

UTILITY CONSUMER PARTICIPATION BOARD

February 3, 2014

MINUTES

A meeting of the Utility Consumer Participation Board was held Monday, February 3, 2014, in the Ottawa Building, 4th Floor Training Room, Lansing, Michigan.

I. Call to Order

Jim MacInnes called the meeting to order at 11:08 a.m. Board members present: James MacInnes, Chairperson, Paul Isely, Vice Chairperson, Susan Licata Haroutunian, Conan Smith. Members absent: Ryan Dinkgrave.

Others present: Michelle Wilsey, UCPB Board Assistant, Christopher Bzdok, Michigan Environmental Council (MEC), John Liskey, Citizens Against Rate Excess (CARE), Robert Burns, (CARE), Ken Rose (CARE), Dan Scripps, Institute for Energy Innovation (IEI), Don Keskey, Michigan Community Action Agency Association (MCAAA) and Great Lakes Renewable Energy Association (GLREA), David Shaltz, Residential Ratepayer Consortium (RRC), LeAnn Droste, State of Michigan Department of Licensing and Regulatory Affairs(LARA), Jim Wilson (LARA), Shawn Worden (LARA), Jim Ault, Michigan Electric and Gas Association (MEGA).

a. Approval of Consent Agenda

MacInnes proposed approval of the consent agenda noting that CARE's MISO status report will just follow the presentation by Ken Rose. Haroutunian moved, second by Isely and motion carried to approve the consent agenda as presented.

II. Board Education

Ken Rose gave a presentation on transmission investment incentives. He noted that CARE is not a party to the ABATE ROE Complaint. The case deals with investment incentive issues to important to ratepayers in Michigan. Rose summarized the case and discussed the return on equity (ROE) issues pertinent to Michigan ratepayers. Primary issues covered included actual base ROE, the capital structure issue, and the extra incentive added on to the ROE for participation in an RTO. A copy of the presentation is attached and included by reference to the minutes. MacInnes and Rose discussed the method for determining capital structure. MacInnes asked if CARE was a party in the case. Liskey responded that CARE is only monitoring. He noted the public consumer sector of MISO that CARE is a part of has filed to intervene.

MISO Activity Report – Burns reported that the planning advisory committee has decided to drop the use of the Rauch method in developing MISO's futures scenarios, and will develop a different method. CARE's suggestion is to look at various sells and contingencies and evaluate the tradeoffs. In regard to activity of the data transparency working group, the end nodule point data has been released and is available. The data can be used on day-ahead and real-time basis to help identify locations where transmission congestion can be relieved. You can also geo-locate energy efficiency and demand response using the data. CARE was an advocate of tracking and releasing that data.

Wilsey informed the board that information requested by the board from MEC was covered by a protective order. As advised by the AG, in order for the board to receive the information, they would have to call a closed session. Isely moved to enter into closed session to hear a portion of the MEC's grant application for

the limited purpose of considering the material that the applicant wishes to present that is subject to the protective order entered by the PSC in the contested case proceeding in U-16890-R. The grounds for the motion include:

- a. MCL 15.268 (h) of the Open Meetings Act authorizes a closed session “to consider material exempt from discussion or disclosure by state or federal statute.”
- b. MCL 24.333(3) and 24.274 (1) of the Administrative Procedures Act authorize administrative agencies to adopt rules of procedure, including procedures for discovery, to be followed in contested cases.
- c. Pursuant to that authority, the PSC has adopted Rules R 460.1701, et seq, for Practice and Procedure before the Commission.
- d. Rule 460.17317 of the PSC Rules provides that “[d]iscovery shall, as far as practicable, be conducted in the same manner as in circuit courts of this state pursuant to the Michigan court rules...”
- e. Rule MCR 2.302(C) of the Michigan Court Rules authorize the entry of protective orders under various circumstances, including: “that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.” MCR 2.302(C)(8)
- f. The information the grant applicant, MEC, wishes the board to consider is subject to a Protective Order entered by the Administrative Law Judge in case U-16890-R pursuant to the foregoing statutes and rules.

