In the matter, on the Commission’s own motion, to consider revisions to implementation of Public Act 299 of 1972; MCL 460.111 et seq., as it pertains to the amount of public utility assessments to be paid by regulated entities in the future.

Case No. U-18115

At the September 23, 2016 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER AND NOTICE OF HEARING

On July 6, 2016, the Commission opened this docket to consider revisions to the current implementation of Public Act 299 of 1972 (Act 299); MCL 460.111 et seq., as it pertains to the amount of public utility assessments to be paid by regulated entities in the future. The order invited each company regulated by the Commission to file a proposal in this docket concerning any suggested changes to the current method used to allocate public utility assessment costs. Then, the order provided the Staff of the Commission’s Financial Analysis and Audit Division 30 days to analyze the proposals, to consult with the other divisions of the Commission, and to make recommendations for the Commission to consider. Following issuance of the order, the Commission’s Executive Secretary served a copy of the order on all companies regulated by the Commission and on all other interested persons.
Proposals and comments were filed by representatives from the Telecommunications Association of Michigan (TAM), Michigan Electric Cooperative Association (MECA), Clear Rate Communications (Clear Rate), AT&T Michigan, Frontier Communications1 (Frontier), the Michigan Cable Telecommunications Association (MCTA), and FirstEnergy Solutions Corp., (FirstEnergy). Joint comments were filed by the Michigan Electric and Gas Association, Consumers Energy Company, DTE Electric Company, and DTE Gas Company (collectively, Energy Providers). The Commission Staff (Staff) filed its report on September 2, 2016. The Staff’s report, which summarizes each of the comments, provides analyses of the positions taken by the commenters, and makes some recommendations of its own, is attached to this order as Exhibit A.

Positions of the Commenters

TAM stresses in its comments that the regulatory workloads of the Commission and its Staff have declined in the aftermath of passage of the Michigan Telecommunications Act, Act 179 of 1991 (MTA); MCL 484.2101 et seq., and the near complete repeal of the Telephone Companies as Common Carriers Act, 1913 PA 206 (Act 206); MCL 484.101 et seq. TAM also avers that the reduction in the nature and extent of telecommunications regulation accelerated dramatically as a result of successive MTA rewrites in 1995, 2000, 2005, 2008, and 2011. Moreover, TAM argues that the extent of Commission oversight and regulation of intrastate operations of telecommunication providers has been further reduced by various orders of the Federal Communications Commission (FCC) that have preempted state authority over intrastate operations. For these reasons, TAM believes that the portion of public utility assessments

---

1 The business entities that joined in Frontier’s comments include Frontier North Inc., Frontier Midstates Inc., Frontier Communications of Michigan, Inc., Frontier Communications Online and Long Distance Inc., and Frontier Communications of America, Inc.
allocated to telecommunication providers is too high and should be reduced by 50% for every telecommunications provider.

In its comments, MECA points out that the Commission’s regulation of rural electric cooperatives has been greatly diminished due to passage of the Electric Cooperative Member-Regulation Act, 2008 PA 167 (Act 167); MCL 460.31 et seq. According to MECA, the Commission’s residual regulatory jurisdiction over the MECA members that have opted for member-regulation no longer involves the determination of rate generated revenue or conducting contested cases.\(^2\) MECA adds that before member-regulation under Act 167, the Commission would annually consider up to 27 contested cases involving power supply cost recovery (PSCR) plans, PSCR reconciliations, and times interest earnings ratio (TIER) cases, and that the number of cooperative-related proceedings for this year has been diminished to only two. For these reasons, MECA asserts that continued use of a gross revenues formula for determining assessments to be paid by MECA’s members is no longer fair or equitable. Rather, MECA maintains that its members should be exempted from Act 299 assessments based on gross revenues. Instead, MECA suggests that its members should be authorized to pay the minimum assessment of $50.00 as provided in MCL 460.112.

The Energy Providers state in their comments that their understanding of the impetus for changing the allocation of public utility assessments are requests from telecommunications industry providers for a reduction in their allocated share of the Commission’s regulatory costs. The Energy Providers note that granting relief to the telecommunications providers would likely

\(^2\) At the time that MECA filed its comments, eight of the nine rural electric cooperative members of MECA had switched to member-regulation as allowed under Act 167. Subsequently, the remaining cooperative, Thumb Electric Cooperative, filed notice on August 26, 2016, of its intent to migrate to member-regulation also. See, the September 8, 2016 order in Case No. U-18167.
increase the amount of the assessment to other regulated entities. The Energy Providers declined to take a position on this issue raised by this proceeding pending review of any specific proposals during the contested case proceeding. However, the Energy Producers did suggest that, if any changes are ultimately made by the Commission, the Commission will need to adopt appropriate measures to allow recovery of the increased costs that might be borne by the Energy Producers.

Citing such factors as the passage of the MTA, the dearth of recent cases involving total service long run incremental cost studies or contested interconnection arbitration orders, the limited amount of time required of administrative law judges to preside over telecommunications matters since 2013, and reduced Telecommunications Division staffing levels, Clear Rate argues that it is no longer appropriate to divide the entirety of the collective amount of utility regulation expenses among all regulated entities on an equal basis based on gross revenues. Rather, Clear Rate asserts that telecommunications providers should be assessed based on 50% of their gross interstate operations revenue while energy utilities should continue to be assessed based on 100% of their gross intrastate operating revenues.

AT&T Michigan also argues for a significant reduction in the contribution being made by telecommunications providers through the current method of funding the Commission’s expenses. AT&T Michigan points out that the current allocation method was created over 45 years ago at a time when telecommunications providers were subject to pervasive economic regulation. However, given that competition has effectively replaced regulation and technologies such as texting, Skype, emails, instant messaging, and social applications like Facebook and Twitter have changed how people communicate, AT&T Michigan believes the Commission should update to an assessment process that grants all telecommunications providers a 50% reduction in their public utility assessments. In support of its position, AT&T Michigan prepared a chart that demonstrates
an 83.9% decrease in plain old telephone service (POTS) lines from December 1999 to December 2014 provided to residential switched access customers by Michigan’s incumbent local exchange carriers (ILECs). According to AT&T Michigan, by December 2016 this decline is projected to reach 92.8%. Because Michigan’s ILECs soon will be providing only 10% of the residential lines provided in 1999, and will be serving only 14% of Michigan’s housing units with traditional POTS service, AT&T Michigan maintains that a reduction in the telecommunications providers’ share of the Commission’s cost of regulation is appropriate. Also, AT&T Michigan enumerated 11 traditional Commission functions involving the telecommunications industry that existed in 1973, but subsequently were deregulated by the Legislature. According to AT&T Michigan, there are no more burdensome cost cases, which required the Commission to maintain a team of cost-study experts, witnesses, and lawyers. Further, AT&T Michigan asserts that the Commission’s surviving areas of regulatory authority, such as approval of interconnection agreements, adjudicating formal and informal complaints, customer migration, slamming and cramming, lifeline, universal service, relay services for the hearing impaired, number assignments, 9-1-1 services, and multi-line rules have not resulted in as many docketed proceedings this year as opposed to prior years. Given that only an average of two or three telecommunications dockets opened in the last three years actually developed into truly contested cases, AT&T Michigan argues that its share of public utility assessments is based on activities that demand only scant attention from the Commission. Another consideration raised by AT&T Michigan involves the creation of the Michigan Intrastate Switched Toll Access Restructuring Mechanism (ARM), which permits the Commission to recover its administrative costs from the ARM to fund the section within the Telecommunications Division that is responsible for performing the ARM functions. According to AT&T Michigan, the Commission recovered administrative costs totaling $521,618
during 2015 from the ARM fund for these activities. For all these reasons, and because the Commission’s other areas of responsibility, most notably those concerning the regulation of electric and natural gas utilities, has increased in scope and complexity in recent years, AT&T Michigan maintains that the Commission should adopt at least a 50% reduction in public utility assessments on telecommunications providers. AT&T Michigan supports the 50% reduction as a fair and equitable recognition of the well-established utility principle of cost-causation that is meant to allocate costs to those who cause them.

Citing a transition from a heavily-regulated telecommunications industry to a much more market-based regulatory environment, Frontier insists that the workload of the Commission and its Staff is currently more heavily focused on energy utilities, not telecommunications providers. According to Frontier, this transition began roughly a decade ago. To prove its point, Frontier analyzed and classified Commission orders for the years 2000, 2005, 2010, and 2015. Frontier asserts that its analysis demonstrates that the number of telecommunications orders issued by the Commission in the years 2010 and 2015 decreased 71% from the number of telecommunications orders issued by the Commission in the years 2000 and 2005. Further, Frontier stresses that the complexity of the cases currently reviewed by the Commission has materially declined due to the emphasis on markets rather than regulation. For these reasons, Frontier intrastate revenue is no longer a relevant measure for the Commission to calculate the public utility assessments. Accordingly, Frontier urges the Commission to assess the costs to telecommunications providers on the basis of an annual, flat rate fee for each legal entity registered to provide telecommunications services in Michigan. Citing Indiana’s Utility Regulatory Commission as an example, Frontier maintains that the Commission should right size its Telecommunications Staff to approximately five full-time employees along with supporting Staff, and then to divide the costs
associated with the regulatory activities of these five employees equally over the approximate number of telecommunications providers in Michigan, which Frontier believes to number 270 companies. According to Frontier’s arithmetic, no telecommunications provider in Michigan would be assessed more than $8,000 annually under a flat-rate assessment approach.

The MCTA’s comments point out that the definition of a “public utility” in Act 299 does not include cable or video service providers. Nevertheless, because several of the members of the MCTA have affiliated entities that are providers of telecommunications services subject to assessments imposed by Act 299, the MCTA argues that, in order to treat telecommunications providers in a fair and equitable manner, the Commission should, at a minimum, reduce assessments imposed on telecommunications providers by 50%. According to the MCTA, due to the de-emphasis of cost of service rate regulation in the telecommunications industry, which has occurred since 1972, telecommunications providers are no longer subject to traditional regulation and should therefore receive the same reduction in their Act 299 assessments that have been provided to member-regulated rural electric cooperatives.

FirstEnergy, an alternative electric supplier (AES), stressed in its comments that AESs require significantly less regulatory oversight and have fewer regulatory filings as compared to public utilities. Accordingly, FirstEnergy supports maintaining the current assessment methodology, which does not impose any public utility assessment costs on AESs. Finally, FirstEnergy maintains that it would be premature for the Commission to upset the status quo while proposed legislation that may affect the current level of regulatory oversight of AESs is pending in both houses of the Legislature.
Discussion

In passing Act 299, the Legislation adopted MCL 460.118, which provides:

The commission may exempt a public utility from this act, if, after notice and hearing, it determines that gross revenues derived from intrastate operations is not a fair or equitable basis for assessing the costs of regulating that public utility and prescribe a fair and equitable manner for assessing such costs of regulation. (Emphasis added.)

Therefore, the Commission cannot adopt any of these suggested changes without conducting a contested case proceeding. Accordingly, the Commission directs its Executive Secretary to electronically provide copies of this order to all regulated entities and other interested persons as a notice of the contested case proceeding to be conducted in this docket. Any person wishing to intervene in the contested case proceeding commenced by this order shall do so by filing a petition for leave to intervene in this docket on or before October 14, 2016, in accordance with the requirements of R 792.10410.

