. This funding would allow MCAAA to fully vet the issues and to not have the funding gaps that we've had in the past. Wilsey noted that the scope of the request was broad and included new areas such as affiliate transactions and on-going review of SNF issues in addition to the items mentioned. Keskey explained the merit of the issues. Wilsey noted her comment was in regard to scope relative to funding available, not to merit. Shulman asked Keskey if the funding requested would take him to testimony. Keskey responded it would not, it was for the initial phases of the case. The testimony filing would be requested in the next grant cycle. The filing deadlines will be very late in the year or early next year, so that there would be something that could be addressed in the new grant cycle.

Shulman commented that as he understand it, if there's any additional funds to get us to that point, that's going to be done on a pro bono basis, this is all that you have to work with? Keskey responded that they had done so in the past. He did not want that to be abused. If additional funding was needed MCAAAA would come to the board with a request for the supplemental in the new grant to explain and to apply for the funds, and we would keep it within the scope, in the kind of range of costs the board has funded in the past for cases. And of course, any request we make is up to the discretion of the board.

Erickson was asked to comment. He noted that the request was to spend \$6,000 without taking a position on a single issue, and he questioned what ratepayers would get out of the \$6,000 if the board doesn't follow through and continue funding? Keskey responded that MCAAA normally take positions in cases. The overall work plan, for example, includes the affiliated transactions. These are scrutinized over more than one case or cycle. Erickson asked Keskey to explain how affiliated transactions affect GCR costs. Keskey commented that MCAAA has filed testimony in all of the gas cases recently on affiliated transactions. He referred to an example of the Saginaw Bay pipeline. Another example would be on the electric side; for example, Edison's proposal to have a Detroit Edison affiliate purchase the gas -- the coal inventories of Detroit Edison and process them with some special chemicals to make them less polluting. A very good cause, but we question the necessity of having a separate utility do that specialized function when in fact the utility could do it and when in fact the Act 304 seems to prohibit expansions in fuel handling at the site. And so that's another example of an affiliated transaction. We have also questioned in the last two gas cases of MichCon their transactions to acquire gas from, it's an affiliate of DTE, which is the Michigan Gathering Company, in which they have escalated the cost of gas because it was a higher rate than they would be able to obtain from other alternative suppliers, and they never carried their burden of proof to establish the reasonableness of that. The Commission in its last order in U-15451-R said prospectively that that cost should be City Gate or index price, which is much lower than the rate they were paying their affiliate. But that's an example. You can't ferret out affiliated transactions unless you get into the case and you have reviewed their filings and you have some discovery, and the danger of them existing is very significant because both Consumers Energy and MichCon are parts of vast utility holding companies that have numerous affiliates and subsidiaries engaged in the very similar kind of businesses, whether it be transportation, gas production, storage, transactions with other companies, and so it takes some exploration to determine that precise adjustment that you're going to make, but the issue is there.

Erickson noted that he was concerned Keskey was talking about PSCR cases and fuel handling and that. He asked Keskey to confirm that these two cases and these two grant applications don't have anything to do with those issues. Keskey responded that they did not. He used an example from electric, but the two gas examples I gave were the Saginaw Bay Pipeline Michigan Gathering Company. Erickson commented that's fine, I understand what you're talking about. He asked if MCAAA had found any disallowances yet in that area? Keskey replied that he had described two

disallowances, one was for Saginaw Bay Pipeline because the Commission agreed with us; and then the other one was the MGAT, which has been an ongoing issue, but where the Commission in its most recent order required MichCon to reduce the price of those purchases. Smith and Isaac requested clarifications on the amended supplemental request. Isaac asked Keskey what would happen if they did not approve funding until the next grant year. Keskey said they would have to continue on a pro bono basis to preserve the issue. But he felt that was unnecessary with funding available. Isaac noted there may be other uses of the funds. Keskey noted that his was the only request for additional funds. Smith asked Keskey if it is his intent to apply to the board for the funds necessary to complete the case and if so how much did he anticipate the case funding to be? Keskey noted that they did plan to ask for the additional funding if necessary. He anticipated it to be in the range of \$20,000-\$25,000, noting the possible need for adjustment or amendment.