Upon a roll call vote the following voted yes: Haroutunian, MacInnes, Smith, Isely. The following voted no: None. The following were absent: Dinkgrave. The motion carried. Bzdok requested MacInnes sign the non-disclosure statement, on behalf of the board, prior to the closed session.

At 1:18 the regular meeting was adjourned and the board went into closed session. At 2:05 p.m. the regular meeting reconvened.

III. Business Items

A. CARE Grant Request – 2013 PSCR Recon Cases (Small-Med Electric Companies)

Liskey reported that this request is for funding for the reconciliation cases as presented in their 2014 Grant Application to the board. He noted that nothing in the request had changed from the original application because the cases have not been filed. The original request was for \$76,000 for the plan cases and \$76,000 for the reconciliation cases. The grant amount awarded was \$55,000. When allocating the money among the cases, CARE choose not to intervene in the I&M Power Case because IEI was awarded a grant to intervene in that case. However, no other grantee is requesting funding for the I&M reconciliation case. Therefore Liskey requested instead of \$55,000 the board increase the prospective grant award amount to \$60,000 so CARE has funds to intervene in the I&M Power recon case. That is still less than the original request of \$76,000. Wilsey asked Liskey if he was, therefore, modifying the grant amount requested from \$76,356 to \$60,000. Liskey confirmed that was correct. MacInnes asked if CARE would address some of the issues IEI planned to cover on demand response. Liskey responded, probably not as CARE did not have an expert in that area. Liskey noted that IEI will not be in the case and the AG also was not in the case. MacInnes asked if Presque Isle would be addressed in the WE Power Company case? Liskey said that really covers MISO to some extent. There was brief discussion of MISO’s determination of SSR status and must-run order. Bzdok noted that the Wolverine Power deal fell through and WE is putting it up for sale. Liskey said he did not expect they would get into that case much but would review it with the CARE expert on the WEPCo case.

B. MEC Grant Request – 2013 PSCR Recon Cases (Consumers and DTE)

Bzdok presented the MEC request for a UCRF grant to intervene in the Consumers Energy and DTE PSCR reconciliation cases which will be filed March 30 of 2014. Given the timing of the case, Bzdok noted the board may take up the request at this meeting or may defer action to the next meeting in April.

Bzdok summarized the status of the three reconciliation case that are pending: In the Detroit Edison 2011 case, MEC is working on an issue related to the net purchase and sales expense from MISO when the utility offers its generation into MISO and then purchases generation back from MISO. The net of that in 2011 was an under-recovery of \$96 million. The utility indicated that the largest single contributor to that was a 171 million higher-than-projected net MISO purchase and sales expense. That is a combination of what they're spending and what they're getting back in revenue. The load was higher than projected, but the generation was lower than projected. So they're running their own plants less and buying more power to meet higher-than-projected load. There was a lot of fighting in the case about who needed to explain that, whether we needed to explain that if we thought it was wrong or whether the utility needed to explain why that was right. We think that this is an issue that's recurring, that it's come up in some other cases in the past, and that it has the potential to recur in the future, and so this is an issue we're looking at in future cases. To explain lower generation at higher load and more purchase of power at higher prices, MEC believes it's either some of the units are not dispatching because they're not meeting the clearing price, or they're having problems with outages.

Bzdok reported that in the 2012 case, MEC noted there was a deviation on the periodic outage plan that was significant, costing \$9 million. MEC is supporting the attorney general and Staff on issues related to a large, expensive outage in Fermi. MEC has previously discussed the REF project. The order in U-16892, the 2012 plan case, reversed a very good PFD on the REF project. Then there was a very good PFD in the 2013 plan case, U-17097, that is pending a Commission order. Depending on the Commission decision, the REF project may be opened again. In either case, there's still issues that we are raising in 2012 dealing with the purchase of untreated, unrefined, untax-credited coal by the regulated entity. DTE Electric is buying, at times, untreated coal from the refined fuel companies as it's sitting in the coal yards of the DTE plants.