The Commission has selected Administrative Law Judge Mark E. Cummins (ALJ) to preside over this proceeding. The ALJ shall conduct a prehearing conference at 9:00 a.m. on October 21, 2016, at the Commission’s Lansing offices, 7109 West Saginaw Highway, Lansing, Michigan 48917. At the prehearing conference any intervening entity that is currently required to pay a public utility assessment and any association that represents such regulated entities shall be allowed to fully participate in this proceeding as a party. The Staff shall also participate as a party to this proceeding under R 792.10418.3 Finally, absent a compelling justification, which must be fully explained in a petition for leave to intervene and which persuades the ALJ to exercise his

---

3 Each of the Commission’s divisions may proffer recommendations, but the overall presentation by the Staff shall be coordinated by the Commission’s Chief Operating Officer.
sound discretion to grant permissive intervenor status, a person who is not directly assessed the costs of regulation under Act 299 of 1972, shall be limited to participation under R 792.10413.

The Commission desires that this proceeding be completed expeditiously, and therefore urges the ALJ to schedule and conduct the proceeding so as to make it possible for the Commission to issue a final order in April 2017. To further ensure a timely conclusion to the proceeding, the Commission agrees to read the record, which obviates the need for preparation of a proposal for decision by the ALJ. While the Commission will allow the ALJ to establish the actual dates for the filing of initial prepared direct testimony, responsive testimony, rebuttal testimony, cross-examination, briefs and reply briefs, the Commission nonetheless wants the proceeding to be conducted as follows:

A. Initial prepared direct testimony – The status quo shall be deemed to be the starting point for the Commission’s inquiry. In other words, only parties advocating revisions to the current method for assessing public utility assessments will be required to submit initial prepared direct testimony and exhibits in support of their proposed revisions. By doing so, the Commission assigns the burden of going forward with evidence, but not the risk of non-persuasion, to the parties advocating changes from the status quo. For the purpose of recommending revisions to the fees that were established by the Commission in 1973 for natural gas, crude oil, and petroleum pipeline applications under MCL 460.1194, the Staff shall be required to file initial prepared direct testimony and exhibits, and may file initial direct testimony in support of other proposed revisions.

---

4 A copy of the 1973 fee schedule letter is included in the Staff’s September 2, 2016 Report and Recommendations, which is attached to this order as Exhibit A.
B. Responsive testimony – Any party interested in preserving all or any portion of the current method for the collection of public utility assessments shall do so through the filing of responsive testimony and exhibits, which should stress any unfairness that could result from positions taken by the parties’ proffered revisions to the status quo and/or by any unintended consequences that could arise from the adoption of any position set forth in a party’s initial prepared direct testimony and exhibits.

C. Rebuttal testimony – All parties may file rebuttal testimony and exhibits. To be considered, the rebuttal testimony and/or exhibits shall be limited to issues previously raised in either a party’s initial prepared direct testimony or in responsive testimony. Rebuttal testimony shall not be permitted to interject entirely new issues into the proceedings.

D. Hearings and briefing – The order for the cross examination of the witnesses, and the filing of briefs and reply briefs, shall be determined by the ALJ.

E. No proposal for decision – As previously stated, the Commission intends to read the record, which obviates the need for the ALJ to prepare a proposal for decision.

THEREFORE, IT IS ORDERED that:

A. The Commission’s Executive Secretary shall serve a copy of this order on all companies regulated by the Commission and on other interested persons.

B. Interested persons shall have until October 14, 2016, to file petitions for leave to intervene in the contested case proceeding commenced by this order in accordance with the requirements of R 792.10410.

C. Administrative Law Judge Mark E. Cummins shall conduct a prehearing conference at 9:00 a.m. on October 21, 2016, at which time he shall address all issues related to interventions and scheduling. Any intervening entity that is currently required to pay a public utility
assessment and any association that represents such regulated entities shall be allowed to fully participate in this proceeding as a party. The Commission Staff shall also participate as a party to this proceeding under R 792.10418. Absent a compelling justification, which must be fully explained in a petition for leave to intervene and which persuades Administrative Law Judge Mark E. Cummins to exercise his sound discretion to grant permissive intervenor status, a person who is not directly assessed the costs of regulation under Act 299 of 1972, MCL 460.111 et seq., should be limited to participation under R 792.10413.

D. Administrative Law Judge Mark E. Cummins shall schedule and conduct all further proceedings in order to expedite the proceedings so as to allow the Commission to issue a final order during April 2017. In reaching his determinations on this matters, Judge Cummins shall be guided by the descriptions of the scope of this proceeding set forth in the July 6, 2016 order in this proceeding and by the requirements of this order and Public Act 299 of 1972 (Act 299); MCL 460.111 et seq.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

______________________________
Sally A. Talberg, Chairman

By its action of September 23, 2016. ________________________________
Norman J. Saari, Commissioner

______________________________
Kavita Kale, Executive Secretary

______________________________
Rachael A. Eubanks, Commissioner

Page 11
U-18115
Staff Report and Recommendations

to the
Michigan Public Service Commission

Regarding:
Case No. U-18115 - In the matter, on the Commission’s own motion, to consider revisions to implementation of Public Act 299 of 1972; MCL 460.111 et seq., as it pertains to the amount of public utility assessments to be paid by regulated entities in the future.

Prepared by:
Michigan Public Service Commission Staff

September 2, 2016
# Table of Contents

Acknowledgements .......................................................................................................................... 3
Executive Summary .......................................................................................................................... 4
Public Act 299 of 1972 .................................................................................................................... 7
Public Utility Assessment Administrative Process ..................................................................... 7
History of the Public Utility Assessment and Telecommunications Providers ....................... 7
Proposals for Public Utility Assessment Allocation ..................................................................... 9
   Telecommunications Association of Michigan ................................................................. 9
   Michigan Electric Cooperative Association .................................................................. 11
   Energy Providers ............................................................................................................... 12
   Clear Rate Communications ............................................................................................ 13
   AT&T Michigan ............................................................................................................... 15
   Frontier Communications ............................................................................................... 18
   Michigan Cable Telecommunications Association ......................................................... 21
   FirstEnergy Solutions Corp........................................................................................... 22
Proposals for the Natural Gas Fee Schedule .......................................................................... 23
Staff Recommendations ......................................................................................................... 29
Acknowledgements

The Michigan Public Service Commission (MPSC or Commission) Staff (Staff) would like to thank the parties for the comments and proposals concerning the current methodology used to allocate public utility assessment costs to public utilities.

Proposals and comments were filed by representatives from the Telecommunications Association of Michigan (TAM), Michigan Electric Cooperative Association (MECA), Energy Providers¹, Clear Rate Communications (Clear Rate), AT&T Michigan (AT&T), Frontier Communications (Frontier), Michigan Cable Telecommunications Association (MCTA) and FirstEnergy Solutions Corp. (FirstEnergy).

¹ Consumers Energy Company, DTE Electric Company, DTE Gas Company and the Michigan Electric and Gas Association filed jointly, collectively referred to as the Energy Providers
Executive Summary

On July 6, 2016, the Commission opened Case No. U-18115 on its own motion to consider revisions to the implementation of Public Act 299 of 1972; MCL 460.111 et seq., (Act 299) as it pertains to the amount of public utility assessment (PUA) costs to be paid by regulated entities in the future.

The Commission is concerned that the regulatory workload of the Commission and Commission Staff has shifted since the implementation of Act 299 and that the shift is expected to continue in the future. Specifically, the Commission sites the diminished regulation of the telecommunications (telecom) industry due to legislative changes and technological developments, the continuing and increased regulation of most public utilities, the additional layers of energy-related utility regulation due to the passage of certain legislation, proposed pending legislation related to the electric power sector and a need to adjust the fees currently charged to natural gas producers, pipelines and common carrier petroleum pipelines that were set in 1973. The sole focus of this proceeding is to review the fairness and equitability of the existing allocation of the costs of regulation of public utilities amongst the public utilities subject to the Commission’s regulation.

Pursuant to the Commission order, each company regulated by the Commission was instructed to file proposals to the docket in Case No. U-18115 concerning any suggested changes to the current method used to allocate PUA costs. Proposals were to be supported with empirical data demonstrating how the new method of calculating the assessments will be fair and equitable.

Eight parties filed comments and proposals. The comments and proposals reflect the following general concepts for allocation of the PUA:

(1) The PUA should reflect the workload of the Commission
(2) The PUA should reflect the cost of regulating telecom providers
(3) The PUA should reflect cost causation to support fair and equitable apportionment
(4) It’s premature to adjust any allocations before legislative outcomes are known

Specific proposals and recommendations include:

(1) 50% reduction in PUA for all telecom providers
(2) Assess telecom providers based on 50% of their gross revenues
(3) Maintain the current methodology within the electric sector
(4) Cooperatives should be exempt from the gross revenue approach and instead pay the minimum assessment of $50
(5) Allocate based on cost to regulate telecom providers compared to other utilities
(6) Optional rate adjustment or deferral of incremental assessment costs
(7) Flat-rate assessment per telecom service provider legal entity
(8) No change to the current approach during the early comment phase
Given the scope of the proposals filed to this docket, Staff recommends that the Commission issue an order and notice of hearing that establishes a date for a prehearing conference and assigns this matter to an administrative law judge for an evidentiary hearing that will be conducted as a contested case proceeding.

Due to the technological changes in the telecom industry over the past several years, the current methodology may no longer be the most appropriate method to determine the PUA allocation for telecom providers in today’s environment.

Staff believes that the concept of allocating the PUA based on the nature and extent of the Commission and Staff workload (most notably the degree of complexity and the amount of resource consumption) is logical and would be a reasonable justification for changing the current PUA allocation methodology if the Commission sees fit. As such, for any entity recommending a change to the current PUA allocation methodology in the contested case proceeding, Staff recommends that the Commission direct all such entities to, at minimum, provide evidence and support pertaining to the degree of complexity and resource consumption related to Staff workload.

Based on the support provided in this early comment phase, Staff believes it remains reasonable to assess cooperatives and member-regulated cooperatives using the current PUA allocation methodology. The Electric Cooperative Member-Regulation Act, Public Act 167 of 2008, MCL 460.34 et seq. (Act 167) reduced the regulatory workload of the Commission and its Staff related to member-regulated cooperatives and, as a result, the Commission adopted a modified gross revenue approach. Therefore, Staff recommends that the Commission direct any entity wishing to abandon the modified gross revenue allocation methodology (for member-regulated cooperatives) or the traditional gross revenue allocation methodology (for non-member-regulated cooperatives) to provide evidence and support pertaining to relevant changes subsequent to Act 167.

Staff believes it would be reasonable for the Commission to recognize incremental costs that may result from a change in the PUA allocation methodology. As such, for any entity wishing to pursue recognition of incremental PUA costs in the contested case proceeding, Staff recommends that the Commission direct all such entities to provide the amount of PUA costs embedded in current rates and the preferred ratemaking approach for recognition of such costs.

