



October 4, 2021

To: Joy Wang, Ph.D., Public Utilities Engineer, Smart Grid Section, Michigan Public Service Commission

Re: Comments on the New Technologies and Business Models Staff Report Draft

I. Introduction

The Michigan Electric and Gas Association (MEGA¹) submits these comments on the Michigan Public Service Commission (MPSC) Staff's draft report on New Technologies and Business Models (Draft Report). MEGA appreciates this opportunity to comment on Staff's proposed review, summary, and recommendations regarding the process so far. MEGA and its members have participated throughout these proceedings, providing information about their systems and operations in Commission workshops, and plans to continue its participation. MEGA appreciates the input provided by all participants in this process.

II. Comments and Suggestions

Topic: Barriers and Customer Education

The New Technologies and Business Models workgroup was designed to create a shared understanding of different technologies and their potential applications, to identify barriers to integration of new technologies, and to propose potential solutions for consideration by the Commission. While energy utilities are an important stakeholder supporting the goals of the MI Power Grid initiative, so too are local, state, and federal governments, other private sector entities, community-based organizations, and many more. A coordinated response is important to the efficacy of MI Power Grid, as well as the cost-equity of funding the initiatives. MEGA commends the work of the New Technologies and Business Models workgroup and notes that the development and full utilization of clean, distributed energy and resources in Michigan will take close collaboration amongst all stakeholders, an effort that will be assisted and made efficient by coordinated State leadership.

Topic: Just Rates

As regulated public utilities, MEGA members have an obligation to serve customers with safe and reliable power and the responsibility to manage the businesses they own and

¹ The MEGA member companies are investor-owned natural gas and electric utilities with fewer than 500,000 customers in the state of Michigan, and include: Alpena Power, Citizens Gas Fuel Company, Indiana Michigan Power, Michigan Gas Utilities, Northern States Power Company – Wisconsin, SEMCO Energy Gas Company, Upper Michigan Energy Resources Corporation, and Upper Peninsula Power Company.



operate to ensure investments are reasonable, prudent and necessary for the provision of service to their customers. There are many factors that determine a utility rate charged to customers, many of which are largely outside a utility's control and many of which are driven by external factors such as public policy changes.

The setting of reasonable and just rates involves a balancing of utility and consumer interests. The Commission must set rates which will protect both the right of the public utility to earn a fair rate of return on the reasonable, prudent and necessary investments it makes for the service it is required to provide and support its financial integrity to produce a reasonable cost of capital for customers. For example, utilities have constitutional protections against "takings" and confiscatory rates under the Fifth Amendment to the U.S. Constitution, which is applicable to the states through the Fourteenth Amendment. Similarly, Mich Const 1963, art 10, § 2 provides in part, "Private property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law." These constitutional protections have been recognized and applied to public utility rates in well-established case law. In addition, the Michigan Supreme Court has provided further guidance that the Commission must use in setting utility rates. Specifically, creating rates that recognize reductions in certain costs while ignoring the increase in other costs, violates the due process rights of utilities.

The Commission also has a role protecting the right of the utility's customers to pay a retail rate which reasonably reflects the cost of service rendered on their behalf. Conflicts can exist between cost-based ratemaking and various public policy goals, including the duty to service. Caution should be exercised when setting rates not on the cost to serve, but based upon meeting social goals and needs.

Setting utility rates is most commonly done as part of a base rate proceeding where the Commission must determine whether costs incurred or forecasted by the utility were done so prudently, which involves an examination of whether the utility's actions, inactions or decisions were reasonable based on what it knew or should have known at the time the actions, inactions, or decision to incur or forecast costs were made.

The Staff's report requesting guidance on what "just" rates entail is a topic that should be considered outside of Staff's report. As mentioned above, several key elements are involved in setting utility rates. It is imperative as the Commission considers Staff's request that the concept of "just" rates be evaluated holistically and in consideration of the many factors that are largely outside the utilities control, including the impacts of regulatory and public policy.

Topic: Data Driven Decisions

The Staff's Draft Report recommends that the Commission support data-driven regulatory and third-party decisions, in part by, ensuring third-party access to utility data in a secure, timely, and ongoing manner. The Draft Report does not define the nature and extent of the utility data to be provided. In addition, the Draft Report does not address a potential



host of complex issues related to providing third party access to utility data, such as privacy protection, data security, managing the costs of providing such data and recovery of any associated costs of providing data to third parties. In addition, data privacy issues are being addressed in a separate work group, Customer Education & Data Privacy, with a report due from that workgroup process in February 2022.