Basically, what occurs is that there is a purchase of the coal by the REF companies, the treating companies, where it gets on the dock at Duluth, and then it's sold to Detroit Edison pretty much on the conveyor belt on the way to be burned after treatment. There are provisions in the contract where the REF companies can compel DTE Electric to purchase inventory. There are big purchases of coal in the inventory, and the only place DTE Electric can sell it is back to the REF companies.

It is not clear if there any cost to customers from that, is there any benefit to the REF company, etc. This is an issue MEC will continue to pursue. It relates to Act 304, which says that a purchase from an affiliate cannot be more costly than fuel of requisite quality available from other suppliers at the same time. That's a very specific PSCR reconciliation provision. Do the provisions of this contract run afoul of the PSCR statute that says you can't buy fuel from an affiliate unless you show that you couldn't get it more competitively from somebody else on the market. MEC is pursuing issues in the Consumers 2012 reconciliation related to coal and gas plant dispatch in this new era now where some coal units are being cycled. Economic projections about whether to bring them on line or keep them off line are part of a set of issues that we're pursuing in the reconciliations as well.

In the 2013 cases, MEC expects to look at some set of these issues again. They will know following filing and discovery.

MacInnes asked about the new combined-cycle plant that was being considered? MEC is reporting on the case but has not asked for any grants on Consumers Thetford IRP case. He provided a summary of the status of the case.

Smith asked if deferring a decision on the grant request would negatively impact the case. Bzdok said substantial work would not be done prior to the April meeting.

C. RRC Grant Request - 2014-2015 GCR Plan cases.

Shaltz noted that he had previously reviewed the issues RRC expected in the 2014-15 GCR plan cases at the December meeting. He reported on additional issues that RRC identified upon review of the filings made in December. RRC expects the unusually cold January weather will result in supplemental filings by the utilities. Areas affected will likely include lower than normal storage levels, demand forecasts and peak day demand. In addition, all of the utility filings are projecting a decline in conservation. Customers are using more gas than they used to, which is a trend that has changed from the prior four to five years.

RRC expects the cases that will be most heavily litigated will be the DTE Gas case where all the alternative gas suppliers have intervened to fight the gas reservation charge. The purpose of the gas reservation charge introduced by that company last year, was to arrive at a fair allocation of the pipeline capacity costs that are maintained so that the utilities can be suppliers of last resort in case those gas Customer Choice customers come back to the system.

RRC will also continue to pursue fixed price purchasing programs. Two administrative law judge decisions have lowered DTE Gas Company's fixed-price purchasing coverage ratio from 75 percent to 50 percent. RRC believes this is a positive trend but it should continue to be lowered. This may be challenged because of the spike in natural gas prices in January of this year. For Consumers, a significant challenge in the coming year is the fact that their main supplier of pipeline capacity, Trunkline Gas Company, is abandoning one of their lines in Michigan. RRC will investigate Consumers plan to replace that capacity. They have one contract expiring in 2014 that's not been renewed on the other pipeline.

In addition, Consumers is bringing the Partello Anderson field back on line. RRC believes aggressive use of that storage field may reduce the utility's need to contract for peaking services through call-and-swing packages where they're putting money out there in case they need to use it to buy additional gas. RRC is also concerned that the company's existing contracts with Panhandle Eastern Pipeline really over-commit the utility to pipeline capacity. Even if the company was running at a hundred-percent load capacity, it couldn't use all that pipeline capacity. One option is to use capacity release and sell into the market. RRC believes a more beneficial approach would be to try to swap pipeline transportation with another utility that has capacity on ANR, which MGUC actually needs, they need more capacity on ANR, and we think on a net basis, that would come out better for the GCR customers.

With SEMCO, the biggest issue will focus on their refined approach to doing fixed-price purchasing. RRC believes this has the potential of being beneficial not only for SEMCO, but the other major gas companies in Michigan. RRC has been working with SEMCO to make gradual refinements, and they're actually going to launch it in this GCR plan year. RRC will monitor its success.