Concerning the Commission’s desire to review and potentially adjust the fee schedule that was adopted in 1973 for natural gas producers, natural gas pipelines and common carrier petroleum pipelines (attached as Appendix C and referred to throughout the report as “fee schedule”) to ensure that other regulated entities are not subsidizing the Commission’s regulatory activities of the above-mentioned, Staff notes that these existing areas are not likely to generate a significant source of future revenue and offers four options to consider for updating the current fee schedule. These options include adjusting the fee schedule based on inflation, direct billing for docketed
cases using currently implemented time-tracking methods, using an estimation of Staff’s time expended for each application and bill accordingly or a combination of the three aforementioned options.

This report provides an overview of PA 299, a description of the Staff’s administrative role in collecting and reporting revenues - including the involvement from the Licensing and Regulatory Affairs Finance & Administrative Services Team (LARA), a history of the telecom providers and the PUA, a detailed summary of each proposal filed, the Staff analysis of each proposal, a description and analysis of options for updating the fee schedule and a recommendation to the Commission.
Public Act 299 of 1972

In 1972, through passage of PA 299, the Legislature created a funding system whereby public utilities regulated by the Commission are annually assessed for the cost of their regulation by the Commission. MCL 460.112 states:

“The department within 30 days after the enactment into law of any appropriation to it, shall ascertain the amount of the appropriation attributable to the regulation of public utilities. This amount shall be assessed against the public utilities and shall be apportioned amongst them as follows: The gross revenue for the preceding calendar year derived from intrastate operations for each public utility shall be totaled and each public utility shall pay a portion of the assessment in the same proportion that its gross revenue for the preceding calendar year derived from intrastate operations bears to such total. Each public utility shall pay a minimum assessment of not less than $50.00.”

Additionally, MCL 460.118 States:

“The Commission may exempt a public utility from this act, if, after notice and hearing, it determines that gross revenues derived from intrastate operations is not a fair or equitable basis for assessing the costs of regulating that public utility and prescribes a fair and equitable manner for assessing such costs of regulation.”

Administrative Process for the PUA

On February 1st of each year, Staff mails a reminder letter to each company regulated by the Commission that is subject to the PUA. This courtesy letter serves as a reminder of the annual report and PUA revenue reporting obligations that are due to the MPSC by April 30 each year. The PUA forms are made available via the MPSC’s website. If an entity fails to provide its PUA revenue by the deadline then Staff makes multiple follow-up attempts, either by email or telephone, to obtain the required PUA revenue information. An internal PUA report is generated using the revenues reported on the PUA form for each entity. The PUA report is provided to LARA in mid-August. LARA is responsible for calculating the PUA rate designed to collect the amount that each entity is to be assessed. LARA prepares quarterly invoices which are mailed starting October 1st.

History of Telecom Providers and the Public Utility Assessment

Historically, there have only been a limited number of challenges by telecom providers to the PUA amounts.

The Commission addressed the issue in its April 23, 1985 order in Case numbers U-7853 and U-7873. The Commission rejected requests submitted by MCI Telecommunications Corporation

2 http://www.dleg.state.mi.us/mpsc/forms/utilityforms.htm
and GTE Sprint Communications Corporation for reductions in their public utility assessments
due to the failure of these companies to bear the evidentiary burden of establishing that the
traditionally calculated assessment amounts were unfair or inequitable.

The Michigan Telecommunications Act, Public Act 179 of 1991 (MTA) as amended, provides
for the assessment of telecom companies. MCL 484.2211 states:

> “Each telecommunication provider of a regulated service in this state shall pay an
assessment in an amount equal to the expenses of the Commission pursuant to Act No.
299 of the Public Acts of 1972, being sections 460.111 to 460.120 of the Michigan
Compiled Laws.”

The revenues that telecom providers use was determined by the Commission and the Michigan
Court of Appeals. LCI Communications and AT&T Communications of Michigan filed
complaints with the Commission in case numbers U-10323 and U-10720 alleging that their
assessments were calculated incorrectly. The plaintiffs objected to the inclusion of interstate
revenue and nonregulated revenues in the determination of their assessments. The Commission
ruled against LCI (1994) and AT&T Communications of Michigan (1995) and included
interstate in total revenue. In its AT&T order dated August 14, 1995 the Commission stated in
part:

> “The Commission therefore will not grant AT&T’s request to alter its assessment to
reflect only revenue from regulated services. However, the Commission is in general
agreement that the regulatory assessment of a provider should be more closely aligned
with the actual burden presented by that provider. Revenue from regulated services
seems to be a reasonable basis.”

Both companies appealed the Commission’s order requesting that interstate and nonregulated
intrastate revenue be excluded from the determination of their PUA liabilities. On December 23,
1997, the Michigan Court of Appeals issued an opinion in consolidated cases 194751 and
202934 (LCI and AT&T Communications of Michigan, respectively) stating that interstate
revenues could not be included for purposes of the PUA, but that intrastate revenues from both
regulated and nonregulated services may be included. The Commission appealed to the Supreme
Court, but the Supreme Court elected not to hear the appeal.

Pursuant to Section 211 of the MTA, each telecom provider of a regulated service in the State of
Michigan shall pay an assessment based on the expenses of the MPSC. All providers of a
regulated service, as defined by the MTA, are subject to the PUA. The list of providers subject
to the PUA includes incumbent local exchange carriers (ILEC’s) and competitive local exchange
carriers (CLEC’s), as well as facilities based competitive access providers (CAP) and
interexchange carriers (IXC) that have filed a tariff with the MPSC for regulated services.
Regulated and unregulated intrastate revenues received from Michigan operations should be
reported separately from other operating revenues since only those revenues will be the basis for
Proposals for PUA Allocation

This section summarizes the comments and proposals regarding PUA allocation as provided by each of the eight entities.

Telecommunications Association of Michigan (TAM)

The comments and proposal filed by TAM were submitted on behalf of its members and are summarized below.

TAM is an association whose principal members include 33 ILEC’s serving primarily small towns and rural communications across Michigan and six CLEC’s serving both rural and suburban and urban communities across Michigan.

TAM agrees with the observation of the Commission that the regulatory workload of the Commission and Commission Staff have shifted since the enactment of Act 299. According to TAM, the reduction in the nature and extent of regulation by Staff of telecom providers has continued and even accelerated dramatically since the original passage of the MTA (including all of the rewrites) and other various orders of the FCC. TAM provided examples of how legal developments have eliminated or reduced regulated activities regarding telecom services including the following:

(1) Elimination of:
   a. Cost of service, rate of return regulation of telecom providers.
   b. The requirement to obtain Commission approval for rate changes or retail intrastate service including basic local exchange, long distance, or any other local exchange service, feature or functionality.
   c. Commission rate-setting authority over access rates and the power to approve an intrastate access rate at a level above the level of the corresponding interstate rate.
   d. Commission authority over directory assistance rates and service quality.
   e. Commission rulemaking authority over retail telecom service quality, billing standards and practices for residential telecom service and privacy standards.
   f. Prohibitions on cross-subsidization of the rates of one service by the rates of another service.
   g. The requirement to file tariffs with the Commission for the rates, terms and conditions of any regulated service, upon the filing of written certification to the Commission that the provider is opting out of tariffs.
(2) Repeal of:
   a. Rate setting and other Commission authority over coin operated telephones, direct inward dialing and touch tone service.
   b. Provisions requiring that LECs offer primary basic local exchange service and obtain Commission approval of rates for such service.
   c. A prohibition against charging a rate for a regulated service which is less than the total service long run incremental cost of service and a duty to impute the costs of certain services, functions and components into the rates for the service.

(3) The FCC’s preemption of state specific eligibility criteria for the federal Lifeline Program.

These reductions in Commission activity in the telecom industry have caused a shift in Commission workload and should result in an even larger allocation of the PUA to gas and electric utilities. TAM believes that the portion of PUA allocated to telecom providers is still too high.

TAM recommends that the Commission reduce the PUA on telecom providers by 50%. This reduction will more closely align with the comparative regulatory workloads across industries and will better reflect the sharp reduction in regulatory activity involving telecom providers.

Staff Analysis

On its surface, Staff believes that the concept of allocating the PUA based on the nature and extent of the Commission and Staff workload (most notably the degree of complexity and the amount of resource consumption) is logical and would be a reasonable justification for changing the current PUA allocation methodology if the Commission sees fit.

However, Staff finds the TAM presentation to be somewhat one-sided. It is true that technological advancements in the telecom industry have changed the focus of the responsibilities of the Staff and as such telecom services are not regulated in the traditional sense in the areas of rate setting and oversight of quality of service and billing rules. However, Staff continues to play a vital role in other areas such as dispute resolution, performing reviews for approvals as delegated by federal statute and orders and oversight in many areas such as lifeline and deaf relay services to protect consumers. TAM does note that providers can opt out of tariff filing requirements but they fail to note that only a handful of providers have done so. As such, Staff is still responsible for maintaining, reviewing and approving tariffs for well over 170 different entities as found on the Commission website. Also, TAM states that the FCC has preempted the state eligibility criteria for the federal Lifeline program. In fact, while the FCC will only reimburse a provider from the federal Universal Service Fund for customers who meet federal eligibility criteria, states are not preempted from having their own criteria.
Michigan Electric Cooperative Association (MECA)

The comments and proposal filed by MECA were submitted on behalf of its members and are summarized below.

MECA is a Michigan non-profit corporation that serves as the statewide association for Michigan’s rural electric distribution cooperatives, one generation and transmission cooperative and one alternative electric supplier which combined serve more than 650,000 Michigan residents over 58 counties.

When Act 167 became effective and as MECA’s members became member-regulated, the Commission changed the PUA assessment to 50% of what would otherwise be required under the gross revenue approach. The transition for MECA’s members to member-regulation is nearly complete with all but one distribution cooperative being member-regulated (the final distribution cooperative filed a letter on August 26, 2016 with the Commission requesting to transition to member-regulation). The Commission and Commission Staff no longer expend the time and resources to regulate the cooperatives to an extent that justifies continuing the modified gross revenue approach. Before member-regulation, the Commission would annually consider power supply cost recovery (PSCR) plan cases, PSCR reconciliation cases, Times Interest Earnings Ratio (TIER) cases and other rate related matters. This year the Commission has one PSCR-R/TIER case pending and one cooperative GCR plan and reconciliation filing.

Using the gross revenues derived from intrastate operations of MECA’s members as a basis for determining their assessments is no longer a fair or equitable method for assessing the declining costs of regulating MECA’s members.

Act 299 exempts municipal utilities from the PUA fee. Since member regulated cooperatives are subject to Commission oversight largely in the same manner as municipalities, MECA respectfully requests that its members be exempted from Act 299 assessment based on gross revenues and that its members be required to pay the minimum assessment of $50 as provided under Section 2, MCL 460.112.

Staff Analysis

On its surface, Staff does not believe the support provided by MECA in this early phase would provide a reasonable basis for an adjustment beyond the modified gross revenue approach of 50% that was approved by the Commission in the order dated June 16, 2011.