Shulman moved, second by Kostielney and motion carried to approve the MCAAA UCRF 11-03 grant as amended to add the MichCon GCR Reconciliation U-16146-R, CECo GCR Reconciliation U-16149-R cases to be filed at the end of June and award \$6,178 in new funds to be split 50/50 for each case.

2b-d SNF MCAAA Case Update and grant amendment requests

Isaac asked Wilsey to introduce the issue. Wilsey noted this is a continuation of this issue from the previous board meeting. Keskey requested a budget for possible involvement in some upcoming cases that had not been initiated yet; he was uncertain as to which other SNF cases might arise. The board, after some extensive deliberation, clarified that Mr. Keskey was authorized to spend up to \$12,000 to take on additional cases as they were filed to allow him to be responsive, but that at this meeting he would inform the board of any new cases that he had become involved in and provide a work plan upon review of those. He has provided the board with an update. My understanding is that there have been no new filings.

Isaac asked Keskey to comment. Keskey reviewed the update of SNF issues covered in his May 16th memo, and supplemented by today's memo. He noted that MCAAA could not predict when they were going to happen but that they are now unfolding. Isaac asked Keskey to discuss the updated events. Keskey said take, first, before the Michigan Public Service Commission, answers are due tomorrow in the U-16191 docket. Secondly, there is a remedy that could be pursued in the U.S. Court of Federal Claims to advocate that there not be an offset of what we call ratepayers' money to pay the federal government for not performing. Third, the Commission may establish a separate docket, as it said it might in its March 17, 2011, rehearing order, to further deal with any settlement or any proposals that Consumers will ultimately file. And there is no appeal filed in the Court of Appeals by either the Company or by anyone else.

Wilsey asked Keskey to clarify for the board, the action he would like the board to consider today. She noted he already had an approved case in U-16191, so in regard to that potential action they are covered. So I assume maybe from your discussion that you would like some sort of extension of authorization to be involved in other SNF cases going forward? Keskey responded that in the transfer memo, we've asked for a shifting of funds to other cases dealing with the SNF issues going forward because the funds have run out in those three cases, taken out of this other SNF budget, but leaving funds in the other SNF budget for pursuing what I've just described.

Isaac noted that, other than the cases U-16191, the timing of events seems just as uncertain today as it did in April when the board first reviewed this request. Keskey said that Consumers will try to file in our Commission on or before July 15 for approval of their settlement with the federal government, which if it includes the offset which they have been suggesting it would, we would oppose because we believe the trust should have already been established, and we're trying to protect that ratepayer money.

With the SNF update, I would request that the funds that the board approved before be available for, as far as I can identify dockets, No. 1, continuation of U-16191 process. The second thing is researching and filing a special purpose late intervention at the U.S. Court of Federal Claims. And then thirdly, the Commission has established that at some point here when Consumers filed its federal settlement, we'll it in most likely a separate docket.

Isaac asked Erickson to comment on the SNF update and request. Erickson noted that was one of the reasons he came to the meeting. He explained that SNF is a complex issue, but it can be broken into three categories- 1. pre-1983 recovery of SNF costs, 2. on-going collection of SNF fees (since 1983), and 3. costs incurred by utilities to store nuclear fuel because they have not been able to transfer it to the federal government for permanent storage.

Erickson raised several concerns and cautions for the board regarding continued funding of some of these SNF cases in light of the applicability of Act 304 to these cases and the "losses" of several cases over the years. He presented the board with a memo outlining the cases and history of rulings and provided an extensive discussion of the memo. Keskey responded to the memo and arguments presented by Erickson. An excerpt of the exchange from the meeting transcript is attached and included by reference to these minutes.

Isaac asked Keskey to again state the transfer proposal. Keskey stated that the transfer proposal is to transfer from the existing approved budget for other SNF cases to the three dockets that I list on page 4 of the memo of May 16. And at the bottom there, as you know, are DECo's rate case U-16472, all of our evidence was accepted and the briefing process will continue. The same is true for the next one, which is the DECo PSCR case, U-16434. The last one is the U-16432, where it was recommended that we file an appeal on that to the Commission of the ALJ's ruling, which we did, and was said we have every right to file our briefs and to seek consideration by the Commission of our appeal on other issues, so that case is still fully alive. We are not asking for additional funds, we're simply asking for the realignment of funds based on case development so that it can be presented to the Commission.