RRC noted that the funding awarded by the board for these cases has fallen short in the last two of three years. They have made up the difference with pro bono hours. Shaltz feels they can intervene in these cases with the \$90,000 they have been granted in the past. The board had given them an initial grant award of

\$60,000 for this year. Shaltz requested the board grant an additional award of \$30,000 to continue work in all four of these cases. Planning and work will have to commence prior to the April meeting, so Shaltz requested the board act on the request at this meeting.

MacInnes asked what work has been done to date on the cases. Shaltz responded that work done is the preliminary review of the filings, petitions to intervene, and attending the prehearing conferences. MacInnes asked for further explanation why the \$60,000 award is not sufficient funding until the April meeting? Shaltz responded the the prehearing conferences are scheduled this week and the filing dates may be set prior to the next meeting. If so, expenditures on discovery and expert witness time may be significant. It may be enough to cover the work but they still need to plan work forward. There was further discussion on expected timing of expenditures in the cases. Shaltz noted he could work with LARA to adjust budgets if needed. MacInnes noted that the board preferred to grant the funds closer to the time needed. Shaltz agreed that he could submit new budgets that reallocate the hours to match what RRC believes their expenditures will be between now and April, and then in April return to the board and give an updated report. MacInnes noted that the board would make a decision, but wanted to explore possibilities. Smith asked if the expenditures were higher than expected before the next meeting, would it be possible to pay retroactively. Wilsey responded that State Contract did not allow for retroactive payments.

At 2:52 there was a 27 minutes recess.

Smith moved, second by Isely and motion carried to approve the CARE 2014 UCRF grant request for intervention in PSCR reconciliation cases for Alpena Power, Indiana Michigan Power, Northern States Power, Upper Peninsula Power, Wisconsin Electric Power, and Wisconsin Public Service Corporation, for a total amount of \$30,000, and the board directs the applicant to allocate the funds among the approved cases to match the requirements of those proceedings. Smith noted that this was a moderated grant approach to allow CARE to move forward. They should approach the board if the demands of the case require additional funding. Liskey said the expert may not have reviewed the case by the April meeting and the other issue is that CARE may not want to publically disclose some of the issues to early in the case.

Smith moved, second by Isely and motion carried to approve MEC's 2014 UCRF grant request for intervention into 2013 PSCR reconciliation cases for Consumers Energy and DTE Energy in the total amount of \$40,400. The board directs the applicant to allocate the funds among the approved cases to match the requirements of those proceedings.

No motion was made regarding the RRC request. It is deferred to the April meeting.

IV. Grantee Reports

- A. IEI – Scripps noted that the board had conditionally granted us funding to participate in three cases, U-17317 for Consumers, U-17318 for Indiana Michigan, and U-17319 for DTE. IEI followed up with Consumers Indiana & Michigan and DTE with affidavits showing that IEI we represented residential ratepayers. IEI was granted permissive intervention in the Consumers case, we were granted intervention in the DTE case, and we were denied intervention in the Indiana Michigan case. The Company and Staff opposed IEI intervention in all the cases. In Indiana Michigan, the ALJ ultimately agreed with them. This is disappointing because the demand response issues proposed by IEI will not likely be raised in the case. An appeal was considered but IEI decided resources would best be used to intervene in the cases they were approved in. IEI participation will continue to be appealed in the approved cases but the

Commission has not acted thus far. So, they will continue as planned. IEI will not seek reimbursement for expenses related to the I&M power case but may seek to reallocate to the other cases, if needed.

For the cases underway, the first discovery requests focus on general market operations and energy efficiency issues. Similar to what Bzdok explained in the Certificate of Need case, IEI is examining whether the utility can go beyond their energy efficiency requirements where it was cost effective. The second round is likely on more technical issues involving volt VAR control, conservation voltage regulation and line loss reductions. IEI is monitoring what other intervenors are seeking in their discovery requests to reduce duplication of effort.