---

The current methodology recognizes the reduced regulatory responsibility related to member-regulated co-ops resulting from Act 167. In addition, the current methodology also recognizes the continued regulatory responsibility that the Commission continues to have. As provided by MCL 460.36, the Commission shall:

“retain jurisdiction and control over all member-regulated cooperatives for matters involving safety, interconnection, code of conduct including, but not limited to, all relationships between a member-regulated cooperative and an affiliated alternative electric supplier, customer choice including, but not limited to, the ability of customers to elect service from an alternative electric supplier under 1939 PA 3, MCL 460.1 to 460.10cc, and the member-regulated cooperative's rates, terms, and conditions of service for customers electing service from an alternative electric supplier, service area, distribution performance standards, and quality of service, including interpretation of applicable Commission rules and resolution of complaints and disputes, except any penalties pertaining to performance standards and quality of service shall be established by the cooperative's members when voting on the proposition for member-regulation or at an annual meeting of the cooperative.”

In addition, Staff has the responsibility for safety inspections of Presque Isle Gas Cooperative and Act 69 franchise cases involving cooperatives. This level of regulation is quite different and more robust than the level of regulatory authority involved with municipal utility entities.

**Energy Providers**

The comments and proposal filed on behalf of regulated electric and gas providers including the members of Michigan Electric and Gas Association, Consumers Energy, DTE Electric Company and DTE Gas Company - collectively referred to as Energy Providers, are summarized below.

Energy Providers recognize the need for sufficient funding to allow the Commission to perform its regulatory functions in a timely manner. Fair and equitable allocation of regulatory costs among those industry participants that create the need for regulation should continue to be a guiding principal. If there is a realignment that causes a significant cost increase to any specific providers, the Commission should consider appropriate measures to allow recovery of the increased costs.

Since 1972, in addition to changes in the scope of regulation for telecom providers, there have been other significant changes in the MPSC regulatory function including:

1. The formation of MAE as a new agency

---

4 For clarity, Staff notes that the modified gross revenue approach reduces the revenues subject to the PUA calculation by 50%. The gross revenue approach does not reduce the assessment by 50% although the two methods provide very similar outcomes mathematically.
(2) Operating a grant program for low income energy assistance  
(3) Administering and evaluating energy optimization (EO) programs  
(4) Implementing the federal PURPA program  
(5) Reviewing renewable energy contracts and supervising renewable energy programs  
(6) Establishing a process for tracking renewable energy credits  
(7) Implementing electric and gas retail choice programs  
(8) Licensing alternative energy providers for both gas and electric service  
(9) Setting up the gas choice comparison website  
(10) Participation in FERC cases and otherwise evaluating the continued development of region markets.  
(11) Implementing the federal EPA clean power plan (temporarily stayed)  
(12) Evaluating and promoting alternative energy and demand response  
(13) Licensing competitive telecom providers  
(14) Promoting the expansion of broadband service in Michigan  
(15) Continuing regulation and monitoring developments in telecom, addressing video and cable complaints and more.  

Some of the new entities involved to varying degrees in these regulatory changes are alternative energy providers (electric and gas), municipalities (EO), competitive telecom providers, energy efficiency service providers, independent renewable energy project developers, the regional electric transmission system operators and FERC approved qualifying facilities.  

If a proceeding to reassign regulatory costs leads to an increase in the assessment of costs of regulation to Energy Providers, the Commission should consider allowing an optional immediate adjustment or phase-in to rates to allow timely recovery of the incremental costs or, in the alternative, allow utilities to defer the incremental assessment of the cost of regulation for recovery in a future base rate proceeding.  

Energy Providers are not proposing any change to the PUA allocation but agree with the overall guiding concept of cost causation to support a fair and equitable apportionment.  

**Staff Analysis**  

From a technical perspective, Staff believes the ability to recover incremental PUA costs is reasonable. Regulatory costs, including PUA costs, are routinely approved for recovery by the Commission. To the extent that regulatory costs change, and to the extent that this process can recognize said change and approve a ratemaking method to recover such costs, then it seems reasonable to allow for recovery of the incremental cost. Deferral of such costs would be the most administratively efficient manner to do so.  

**Clear Rate Communications (Clear Rate)**  

The comments and proposal filed by Clear Rate are summarized below.
The regulatory workload of the Commission and Staff has shifted since the implementation of Act 299. Most notably, since the enactment of the MTA and its legislative revisions in 1995 and 2011, the cost of regulating telecom providers has decreased.

While rate cases for telecom providers used to be commonplace, the last order issued by the Commission considering a total service long run incremental cost study was in 2010. The most recent Interconnection Arbitration Order was issued by the Commission in 2013.

According to the Commission’s annual reports to the Governor and Legislature, despite the fact that there are more regulated telecom companies than other public utilities, telecom orders have consisted of approximately 25% of the total orders issued each of the last five years. Considering that the overwhelming number of telecom orders were non-contested matters, telecom cases took up less than 25% of the time of the Michigan Administration Hearing Systems (MAHS) Administrative Law Judge’s (ALJ) assigned to the Commission. Of the Commission Staff dedicated to specific utility industries, less than 19% are dedicated to telecom. Likewise, customer service contacts shows that telecom makes up a small percentage of the total number of contacts over the last four years.

In light of the decreased regulation of telecom carriers and the relatively low percentage of regulation of public utilities in Michigan applicable to telecom carriers, Clear Rate does not believe it is appropriate to divide the entirety of the collective amount of utility regulation among all regulated entities on an equal basis. Further the Commission must recognize that the collective gross revenues of the 16 regulated energy utilities in Michigan far exceeds that of the 157 regulated telecom utilities.

Clear Rate proposes that the Commission adopt the following formula for allocation of public utility assessments. Once LARA determines the correct amount under MCL 460.112 and MCL 460.113 to assess against public utilities on a collective basis, recognizing that energy utilities are utilizing at least 75% of Commission’s resources and telecom utilities are utilizing less than 25%, telecom utilities should be assessed based on 50% of their gross interstate operations revenue while energy utilities should continue to be assessed based on 100% of their gross intrastate operation revenue.

Staff Analysis

It is true that technological advancements in the telecom industry have changed the focus of the responsibilities of Staff and as such telecom services are not regulated in the traditional sense in the areas of rate setting and oversight of quality of service and billing rules. However, Staff would like to outline a few observations related to Clear Rate’s statements.

Clear Rate attempts to show that the percentage of telecom related Orders issued by the MPSC over the past five years is down slightly during that timeframe, ranging from
20.4% to 30.9%. Staff would be hesitant to agree with Clear Rate’s suggestion of a trend, since it would appear that the percentage of telecom related orders issued is up more than 4% from 2014 to 2015.

Clear Rate indicates that there are 19 employees in the Telecom Division, representing less than 19% of the Commission’s total employees dedicated to specific utility industries. While this is accurate, not all 19 of those employees are funded by the PUA, some are funded through the Access Restructuring Mechanism (ARM) and video franchise fees. The total staffing number is reduced considerably from recent years.

Additionally, Clear Rate identifies that telecom-related customer service contacts have ranged from 12.6% to 16% over the most recent four years and that the percentage of Proposal for Decisions (PFD) in telecom cases range from 5.5% to 14.2% for the past three years. Clear Rate asserts that under the status quo, the percentage of gross revenue method does not reflect that the Commission resources are overwhelmingly used by energy utilities.

Staff believes that these portions of the Clear Rate presentation are contradictory to its conclusion that the Commission should reduce the PUA allocation for telecom providers. Referring to Appendix B, one will find that the telecom industry has provided approximately 11%, 10%, 9% and 9% of the PUA costs for the most recent four fiscal years. This PUA data shows that non-telecom (energy) entities provide the large majority of the PUA. This PUA data also suggests that telecom customer service contacts, telecom employee levels, telecom orders, and telecom PFD data offered by Clear Rate would not be a reasonable justification to support a 50% reduction in PUA revenues. At present, the metrics offered by Clear Rate are equal to or in most cases far greater than the current telecom industry assessment of approximately 10%.

**AT&T Michigan (AT&T)**

The comments and proposal filed by AT&T are summarized below.

AT&T applauds the Commission for its forward-looking action in initiating this review of the current method used to allocate PUA costs. The current allocation method was created over forty five years ago in a telecom marketplace that bears little resemblance to how telecommunications are provided today. Competition has replaced regulation. The development of telecom services have transformed since 1972 and are reflected in the MTA to reduce or remove regulations that are no longer necessary in a competitive marketplace.

The vast majority of Michigan customers have dropped traditional ILEC services and now get their service from wireless carriers or from cable telephony/voice over internet protocol (VOIP). This transformation has been recognized by the Commission in the annual status of competition in the telecom industry reports that are published online. The most recent year report shows that
wireless, VOIP and broadband subscribers all increased. None of these services are regulated by the Commission.

Additionally, in a series of regulatory reform bills, the Legislature has sharply reduced the degree of regulation under the MTA and has thereby lessened the need for Commission involvement in telecom in the following areas: retail rate regulation, tariff requirements, service quality & billing rules, access rates, requirement to provide basic service package, price floors and imputation requirements for retail services, toll services and local calling areas, VOIP services, affiliate transactions, annual reporting obligations and white pages.

The Commission’s remaining responsibilities in the retail area are fairly light. However, it continues to entertain formal and informal complaints brought under MTA; enforce requirements dealing with customer-migration; slamming and cramming; overseeing administration of programs for lifeline, federal USF, and relay services for the hearing-impaired; and it handles certain issues involving number-assignments, 911. However there are not many dockets at the Commission on these issues. There are, at most, only two or three telecom dockets each year that rise to the level of a truly contested case. The small number of docketed proceedings and the ministerial nature of most of those proceedings, strongly support AT&T’s thesis that there is no longer a rational connection between size of its intrastate revenues and the resources the Commission devotes to its oversight of the telecom industry.

Moreover, relatively few of each years docketed proceedings deal with retail issues. AT&T intrastate revenues are predominately retail, accounting for 80% of total revenue for 2015. Thus, AT&T’s share of assessments are based on activities that demand only a scant attention from the Commission. Another factor driving the over-allocation of costs to the telecom industry is the separate funding of the Michigan Intrastate Switched Toll Access Restructuring Mechanism (ARM). The Commission operates and administers the ARM fund and established a separate section with the Telecom Division to do that work. The Commission recovers its administrative costs from the ARM.

There is increasing complexity in the regulation of electric and gas utilities. The Commission explained that, in contrast to the regulation of telecom providers, most of the public electric and gas utilities are still subject to traditional cost of service rate regulation. There are also annually conducted reviews of costs, revenues and expenses, and the Legislature added new forms of regulation associated with alternative electric and gas suppliers and renewable energy and energy optimization plans. Additionally, the proposed electric legislation may increase and further complicate regulation of electric power.

AT&T acknowledges that it should continue to pay public utility assessments however, a significant adjustment is appropriate. AT&T proposes that the Commission adopt at least a 50% reduction in public utility assessments on telecom providers to account for the above mentioned reduced workload. Telecom providers would continue to report intrastate revenues, but the
assessment would be reduced by 50%. This reduction is in line with the reduction authorized by the Commission for member regulated cooperatives and is smaller than the 75% discount authorized to Upper Peninsula Generating Company by the Commission in Case No U-6457.