Once MPSC Staff defines “utility data”, establishing policies and procedures related to the collection, use and disclosure of that data requires more time, study, and input. Utilities need to consider best practices associated with balancing the benefits of data accessibility with their obligations to protect customers’ privacy rights and the potential value to stakeholders. It is also important that customers served by utilities in Michigan understand how utility data will be shared and are provided notice and a reasonable opportunity to provide input. At a very minimum, utility data released to third parties should be aggregated and anonymized so that all identifying information has been removed to protect individual customer confidentiality and prevent unauthorized access, use or disclosure.

Based on current drafting of the report and other Commission activities on the topic, MEGA members express their concern that data being sought is not well-defined, may be expensive to provide in both technological and human resource needs, and raises serious privacy concerns that should be addressed.

MEGA asserts that assembling and providing data to third-parties is a non-trivial exercise, and that such release, beyond the provision of standard usage information, should be at the requestor’s sole expense. Since it is unclear what utility data is being sought for disclosure, it is difficult for MEGA to opine at this point in time on reasonable data protection safeguards, payment of costs for formatting and transferring the data, and other appropriate requirements.

MEGA also respectfully notes that MPSC Staff should consider that providing utility data to third parties in various formats and delivery methods may require investment in software and systems that the Company may not necessarily own today. The MPSC Staff’s final report should address recovery of costs associated with deployment of any software or systems necessary to facilitate the provision of utility data to third parties, direct assignment of expenses associated with formatting and transmitting such data, and whether third parties should directly bear the responsibility for such costs.

It is also important that any rules established protect against further sharing utility data by third parties, ensure third party compliance with reasonable data security procedures and practices appropriate to the private nature of the information received and that utilities not be held liable for any claims for loss or damages resulting from such disclosure.

Lastly, the legislature has opined on the use of customer data and limited disclosure of this data to utilities that enter an unregulated space and offer value-added programs under Section 10ee (MCL 460.10ee), establishing a Code of Conduct for utilities to utilize and, if applicable, share specific customer data to competing interests. MEGA posits



whether customer data collection and disclosure is an issue that the legislature should provide direction to the Commission.

Topic: Pilot Approval and Cost Recovery

MEGA thanks the MPSC Staff for revisiting the issues of expedited pilot review, approval and cost recovery. MEGA would request that the Staff's final report further detail its recommendation that pilot cost recovery is allowed for the duration of the pilot. MEGA members are interested if MPSC Staff are recommending that approved pilot costs be deferred until approved in a subsequent base rate proceeding or costs be tracked through a rate adjustment mechanism.

MEGA members are concerned with the recommendation that pilot offerings include a comparable, parallel third-party pilot or tariff, either separately or within the same pilot or tariff. The scope of a third-party pilot recommendation is not clearly defined in the Draft Report. In addition, the Draft Report does not address who the responsible party will be for the costs and resources needed to execute a parallel third-party pilot or tariff. These costs can include, but are not limited to, utility information technology costs, security costs, and utility personnel costs. Likewise, it is unclear who will have oversight and responsibility of the parallel third-party pilot performance. The recommendation as currently proposed seems to require two pilots testing the same concept with duplicative costs that, as proposed, appear to get spread across the utilities' same customer base, where such cost duplicity represents increasing burden to smaller utility's customer base.

Topic: On-Bill Financing

MEGA members note that while the legislature has authorized the use of and the report recommends pilots for on-bill financing, we are concerned about the impact on our members. Consumer financing is not a core business of utilities, and our utilities have limited experience in securing and processing loans. Further, financing requires much more than simply billing, including securing funds, call center operations, recordkeeping, online access to information, default payment arrangements, etc.

Current resources are devoted exclusively to providing service to our customers. Additionally, current utility customer information and billing systems are not designed to support such activities and would require substantial and costly upgrades to do so. Therefore, any commercial financing risks, loan processing activities, etc. would require additional resources that would be reflected in increased customer rates.

III. Summary and Conclusion

MEGA reiterates its appreciation for the opportunity to provide comments and respectfully requests that Staff consider the above positions and make appropriate modifications in its Draft Report before filing it with the Commission.



Sincerely,

A handwritten signature in black ink, which appears to read "Daniel Dundas". The signature is fluid and cursive, with a distinct loop at the end.

Daniel Dundas
President
Michigan Electric and Gas Association