An important basis of IEI's participation in the UCRF funded cases was the creation of an electric reliability project. There were recent outages over the Christmas period. Governor Snyder announced a goal of moving Michigan utilities to the top quartile for a number of outages in the top half in terms of duration. DTE and Consumers currently are in the bottom quartile in terms of duration of outages, DTE is already in the top quartile for number of outages, and Consumers would need to do some work in terms of the two primary ones.

The Electric Reliability Project is filing comments as part of the Public Service Commission's review of the outages, and those are due later this month, and IEI is in discussions with organizations representing local governments on reliability issues, as well as doing some public engagement and building public support for a greater focus on reliability.

Scripps further commented on the U.P. issues discussed earlier. Wisconsin is concerned as well as Michigan. There is a need to develop a comprehensive energy strategy. IEI continues to participate in and review these issues, without UCRF funding, with the exception of the reliability issues in the PSCR context.

MacInnes asked if Scripps knew when the Northern Area Study Phase 2 results will become available? Scripps said he could provide that information. MacInnes said Presque Isle should have a significant impact on the next phase of that study.

- B. MCAAA/GLREA – Keskey reported that with respect to Great Lakes Renewable Energy Association, memos on both Consumers Energy's PSCR plan case, U-17317, and DTE Electric, U-17319 were provided to the board. In the DTE Electric case, the ALJ granted the intervention of GLREA by right, and there were no appeals from that, so that case is going forward without any kind of condition. GLREA has issued discovery requests in that case and will continue. In Consumers Energy U-17317, the ALJ, over the objections of the Staff and the Company and other parties, granted the intervention by right. The Staff and the Company filed appeals of that to the Commission, which we have fully responded to.

With respect to MCAAA cases, the Commission on January 23, 2014, issued its order in Consumers Energy Company's PSCR plan case for 2012 in Case U-16890. MCAAA challenged the Company's use of a third-party gas agent at what MCAAA believes was too high a cost, per mcf cost to acquire gas supplies used at the Zeeland electric generating plant. MCAAA proposed that the Commission order the Company to do a more comprehensive study of the acquisition economics and strategy, particularly since they were coming up to another bidding process on using a gas agent versus some of these other alternatives. MCAAA also suggested that the Commission require the Company to undertake a study to see if there would be more avenues for diversifying the supply of gas to the Zeeland plant to potentially lower the cost of that gas supply or leverage your bargaining position to acquire better priced gas. With respect to those two issues, the Commission order did not grant relief to require a study on those two issues. But sometimes the issues

engender a later study, within the Staff or within the Company. It does not mean the issue was lost, maybe the seeds have been sewn for consideration of these ideas. MCAAA also recommended an outright disallowance of \$2.295 million from the amount that Consumers was paying for transportation of gas over 7.5 miles of pipeline that it purchased with the Zeeland plant, because within that cost structure there was an amortization of capacity costs to buy the pipeline. They had options in every five years to purchase the pipeline for a one dollar balloon payment. So a portion of these costs were in fact capital costs, and that's important because Act 304 has a provision that expressly prohibits the inclusion in Act 304 PSCR rates of capital costs for purposes of transportation of gas, or capital costs to acquire facilities to transport gas. The company can seek that in their base rate case, but it's not within the scope of Act 304. The attorney general supported MCAAA's position. MCAAA expert testimony was presented that the most economic option for Consumers Energy was to buy the pipeline under the balloon payment option in 2012. According to MCAAA, on a present value basis, that was the cheapest option. Again, the Commission did not grant the relief requested.

MacInnes asked if the Commission gave a reason for not granting relief on that issue? Keskey said they stated in the order that Consumers Energy doesn't own any part of the pipeline. While true, the real question is under the statutory language of Act 304, are there capital costs included within an umbrella demand rate. According to Keskey, that is really capital costs to acquire pipeline to transport gas.