AT&T requests that the Commission issue an order that initiates a proceeding, with notice and opportunity for hearing, to evaluate its proposal.

Staff Analysis

As discussed previously, on its surface Staff believes that the concept of allocating the PUA based on the nature and extent of the Commission and Staff workload (most notably the degree of complexity and the amount of resource consumption) is logical and would be a reasonable justification for changing the current PUA allocation methodology if the Commission sees fit.

As mentioned earlier, it is true that technological advancements in the telecom industry have changed the focus of the responsibilities of the Staff and as such telecom services are not regulated in the traditional sense in the areas of rate setting and oversight of quality of service and billing rules. However, Staff would like to outline a few observations relative to AT&T’s comments.

AT&T notes that providers can opt out of tariff filing requirements but they fail to note that only a handful of providers have done so. As such, Staff is still responsible for maintaining, reviewing and approving tariffs and tariff amendments for well over 170 different entities as found on the Commission website.

Staff still maintains a vital role in other areas of regulation such as dispute resolution, performing reviews for approvals as delegated by federal statute and orders and oversight in many other areas such as under Metropolitan Extension Telecommunications Rights-of-Way Oversight (METRO) Act and the Video Franchise Act. The more recent trend has been for the legislature to provide specific funding for new programs such as these through legislative changes. As noted, technological advancements have changed the way the Commission oversees the telecom industry but the Commission continues to play an important role.

AT&T also points out that a vast majority of Michigan customers have dropped traditional ILEC services and are now turning to other types of unregulated services such as wireless, VoIP and broadband. Staff notes that because the PUA is based on regulated revenues of the providers, the amount that providers are paying into the PUA continues to drop substantially each year with the decline of landlines in Michigan.
Frontier Communications

The comments and proposal filed on behalf of Frontier North Inc., Frontier Midstates, Inc., Frontier Communications of Michigan, Inc., Frontier Communications Online and Long Distance, and Frontier Communications of America, Inc. (collectively Frontier) are summarized below.

Frontier appreciates the Commission’s solicitation of comments on this issue.

Consistent with transition from a regulated to a highly competitive telecom market, the workload of the Commission and Staff has shifted away from telecom regulation since the implementation of Act 299 and that shift in resources and workload is going to continue in the future. The regulation of the telecom industry has been dramatically reduced by technological and product innovations and as a result, legislative changes dramatically reduced the level of regulation of telecom services. The Commission now regulates telecom services, not providers, under Act 179, which has been amended numerous times to accommodate advancements in communications and relies upon a competitive marketplace.

The shift can be identified by examining Commission order output. Frontier examined Commission orders from years 2000, 2005, 2010, 2015 and 2016 and classified them into ten categories: cost studies, interconnection agreements (arbitration vs. no arbitration), retail quality of service rules, licensing actions, Commission’s own motion, non-consumer complaints, consumer complaints, area code/NXX relief, and other. Commission orders consistently decreased for each of the five years examined from 2000-2016.

The most resource consuming actions of the Commission and Staff have been eliminated or reduced by legislative changes or changes in the marketplace as measured by Commission activity related to cost studies, interconnection agreements (arbitrations), Commission’s own motion and consumer complaints. The volume of other less resource consuming activities has also decreased dramatically, including licensing activity and interconnection agreements (no arbitration).

Continued use of intrastate revenue as the basis for the PUA calculation for telecom providers is no longer a relevant measure of Commission activity given the changes in legislation, technology and the competitive marketplace. The services that serve for the basis from MPSC assessments will soon be gone. Frontier recognizes the need for consistent and predictable assessments for efficient and effective Commission operations. Self-reporting of intrastate revenues for the regulated telecom industry is troublesome, expensive and easily-avoided.

Assessing Commission costs to telecom providers on the basis of an annual, flat rate fee for each legal entity registered to provide telecom services in Michigan provides the Commission with a stable and equitable methodology for funding the Commission’s telecom activity. Frontier believes the right-sizing of the Commission’s Telecom Staff should be reflected in the total level
of PUA collected from the telecom industry. As such, Frontier believes the proper assessment fee for the telecom industry should be between $1 million and $1.5 annually. With an excess of 270 companies subject to assessment, the annual fee for any one legal entity would be between $5,000 and $8,000 annually.

A flat fee assessment for telecom providers and gas producers, gas transmitters and common carrier petroleum companies can be incorporated in the overall apportionment process of the Commission’s PUA process. A flat fee per legal entity reflects the most efficient and effective method for the Commission to assess its costs to the telecom industry.

Staff Analysis

Again, it is true that technological advancements in the telecom industry have changed the focus of the responsibilities of the Staff and as such telecom services are not regulated in the traditional sense in the areas of rate setting and oversight of quality of service and billing rules. However, Staff would like to outline a few observations relative to Frontier’s comments.

The analysis that Frontier provided of the different years of orders issued by the Commission does not seem to be the best approach. The years appear to have been selected at random, and do not show a true representation of what Frontier is suggesting as a decline in telecom regulation, involvement, and issuing orders. The numbers that are used do not appear to be accurate, or at the very least are skewed. It appears as though Frontier is confusing license surrenders with revocations, and Staff is not certain the details are correct. Frontier states that there were four retail service quality orders in 2000 and 2005 and none in 2010 and 2015, however, the Commission records show that there were six service quality orders issued in 2005 under U-14435 and U-14488 pertaining to the service quality rules. There were also two service quality orders issued in 2010 under U-16251. It appears as though Frontier has not categorized the information properly.

Regarding Frontier’s comment that “Frontier believes this right sizing of the Commission’s Telecom Staff and supporting Staff should be reflected in the total level of PUA collected from the telecomm industry”, Staff notes that the Telecom Staff has gone from a high of 30 employees in 2002 to the current count of 19 employees which includes Staff for the ARM and video franchise, both of which are funded separately. This reduction in Telecom Staff has occurred concurrently with technological changes and alterations in the way the industry is regulated, and has resulted in a division appropriately sized to the assigned workload.

On pages 4-5, Frontier produces information related to its Exhibit B, stating that there are over 270 providers in the telecom provider registry to be assessed, but the Staff notes that not all of these providers are subject to the assessment. Frontier incorrectly includes
entities such as payphone providers, operator service providers and toll resellers that are not assessed pursuant to Sec. 401 of the MTA as discussed earlier in this report. Staff also observes that Exhibit B is a print out of the registry as of August 2, 2016 whereas the 253 figure provided in the July 6 order is the total number of providers assessed based on 2014 numbers.

Staff still has a vital role in other areas of regulation such as dispute resolution, performing reviews for approvals as delegated by federal statute and orders and oversight in many other areas such as under METRO Act (right-of-way) and the Video Franchise Act, licensing, 211, 911, lifeline and related federal lifeline eligibility certification, deaf relay, numbering resources, etc. The more recent trend has been for the legislature to provide specific funding for new programs such as the ARM and video franchise. As noted, technological advancements have changed the way the Commission oversees the telecom industry but Staff continues to play an important role, particularly in the wholesale arena.

Frontier recommends a flat-rate assessment per telecom provider legal entity for recovery of the Commission’s costs related to telecom regulation. Frontier asserts that the use of revenue as the basis for PUA allocation is no longer relevant due to the changes in legislation, technology and competition. The guiding principle used as support by Frontier is workload and resource consuming activities of the Commission, specifically being much less for telecom (including the right sizing of Staff as discussed earlier). Frontier believes the proper assessment fee to recover the costs of telecom regulation should be between $1 million and $1.5 million annually. Frontier states that the annual fee for any one legal entity would be between $5,000 and $8,000 annually.

First, the notion of a $5,000 to $8,000 annual fee per telecom provider appears to conflict with the underlying premise of Frontier’s primary logic for assessing less to the telecom industry based on workload and resource consumption. Frontier supports a reduction in the telecom industry PUA by focusing on workload and resource consumption of the Commission and Staff. If this same logic were applied within the telecom industry as well, the resulting annual fees per company would vary drastically between telecom companies based on how much Staff workload and resource consumption the entity required. The more workload and resource heavy the telecom entity is, the greater the assessment amount would be, and vise-versa. The Frontier proposal appears to desire a workload/resource focused split between industries, but then desires a different method (not based on workload/resource utilization) to allocate between the telecom entities within the telecom industry.

Second, the notion of a telecom industry fee ranging between $1 million and $1.5 million is roughly one-third (33%) to one half (50%) of what the telecom industry has provided in the past four years (see Appendix B). This proposed 33-50% decrease is similar to
several other proposals in this docket, with the main difference being how to arrive at the end result. The Frontier proposal, while not fully developed in this early comment phase, appears to be more administratively complex to arrive at the same end result as the administratively simple “50% reduction” proposals. The Frontier proposal would require adjustments and calculations by both MPSC Staff and LARA, while the other “50% reduction” proposals would simply require MPSC Staff involvement only.

**Michigan Cable and Telecommunications Association (MCTA)**

The comments and proposal filed on behalf of MCTA are summarized below.

MCTA is a Michigan non-profit corporation consisting of members of many operators of cable systems in Michigan. MCTA members have an interest in this proceeding because their affiliated entities are telecom providers who are subject to the PUA. These comments seek to have assessments upon telecom providers better reflect the diminishing cost to the Commission of regulating telecom services.

When Act 299 was enacted in 1972 all of the public utilities that were subject to this statutory assessment formula were also subject to traditional utility regulation, including cost of service. Since that passage of Act 299 there has been significant changes in regards to the regulation of telecom by the Commission. Due to the de-regulatory nature of both federal and state policy, telecom has transitioned from a regulated monopoly service to a competitive service. In fact, the deregulation has been so significant that telecom service is no longer considered a “public utility service” and the Commission no longer engages in time consuming costly rate regulation of telecom service providers.

Since the passage of Act 299, the amount of regulation over traditional public utilities in the energy sector has increased, while the regulation of telecom services has decreased.

The Commission has exercised the statutory authority given by MCL 460.118 when they approved a 50% assessment reduction for member-regulated cooperatives when they were no longer subjected to cost of service rate regulation. To treat telecom providers in a fair and equitable manner, the Commission at a minimum should reduce the assessments imposed on telecom providers by 50%. Like member regulated cooperatives, telecom providers are no longer subject to traditional cost of service rate regulation.

Another approach would be to adjust the assessments imposed on telecom providers based on the cost to regulate telecom providers compared to other utilities. While this cost data is in the hands of the Commission and not publicly available, one proxy for these costs would be the number of Commission Telecom Staff members compared to the total number of Commission Staff members. A review of the Commission’s employee directory suggests that approximately 15% of employees serve on the Telecom Staff. Thus another approach, would be to reduce the
assessments imposed on telecom providers so that no more than 15% of the Commission’s overall costs are assessed and collected from telecom providers.

To make assessments more fair and equitable, a reduction on 50% in the assessments imposed upon telecom providers should occur. Another approach would be to reduce the assessments imposed based on the cost to the Commission to regulate telecom services and a proxy for reduction could be number of Staff dedicated to the Telecom Division compared to the overall Commission Staff.