Isaac called for a motion in regard to the transfer request. Kostielney moved to approve the transfer.
The motion died for lack of a second.

3. RRC Request for Modification to Grant No. UCRF-10-01

Isaac asked Wilsey to summarize the request before the board. Wilsey commented that this request involves a redistribution of expert witness hours from the SEMCO and MGU 2009-2010 GCR Reconciliation Cases to the Michigan Consolidated Gas Company and Consumers Energy Company 2009-2010 GCR Reconciliation cases. The total authorized budgets for these cases is unchanged. No new funds and no addition of new cases is requested. Isaac asked Shaltz to explain the purpose for the redistribution. Shaltz explained that this grant really had two parts; there are four cases that were GCR plan cases, that's not part of this request. The other part of the grant were four reconciliation cases. The sole purpose of this request is to more accurately reflect how the hours are actually being spent on the cases based on the issues that have arisen in the cases. Shaltz further commented that he was aware that in the past the board has had some concerns about some cases having unspent budgets and other cases, you know, there being overspending without the monies being transferred. So the purpose of this request is just to reflect what's actually happening in these cases in terms of our expenditures. Again, no request for extra money, it's just transfers within the cases.

Smith moved, second by Shulman and motion carried to approve RRC amendment request for UCRF Grant 10-01 for a redistribution of expert witness hours from the SEMCO and MGU 2009-2010GCR Reconciliation Cases to the Michigan Consolidated Gas Company and Consumers Energy Company 2009-2010 GCR Reconciliation cases as presented below. The *total* authorized budgets for these cases is unchanged. No new funds and no addition of new cases is requested.

MGU Corporation Case No. U-15700-R

Approved Budget	\$27,270	(\$13,500 Expert, \$13,500 Legal, \$270 Admin)
Amendment Requested 6/6/2011	- 6,363	
Total Budget (if approved)	\$20,907	(\$ 7,200 Expert, \$13,500 Legal, \$207 Admin)

Michigan Consolidated Gas Co. Case No. U-15701-R

Approved Budget	\$27,270	(\$13,500 Expert, \$13,500 Legal, \$270 Admin)
Amendment Request 6/6/2011	\$3,636	
Total Budget (if approved)	\$30,906	(\$13,500 Expert, \$17,100 Legal, \$306 Admin)

SEMCO Energy Gas Co. Case No. U-15702-R

Approved Budget	\$27,270	(\$13,500 Expert, \$13,500 Legal, \$270 Admin)
Amendment Request 6/6/2011	- 8,181	
Total Budget (if approved)	\$19,089	(\$5,400 Expert, \$13,500 Legal, \$189 Admin)

Consumers Energy Company Case No. U-15704-R

Approved Budget	\$27,270	(\$13,500 Expert, \$13,500 Legal, \$270 Admin)
Amendment Request 6/6/2011	- 8,181	
Total Budget (if approved)	\$19,089	(\$18,000 Expert, \$19,800 Legal, \$378 Admin)

Shaltz noted that the term of the grant had been administratively extended to August 1, 2011.

4. **2010 Annual Report.** Wilsey provided a draft copy of the annual report for board review and comment. She noted changes and additions to the structure of the report. She also noted that comments from parties were still expected and would be incorporated into the final draft of the report. She highlighted areas in the results section that she felt were directly attributable to UCRF intervention based on her review of the record and invited comment and further input. She noted that in the case of settlements, the record was limited and independent verification was welcome from any of the parties. Isaac asked if the parties had received the draft. Wilsey noted it was emailed to the grantees and other parties. Isaac asked if the attorney general's office had received it. Erickson commented that he thought Michael Moody had already received it. Punctuation, salutation, greeting lines and other grammar and formatting details were discussed.

V. Old Business

Smith commented that he would appreciate a staff summary of the spent nuclear fuel issue as it applies to distribution of Act 304 funds, historic expenditures, etc. would be helpful for the next meeting.

VI. Public comment – Liskey announced that it was Alex Isaac's birthday. All extended warm wishes. Isaac noted that new appointments to the board may be made. He thanked everyone for their service.

VII. Next meeting - The next regular meeting of the UCPB is scheduled Monday, Aug 1, 2011, 10 a.m.

The meeting adjourned at 3:04 p.m.