Keskey noted that a correction for the record is that SEMCO Gas owns the 7.5 miles of pipeline. Consumers has the option to buy it under a balloon payment that was higher in 2007, lower in 2012, and lower in 2017. But because you can buy it for one dollar, there are capital costs that are included within the demand charges that are being paid to SEMCO, which ended up owning the pipeline at the time that Consumers bought Zeeland from the owner of that plant. The question is what's the lowest present value that they should have exercised that option? MCAAA expert witness determined in testimony and exhibits that 2012 was the year it should exercise purchase. That was not responded to or rebutted with expert analysis. So there was a good statutory argument for the disallowance. In the end, the Commission did not grant it.

MCAAA will provide an update on the recent Michigan Court of Appeals decision issued on an appeal by Michigan Consolidated Gas of Commission orders in the 2010 gas cost recovery reconciliation and the 2011 gas cost reconciliation wherein the issue was as to how MichCon should be required to price the gas that it receives from its separate subsidiary, Michigan Gathering and Transportation Company, or MGAT. MacInnes and Keskey discussed the need for a city gate price for coal.

- C. MEC - Bzdok responded to an earlier question noting that Consumers filed the IRP case at a cost estimate of \$1,056 per kilowatt, and they bought this other plant, again, it was a 12 year old plant, at \$286 a kilowatt. So there was a big reduction in the cost of the purchase, as well as how much time is committed into the future.

In the DTE reconciliation from 2011, which is U-16656, MEC did get a favorable PFD recommending the adoption of the transfer prices they had been advocating for which are favorable for residential customers because they keep the utility from shifting more costs out of the PSCR and into the surcharge which is paid for (two-thirds) by residential customers. In U-17302, the plan case, the Commission declined to grant MEC relief on the surcharges. Primary arguments were depreciation and transfer price. MEC received a favorable PFD but still don't have a Commission order on depreciation. MEC received the transfer price PFD the same day as we got the Commission order in U-17302. At the meeting in December, Bzdok commented that these issues would continue into the next reconciliation.

Precedent wise, the Commission granted another motion to strike and said the utility can't rely on forecasts and then not give you the forecast. They cannot make contracts and say the forecasts are proprietary and then testify about what the forecasts say. That was the second time an order was issued striking DTE evidence in renewable energy cases. First time it was transfer prices, and this was on capacity factors projected for wind.

Bzdok had also expressed concern with the utility's argument that they were going to reduce surcharges, and the Commission has to either take it or leave their proposal in its entirety. The Commission made a ruling adopting MEC's theory saying, no, if we deny your plan unless you agree to changes and you refuse to agree to those changes, you don't get to keep collecting your earlier higher surcharges, you don't get to collect surcharges at all until we work this out. They have 200 million in the bank pre-collected on this program to sustain them. Bzdok felt it was positive that the Commission adopted MRC's argument on that. The issues continued into the reconciliation when MEC filed testimony in the reconciliation. The ALJ did not agree with MEC that DTE's forecasts were bad. The ALJ said, none of this is weather normalized and none of it's based on modeling, so no relief is granted, but I am going to recommend the Commission in the future require the utilities to basically provide more evidence in support of their forecasting, both as to the plan year and as to the five-year forecast.

Bzdok noted that one of the board's recurring items in the report to the legislature is the rigor that goes into the five-year forecast, so MEC viewed that as positive. They have also now filed a motion to compel in the 2014 plan case, to get all of the utilities' modeling. It is pending. MEC's theory is partially based on the idea that, in these renewable cases, you can't testify about the results of forecasting and then not give parties access to the forecasting. ABATE actually used that to some success in the IRP case in getting Consumers to provide the modeling to all the parties. ABATE used MEC's DTE renewable orders to get Consumers to provide modeling in an IRP case, and now MEC is trying to say the ALJ should adopt that same resolution in the DTE case.

V. Public Comment – Wilsey introduced Jim Wilson. He is the new LARA staff member who will be working on contracts and grants with the UCPB.

VI. Next Meeting – The next meeting of the board is scheduled Monday, April 14, 2014, 12:30 p.m.

VII. Adjournment – The meeting adjourned at 3:55 p.m.

Recorded by:
Michelle Wilsey, Board Assistant
Utility Consumer Participation Board

Transcript available.