Staff Analysis

As pointed out earlier, while the Commission’s regulation over retail telecom services has diminished, Staff continues to have many obligations in the oversight of telecommunications delegated by the MTA, the Emergency 911 Service Enabling Act, the METRO Act and Video Franchise Act as well as the Federal Telecommunications Act (FTA).

On its surface, Staff believes that the concept of allocating the PUA based on the nature and extent of the Commission and Staff workload (most notably the degree of complexity and the amount of resource consumption) is logical and would be a reasonable justification for changing the current PUA allocation methodology if the Commission sees fit.

However, Staff believes that portions of the MCTA presentation are contradictory to its conclusion of a reduced PUA allocation being warranted. For example, MCTA indicates that one approach to change the methodology would be to adjust the assessments imposed on telecom providers to reflect the cost to regulate telecom providers compared to other utilities. Based on a review of the Commission’s employee directory, MCTA calculates that approximately 15% of the Commission’s employees serve on the Telecom Staff and, therefore, telecom providers should not be assessed more than 15% of the PUA. Referring to Appendix B, one will find that telecom providers provide much less than 15% of the PUA. In fact, telecom providers have provided approximately 11%, 10%, 9% and 9% of the PUA for the most recent four fiscal years. At best, this data suggests that the MCTA concerns are already satisfied through the current methodology, while at worst this data suggests that using telecom/cost staffing levels to support a downward change in the telecom assessment is not reasonable.

FirstEnergy Solutions Corp. (FirstEnergy)

The comments and proposal filed on behalf of FirstEnergy are summarized below.

As an alternative electric supplier (AES), FirstEnergy submits this proposal in a narrowed scope to the current assessment process for the electric sector.
AES’s are required to submit regulatory compliance and informational filings, which are generally concise and straightforward in nature. These filings require minimal Commission resources when compared to the complex, voluminous nature of the ratemaking proceedings filed by Michigan’s electric utilities. Additionally, while proposed legislation is pending in the Legislature that may impact the current level of regulatory oversight of AES’s, it would premature to adjust any utility cost allocations before legislation outcomes are known.

Due to AES’s requiring significantly less regulatory oversight and having very few regulatory filings as compared to public utilities, FirstEnergy supports maintaining the current assessment methodology applied in the electric sector as it is fair and equitable.

**Staff Analysis**

Staff acknowledges that Staff time and resources are used for non-utility entities such as alternative energy providers (AES/AGS), municipalities (EO), competitive telecom providers, energy efficiency service providers, independent renewable energy project developers, regional electric transmission system operators, and FERC-approved qualifying facilities. However, the scope of this docket is focused on the “how” not the “who” in terms of allocating the PUA. In addition, through consultation with counsel, Staff recognizes that the ability to allocate costs to these various non-utility entities does not exist at present. Therefore, for purposes of this report, the Staff analysis is centered on how to allocate PUA costs among the utility entities pursuant to current law. The Staff analysis does not address whether other various entities should, or should not, be assessed.

**Proposals for the Natural Gas Fee Schedule**

The Commission’s July 6, 2016 order directed Staff to make recommendations for updating the fee schedule developed pursuant to MCL 460.119 (attached here as Appendix C). The fee schedule was developed in 1973 and prescribes fees charged to natural gas producers for applications for standard gas well connection permits and application for construction and operation of natural gas pipelines and common carrier petroleum pipelines. On page 4 of the order, the Commission describes the history and context for the existing fee structure:

“.. in MC 460.119, the Legislature authorized the Commission to create one-time fees in lieu of annual assessments for natural gas pipeline and crude oil or petroleum pipelines. MCL 460.119 provides: “Any public utility over which the Commission has jurisdiction solely pursuant to the provisions of Act No. 9 of the Public Acts of 1929, as amended, being sections 483.101 to 483.120 of the

---

5 Energy Provider filing, page 5. [http://efile.mpsc.state.mi.us/efile/docs/18115/0006.pdf](http://efile.mpsc.state.mi.us/efile/docs/18115/0006.pdf)

6 Public Act 16 of 1929 (Act 16) was modified in 2014 to include CO2 pipelines, so the Fee Schedule should be similarly updated to reflect the broader definition of products regulated by Act 16.
Complied Law of 1948 or Act No. 16 of the Public Acts of 1929, as amended, being sections 483.1 to 483.11 of the Complied laws of 1948 shall pay fees as prescribed by the Commission in lieu of any assessment under the provision of this act.” On September 26, 1973, under authority of MCL 460.119, the Commission informed all gas producers, gas pipeline companies, and common carrier petroleum pipelines of the fees that would be collected from them in lieu of public utility assessments. A copy of that correspondence and the approved fee schedule, which has remained unchanged for nearly 43 years, is attached to this order...

In directing the Staff to make recommendations for updating the fee schedule, the Commission’s order stated that upward adjustments to the fees were warranted in order to prevent regulated entities from subsidizing the Commission’s regulatory activities of “natural gas producers, natural gas pipelines and common carrier petroleum pipelines.” (U-18115 Order, page 6.)

Energy Providers was the only entity to address the fee schedule, agreeing that it should be updated as appropriate to reflect a fair and equitable allocation of regulatory costs, if the Commission engages in a review.

Staff Analysis

How our nearest PUC neighbors assess fees

In order to guide in the development of recommendations for the Commission, Staff reviewed the provisions for assessing special fees in five Midwest states: Minnesota, Wisconsin, Ohio, Indiana, and Illinois. The table below summarizes the distinctions between these states and is followed by a short narrative providing state-specific highlights.

<table>
<thead>
<tr>
<th>Revenue Sources for Public Utility Commission’s – Midwest States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessments on Regulated Companies</td>
</tr>
<tr>
<td>Ohio</td>
</tr>
<tr>
<td>Illinois</td>
</tr>
<tr>
<td>Indiana</td>
</tr>
<tr>
<td>Michigan</td>
</tr>
<tr>
<td>Wisconsin</td>
</tr>
<tr>
<td>Minnesota</td>
</tr>
</tbody>
</table>

Ohio Public Utilities Commission (OPUC)

4905.10 Assessment for expenses.

The bulk of Ohio’s funding (>75%) comes from assessment on regulated companies, but there is a portion derived from revenues from the state treasury in addition to fees...
assessed for gas pipeline operators. The assessment against each gas pipeline operator is based on the total thousand cubic feet (Mcf) of gas supplied or delivered in-state during the calendar year preceding the assessment. Ohio also receives a grant from the federal Department Of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) to administer pipeline safety programs. In addition, the Ohio Power Siting Board (OPSB) which reviews all applications for building (or expanding) electric generating facilities, and both electric and natural gas transmission facilities in Ohio, receives separate funding collected through the application fees and associated expenses submitted by the applicants.

**Illinois Commerce Commission (ICC)**

*(220 ILCS 5/) Public Utilities Act*

Illinois has extreme uncertainty in terms of funding the ICC. Unlike the other Midwest states reviewed, Illinois’ revenue is derived exclusively from appropriations from the general treasury taxes. Recently three major funding sources were discontinued by the General Assembly, leaving the ICC with a shortfall equal to nearly 50% of their annual budget. The ICC is pursuing legislative solutions for the structural deficit. The ICC also receives a grant from the PHMSA to administer pipeline safety programs.

**Indiana Utility Regulatory Commission (IURC)**

*IC 8-1-6 Chapter 6. Public Utility Fees*

Indiana’s public utility fees are assessed to each public utility based upon a percentage of gross revenue from the preceding calendar year, with a minimum assessment of $50. The fees collected are deposited into an account known as the IURC public utility fund account. This fund is utilized only for the purpose of funding the expenses of the IURC and the consumer counselor in amounts not in excess of their respective appropriations by the general assembly, plus the contingency fund. The IURC also receives a grant from the PHMSA to administer pipeline safety programs.

**Minnesota Public Utilities Commission (MPUC)**

Minnesota by far has the most detailed assignment of costs to cost causers. Not only does their statute allow for directly assigning costs, but there is also a provision for billing based upon an estimate of fees that will be incurred for specific permit-related and siting activities. As part of their bi-weekly timesheet, every MPUC employee tracks time spent on every MPUC docketed case or project, or if not attributable to a docket or project, as an overhead expense. These expenses are then used to determine utility assessments.
Like Ohio, applicants seeking siting authority for power lines or generation plants are responsible for the costs incurred in reviewing the application and are assessed fees separate from the public utility assessment.

The following are the charges:

(1) Direct Assessment to specific utility for any investigation, appraisal, service or intervention. (All MPUC employees submit timesheets which track every hour of their time attributable to specific dockets or as overhead expenses.)
   https://www.revisor.leg.state.mn.us/statutes/?id=216B.62

(2) Permit Fees associated with an application for a siting permit or route review. Includes provision for billing and payment schedule.
   https://www.revisor.mn.gov/rules/?id=7850.1800

(3) Special assessment request not to exceed $250,000 from various non investor-owned utilities such as municipal and cooperative utilities.
   https://www.revisor.leg.state.mn.us/statutes/?id=3.8851

Wisconsin Public Service Commission (WPSC)

PSC 5.05 Other types of assessments

The WPSC is authorized by law to charge any public utility, power district, or sewerage system the expenses attributable to the performance of the WPSC's duties. Charges are either direct assessment or remainder assessments. Direct assessments are costs that are directly attributable to the utility, power district or sewerage system to which the bill is rendered and includes employee wages, travel, and fringe benefits. Remainder assessments are overhead costs not directly attributable to a specific utility, power district or sewerage system. These remainder assessments for each entity subject to assessment shall be calculated by apportioning the total WPSC expenses not directly attributable to a specific utility, power district or sewerage system in proportion to gross intrastate operating revenues derived from regulated services during the preceding calendar year. Overhead expenses include department heads acting in a general supervisory capacity, hearings officers, reporters, stenographers and clerks in preparation of transcripts, docketing, or filing and Commissioners. The WPSC also receives a grant from the PHMSA to administer pipeline safety programs.

Discussion

In other states such as Ohio and Minnesota, the fees associated with siting authority for transmission lines or certificate of need issuance for construction of large generation are separately tracked and billed to the applicant. This could be an option for Michigan, however if the fees assessments are limited to the Commission’s authority under Public Act 9 of PA 1929 (Act 9) or Public Act 16 of 1929 (Act 16). Staff notes that these
existing areas are not likely to provide a significant source of future revenue due to the
general decline in the number of applications for Standard Well Connection Permits
(SWCP) and associated Act 9 natural gas pipelines. There was a slight uptick in Act 16
common carrier oil pipelines in the past 8 years. Additional details regarding these
specific types of applications are discussed below:

SWCP: The Standard Well Connection Permit is issued to an applicant requesting
authority to connect a newly drilled gas well to a natural gas pipeline. Requests for
SWCP have declined steadily over the past 10 years\(^7\) reflecting most recently the
advanced maturity of the Antrim shale in the northern portion of the Lower Peninsula in
Michigan. The Antrim Shale drilling was very active for nearly 20 years, beginning in
the early 1990’s. Prior to the onset of the Antrim Shale drilling boom, there was also
active drilling in the Priarie du Chein sandstone in central Michigan from the late 1980’s
until the late 1990’s. And before the Prarie du Chein drilling, in the mid-1970’s through
the 1980’s, the Niagaraan Reef Trend reservoirs in upper Michigan were the active play.
Associated with the SWCP issuance is the Commission’s authority to oversee proration
of natural gas reservoirs which assures that owners of the gas reservoir do not produce
more than their share of the gas reserves. Although the Commission has not conducted a
proration case in over 15 years, proration cases are unique and vary widely in the time
commitment require by Staff for processing. For instance, depending upon the reservoir
type, complexity of the reservoir and ownership in the reservoir, a proration case may be
settled or proceed as a contested case. However, unless a new natural gas producing
formation is discovered in Michigan, the Staff time spent processing standard gas well
connection applications (or proration cases) will be minimal due to the low numbers of
applications received per year. The chart below demonstrates the decline in SWCP
applications received over the past 30 years.

\(^7\) No Standard Well Connection Permit applications were received in 2015.
Act 9 pipelines: The decline in applications for SWCP also leads to a decline in Act 9 applications for authority to construct and operate Act 9 natural gas pipelines. During the height of the Niagaran Reef Trend development, it was not uncommon to have six or more Act 9 gas pipeline applications on the Commission meeting agenda. Often there were competing pipeline applications, in which the Commission would consolidate the dockets in order to allow a single contested case hearing for purposes of eliminating waste by duplication of pipelines. The volume and complexity of these cases resulted in the commitment of many Staff hours. More recently, Act 9 gas pipeline construction and operation applications number four to eight per year that result in ex parte orders. These ex parte applications, which don’t require a contested case hearing because the right of way has been acquired, may involve 10-40 hours of Staff time for processing. The length of time required is dependent upon the number of meetings with the applicant and whether a route review is required.

Act 16 pipelines: There has been a slight uptick in the number of Act 16 common carrier oil pipeline applications received by the Commission in recent years. There have been a number of high profile incidents involving ruptured oil lines and the resulting State pipeline taskforce, which are taking more of Staff time. Below is a chart estimating the number of gas and liquid pipeline applications processed by the Commission since 1993.

---

**MPSC Standard Well Connection Permits Issued**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>TOTAL PERMITS ISSUED</th>
<th>ANTRIM</th>
<th>PdC</th>
<th>NIAGARAN</th>
<th>OTHER</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2014</td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2013</td>
<td>12</td>
<td>7</td>
<td>1</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>2012</td>
<td>12</td>
<td>8</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>2011</td>
<td>63</td>
<td>56</td>
<td>4</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>2010</td>
<td>55</td>
<td>50</td>
<td>2</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total (2010-2015)</strong></td>
<td><strong>147</strong></td>
<td><strong>125</strong></td>
<td><strong>8</strong></td>
<td><strong>5</strong></td>
<td><strong>9</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>YEAR</th>
<th>TOTAL PERMITS ISSUED</th>
<th>ANTRIM</th>
<th>PdC</th>
<th>NIAGARAN</th>
<th>OTHER</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000-2009</td>
<td>3426</td>
<td>3327</td>
<td>37</td>
<td>37</td>
<td>25</td>
</tr>
<tr>
<td>1990-1999</td>
<td>6175</td>
<td>5986</td>
<td>97</td>
<td>60</td>
<td>32</td>
</tr>
<tr>
<td>1984-1989</td>
<td>1010</td>
<td>778</td>
<td>85</td>
<td>116</td>
<td>31</td>
</tr>
<tr>
<td><strong>Total (1984-2015)</strong></td>
<td><strong>10758</strong></td>
<td><strong>10216</strong></td>
<td><strong>227</strong></td>
<td><strong>218</strong></td>
<td><strong>97</strong></td>
</tr>
</tbody>
</table>

---

8 Gas wells by formation of all the SWCP’s issued by the Commission between 1984 and 2015.
9 Staff is aware of pending pipeline replacement projects that will require Act 9 applications and there may be additional projects to support natural gas electric generating capacity.
Estimate of Act 9 and Act 16 Pipeline Applications
Approved

<table>
<thead>
<tr>
<th></th>
<th>Act 9</th>
<th>Act 16</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>2015</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>2010-2014</td>
<td>27</td>
<td>6</td>
</tr>
<tr>
<td>2005-2009</td>
<td>76</td>
<td></td>
</tr>
<tr>
<td>2000-2004</td>
<td>90</td>
<td></td>
</tr>
<tr>
<td>1995-1999</td>
<td>140</td>
<td></td>
</tr>
<tr>
<td>1994</td>
<td>95</td>
<td></td>
</tr>
<tr>
<td>1993</td>
<td>38</td>
<td></td>
</tr>
</tbody>
</table>

**Staff Recommendations**

Given the scope of the proposals filed to this docket, Staff recommends that the Commission issue an order and notice of hearing that establishes a date for a prehearing conference and assigns this matter to an administrative law judge for an evidentiary hearing that will be conducted as a contested case proceeding under Michigan’s Administrative Procedures Act, 1969 PA 306; MCL 24.201 *et seq*.

**Public Utility Assessment**

As previously mentioned, the PUA methodology applied to telecom providers has not changed since the late 1990’s. Currently, the Commission collects data related to the total intrastate revenue (regulated and nonregulated) from each licensed and regulated telecom provider that is providing service. Due to the technological changes in the telecom industry over the past several years, this methodology may no longer be the most appropriate method to determine the PUA allocation for telecom providers in today’s environment.

On its surface, Staff believes that the concept of allocating the PUA based on the nature and extent of the Commission and Staff workload (most notably the degree of complexity and the amount of resource consumption) is logical and would be a reasonable justification for changing the current PUA allocation methodology if the Commission sees fit. As such, for any entity recommending a change to the current PUA allocation methodology in the contested case proceeding, Staff recommends that the Commission direct all such entities to a minimum, provide evidence and support pertaining to the degree of complexity and resource consumption related to the Staff workload.

Based on the support provided in this early comment phase, Staff believes it remains reasonable to assess cooperatives and member-regulated cooperatives using the current PUA allocation

---

10 Staff has not historically tracked the number of Act 16 orders issued by the Commission.
methodology. Act 167 reduced the regulatory workload of the Commission and its Staff related to member-regulated cooperatives and, as a result, the Commission adopted a modified gross revenue approach. Therefore, Staff recommends that the Commission direct any entity wishing to abandon the modified gross revenue allocation methodology (for member-regulated cooperatives) or the traditional gross revenue allocation methodology (for non-member-regulated cooperatives) to provide evidence and support pertaining to relevant changes subsequent to Act 167.

Staff believes it would be reasonable for the Commission to recognize incremental costs that may result from a change in the PUA allocation methodology. As such, for any entity wishing to pursue recognition of incremental PUA costs in the contested case proceeding, Staff recommends that the Commission direct all such entities to provide the amount of PUA costs embedded in current rates and the preferred ratemaking approach for recognition of such costs.

Additionally, Staff believes that any changes to the current allocation method should be made with a focus on the incremental administrative impact to the Staff and to LARA. In short, Staff would prefer that the PUA process remain unchanged for LARA. As such, Staff recommends that any change in the PUA allocation methodology adopted by the Commission be narrow in scope such that the necessary changes could be handled by Staff without impacting the LARA portion of the process. This would be effective and efficient, and would also help to mitigate the chance of implementation errors.

**Fee Schedule**

Unless the Commission’s authority for assessing fees is expanded to additional areas such as siting for electric transmission or generation siting, it does not appear that the three existing areas: SWCP applications, Act 9 gas pipeline applications and Act 16 common carrier pipeline applications, will generate significant revenue. However, Staff offers four options below to update the current Fee Schedule (Appendix C):

1. **Inflation Adjusted** - The simplest method to adjust the fee schedule is to adopt an inflation adjustment of the 1973 fee. Staff used an on-line Consumer Price Index (CPI) inflation calculator developed by the Bureau of Labor and Statistics which shows an inflation adjusted fee of $100 in 1973 is equal to $542 in 2016. However, this is not the Staff preferred method because even with the inflation adjustment, the fee is still arbitrary and does not reflect actual costs associated with processing the applications.

2. **Direct Bill** - Direct billing would allow specific tracking of costs for Act 9 and Act 16 docketed cases. Michigan receives federal funding to administer gas pipeline safety programs and as part of the grant requirements, already has a time-tracking method in place which could be used to track docket-specific work related to Act 9 and Act 16 applications. This could also be done for SWCP, but because the time
allocated to this work is typically small compared to other work, it seems more appropriate to apply a one-time fee with some consideration given to time to maintain production data for the life of the well.

(3) **Estimate of Time** - Another option would be for Staff to estimate the time commitment for each application and bill the applicant either a one-time invoice for applications requiring minimal Staff time, or quarterly, depending upon whether the application requires a contested case. The estimate of time could be multiplied by the current salary, benefits and overheads costs assigned to the employee.

For reference purposes, the simplest ex parte application for an Act 9 pipeline case would take less than 10 hours for application review, which assumes no route review is required and all the landowners have approved the route. A more detailed ex parte application for an Act 9 pipeline requiring a route review and analysis of environmental impacts, would likely be completed with less than 40 hours of Staff time.

Applications which are not ex parte and require a contested case proceeding, including such things as pre-application meetings with application, a route review, testimony, cross-examination, brief, responding to land-owner/media/legislator inquiries, media and legislators can add significantly more to the estimate of time.  

(4) **Combination** - Proceedings that involve docketed pipeline applications could be direct billed, while SWCP applications could continue to be fee-based, albeit incorporating some type of inflation adjustment or reflection of processing time required. In addition, it would be appropriate for future SWCP application fees to include an additional fee in consideration of the time spent tracking the well production over the life of the well and maintaining the MPSC gas production database.

It may also be appropriate to consider the potential for future proration cases and incorporate a provision for direct billing in these circumstances, since proration cases historically vary widely in terms of requirements for Staff’s time.

For additional consideration, there are other examples of the Commission’s regulatory authority outside of Act 9 and Act 16 where it may be appropriate to consider some type of fee

---

11 Staff does not have the actual hours, but notes in 2011, 2012 and 2013 an employee dedicated a significant amount of time to issues related to a single hazardous liquids pipeline replacement project and the related applications before the Commission, which was due to the highly sensitive nature of the application. Additionally, this required a significant time commitment by the Section Manager and Division Director.

12 A significant amount of time is spent processing the monthly gas production data that is received for the natural gas wells permitted. Staff time is estimated at one day/week recording monthly gas production from nearly 11,000 gas wells and gas production associated with oil wells and keeping the web page updated with this information.
assessment. For example, the Staff and Commission process Public Act 69 of 1929 franchise applications for propane distribution and cooperatives. In addition, Staff inspects and enforces the pipeline safety regulations for propane distribution companies, landfill pipelines, hydrogen pipelines and gathering pipelines and none of these operators are assessed fees. Further, Staff inspects and enforces the pipeline safety regulations for cooperative owned natural distribution facilities and municipal owned transmission pipelines. PHMSA partially funds the state pipeline safety programs with user fees assessed to operators of natural gas pipelines, hazardous liquids pipelines and LNG facilities, but the PHMSA grant does not fully cover Staff resources to perform these critical safety-related functions.
PUA INSTRUCTIONS FOR TELECOM COMPANIES

On December 23, 1997, the Michigan Court of Appeals issued an opinion in consolidated cases 194751 and 202934 (LCI and ATT respectively) stating that interstate revenues could not be included for purposes of the PUA, but that intrastate revenues from both regulated and non-regulated services may be included.

Pursuant to Section 211 of the MTA, each telecommunication provider of a regulated service in the State of Michigan shall pay an assessment based on the expenses of the Michigan Public Service Commission. All providers of a regulated service, as defined by the MTA, are subject to the public utility assessment (PUA). The list of providers subject to the PUA includes incumbent local exchange carriers and competitive local exchange carriers, as well as facilities based competitive access and interexchange providers that have filed a tariff with the MPSC for regulated services. Regulated and unregulated intrastate revenues received from Michigan operations should be reported separately from other operating revenues since only those revenues will be the basis for your assessment.

Excluded from the PUA are toll resellers who acquire interexchange telephone service capacity (on a wholesale basis) and establish rates to sell telecommunication services to end users. Providers who are a toll reseller of unlicensed services, and who otherwise have no regulated revenues, are exempt from the PUA based upon Section 401 of the MTA. Further, unlicensed telecommunications enhanced services are not to be considered part of local exchange service revenues.

Also, per Section 401 of the MTA the following services shall not be considered part of basic local exchange service and therefore are not to be included in the revenue reported for the PUA: paging, cellular, mobile, answering services, retail broadband service, video, cable service, pay-for-view, shared tenant, private networks, financial services networks, radio and television, WATS, personal communication networks, municipally owned telecommunication system, 800 prefix services, burglar and fire alarm services, energy management services, except for state institutions of higher education, the reselling of Centrex or its equivalent, payphone services, the reselling of an unlicensed telecommunication service, VoIP (Voice Over Internet Protocol) services. Data services (computer, broadband), consulting or professional fees, equipment sales and commissions are excluded as well.

Unlicensed Regulated Services, if part of licensed regulated service, that should be included in the PUA include: Toll service providers (intrastate), toll access service, operator services, payphone services, services for the hearing impaired, lifeline services, and local interconnection services.

You can obtain the PUA Form at [http://www.dleg.state.mi.us/mpsc/forms/utilityforms.htm](http://www.dleg.state.mi.us/mpsc/forms/utilityforms.htm). The body of the page will provide an option for downloading available forms.

Please submit your completed PUA Form to Heather Cantin, Financial Analysis & Audit Division at the address below or via E-mail at cantinh@michigan.gov.

If you are unable to access the PUA Form online or if you have questions regarding this report then please contact Heather at (517) 284-8266 or at cantinh@michigan.gov and she can assist you further.
### Appendix B
PUA Revenues and Appropriations

#### Fiscal Year 2013-14 (Revenue Year 2012)

<table>
<thead>
<tr>
<th>Industry</th>
<th>PUA Revenues</th>
<th>% of PUA Appropriation</th>
<th>Approx $ toward PUA Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elec, Gas &amp; Steam</td>
<td>$13,537,360,147</td>
<td>86%</td>
<td>$28,035,679.54</td>
</tr>
<tr>
<td>Coops</td>
<td>$453,559,648</td>
<td>3%</td>
<td>$939,315.55</td>
</tr>
<tr>
<td>Telecom</td>
<td>$1,772,877,947</td>
<td>11%</td>
<td>$3,671,604.91</td>
</tr>
<tr>
<td><strong>Total PUA Revenues</strong></td>
<td><strong>$15,763,797,742</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>PUA Appropriation</strong></td>
<td><strong>$32,646,600</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Fiscal Year 2014-15 (Revenue Year 2013)

<table>
<thead>
<tr>
<th>Industry</th>
<th>PUA Revenues</th>
<th>% of PUA Appropriation</th>
<th>Approx $ toward PUA Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elec, Gas &amp; Steam</td>
<td>$13,955,822,584</td>
<td>88%</td>
<td>$29,173,702.08</td>
</tr>
<tr>
<td>Coops</td>
<td>$350,312,590</td>
<td>2%</td>
<td>$732,304.75</td>
</tr>
<tr>
<td>Telecom</td>
<td>$1,528,006,045</td>
<td>10%</td>
<td>$3,194,193.17</td>
</tr>
<tr>
<td><strong>Total PUA Revenues</strong></td>
<td><strong>$15,834,141,219</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>PUA Appropriation</strong></td>
<td><strong>$33,100,200</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Fiscal Year 2015-16 (Revenue Year 2014)

<table>
<thead>
<tr>
<th>Industry</th>
<th>PUA Revenues</th>
<th>% of PUA Appropriation</th>
<th>Approx $ toward PUA Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elec, Gas &amp; Steam</td>
<td>$14,750,061,355</td>
<td>89%</td>
<td>$29,653,874.09</td>
</tr>
<tr>
<td>Coops</td>
<td>$361,918,699</td>
<td>2%</td>
<td>$727,609.96</td>
</tr>
<tr>
<td>Telecom</td>
<td>$1,434,382,133</td>
<td>9%</td>
<td>$2,883,715.95</td>
</tr>
<tr>
<td><strong>Total PUA Revenues</strong></td>
<td><strong>$16,546,362,187</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>PUA Appropriation</strong></td>
<td><strong>$33,265,200</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Fiscal Year 2016-17 (Revenue Year 2015)

<table>
<thead>
<tr>
<th>Industry</th>
<th>PUA Revenues</th>
<th>% of PUA Appropriation</th>
<th>Approx $ toward PUA Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elec, Gas &amp; Steam</td>
<td>$13,631,937,305</td>
<td>89%</td>
<td></td>
</tr>
<tr>
<td>Coops</td>
<td>$351,432,956</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td>Telecom</td>
<td>$1,347,559,432</td>
<td>9%</td>
<td></td>
</tr>
<tr>
<td><strong>Total PUA Revenues</strong></td>
<td><strong>$15,330,929,693</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>PUA Appropriation</strong></td>
<td><strong>Not confirmed by LARA at time of report</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
STATE OF MICHIGAN

DEPARTMENT OF COMMERCE
LAW BUILDING, LANSING, MICHIGAN 48813
RICHARD K. HELMBRECHT, Director

September 26, 1973

TO ALL GAS PRODUCERS AND
TRANSMITTERS AND COMMON CARRIER
PETROLEUM PIPELINE COMPANIES

Gentlemen:

Act 299 of the Public Acts of Michigan of 1972, which is "An Act to provide for the assessment, collection and disposition of the costs of regulation of public utilities" establishes a system whereby the costs of the public utility regulation within Michigan state government will be assessed against most public utilities in proportion to the companies' gross intra-state revenues. Section 9 of the act provides as follows:

"Any public utility over which the commission has jurisdiction solely pursuant to the provisions of Act No. 9 of the Public Acts of 1929, as amended, being sections 483.101 to 483.120 of the Compiled Laws of 1948 or Act No. 16 of the Public Acts of 1929, as amended, being sections 483.1 to 483.11 of the Compiled Laws of 1948 or Act No. 144 of the Public Acts of 1909, as amended, being sections 450.301 to 450.303 of the Compiled Laws of 1948, shall pay fees as prescribed by the commission in lieu of any assessment under the provisions of this act."

In response to the mandate of Section 9, the Commission has adopted a fee schedule covering applications for authority to construct gas transmission pipelines under Act 9, statutory filings under Act 16, miscellaneous applications under Act 9, applications for Standard Well Connection Permits for gas wells, official state gas well tests, and security issuance fees under Act 144. A copy of the fee schedule is attached. These fees will become effective October 1, 1973.

The fees set forth on the schedule which are definite as to amount must accompany applications at the time of filing. Hearing reporting costs, which cannot be determined in advance, will subsequently be billed to applicants.

We wish to emphasize that these fees apply only to applications filed by companies which are subject to Public Service Commission jurisdiction solely with respect to activities or projects under Act 9, P. A. 1929; Act 16, P. A. 1929; or Act 144, P. A. 1909. Persons or companies falling within...
September 26, 1973
Page Two

this category would normally be those proposing common carrier crude oil or petroleum products pipelines, liquid petroleum gas or natural gas liquids pipelines and natural gas transmission pipelines, as would producers of natural gas from gas wells (as opposed to producers of natural gas from oil wells), common purchasers of gas or oil or common carriers of gas. Companies which are public utilities in the conventional sense and which are assessed on the basis of gross intrastate revenues are exempt from the payment of fees under the attached schedule.

Sincerely,

William G. Rosenberg
Chairman

Attachment
MICHIGAN PUBLIC SERVICE COMMISSION

FEE SCHEDULE

Required by Sec. 9, Act 299, P. A. 1972

Effective October 1, 1973

1. Fee for application for authority to construct gas transmission pipeline under Act 9, P. A. 1929:

$100 MINIMUM

Minimum covers application fee for one pipeline with a proposed length of 25 miles or less.

Additional charges:

A. $75 for each additional separate pipeline in the same general geographical area.

B. $50 for each 25 miles of length or fraction thereof over 25 miles per pipeline.

C. Hearing reporting costs, including one copy of hearing transcript for Public Service Commission docket files.

2. Fee for making statutory filing under Act 15, P. A. 1929:

$100 MINIMUM

Minimum covers fee for one pipeline with a proposed length of 25 miles or less.

Additional charges:

A. $75 for each additional separate pipeline in the same general geographical area.

B. $50 for each 25 miles of length or fraction thereof over 25 miles per pipeline.

3. Application fee to accompany Application for Standard Well Connection Permit under the "Rules and Regulations Covering the Production and Transmission of Natural Gas," Order No. D-2883:

$100

The application fee covers the acceptance for filing of an Application for Standard Well Connection Permit, the acceptance for filing of the related gas purchase contract, the issuance of a Standard Well Connection Permit and a metal permit plate, and the issuance of a Temporary Allowable Withdrawal Order if appropriate.
FEE SCHEDULE

-2-

4. Gas well test fees:

INITIAL OFFICIAL STATE TEST - $100
EACH RETEST - $50

The gas well test fees cover state supervision and/or witnessing of gas well open flow capacity tests, acceptance for filing and checking of gas well test data, issuance of Allowable Withdrawal Orders and issuance of proration schedules.

5. Fee for miscellaneous applications under Act 9, P. A. 1929:

$100

Additional charges:

Hearing reporting costs, including one copy of hearing transcript for Public Service Commission docket files.

Fee covers applications involving such matters as gas purchase price revision applications, formal complaints, and requests for exceptions to standard rules.

6. Fees for authority to issue securities pursuant to Act 144, P. A. 1909, as amended.

Fees to be paid by any public utility over which the Michigan Public Service Commission has jurisdiction solely pursuant to the provisions of Act 144, P. A. 1909, as amended, for the authorization to issue stocks, bonds, notes or other evidence of indebtedness, shall be the fees prescribed by Sec. 11, Act 419, P. A. 1919, as amended.

MAKE CHECKS PAYABLE TO "STATE OF MICHIGAN, PUBLIC SERVICE COMMISSION"