

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



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February 10, 2023

Ms. Lisa Felice  
Executive Secretary  
Michigan Public Service Commission  
7109 West Saginaw Highway  
Lansing, MI 48917

Dear Ms. Felice:

**Re: MPSC Case No. U-18238 – *In the matter, on the Commission’s own motion, to revise the standard rate application filing forms and instructions previously adopted in Case No. U-15895.***

In its order dated August 11, 2022, the Commission requested comments from interested parties to address certain potential modifications and added disclosures to the Rate Case Standard Filing Requirements (RCFR). In the order, the Commission identified the following areas of interest:

1. Efficient use of the 10-month timeframe, including potential changes to attachments, exhibits, workpapers, protective orders, documentation of overspends, timing, discovery, the required rate case summary, and notifications. The Commission also supported the use of the standard outline for Briefs and for Staff to revise the RCFR to reflect the first round of discovery sought by Staff.
2. IT Matters. The Commission specifically stated that it supports the Staff’s proposals for addressing IT matters, including requiring a full and comprehensive description each IT program, project, piece of equipment, and additional details outlined by the Staff in reply comments.
3. Addressing the issue of whether small and multi-jurisdictional utilities should be exempted from any the RCFR.

On October 7, 2022, Staff filed a Draft Proposal identifying certain modifications and additions to the RCFR. The Attorney General was generally in agreement with the modifications, additions and suggestions made by Staff in the Draft Proposal but proposed certain revisions and additions. On November 3, 2022, the Attorney General filed comments with the Commission reiterating the comments provided to Staff.

On November 17, 2022, Staff held a collaborative with interested parties to discuss certain proposed modifications to the RCFR at which a representative of the Attorney General participated and provided additional input.

On January 10, 2023, Staff filed its latest draft of the proposed RCFR making firm recommendations in most cases and leaving some issues to the discretion of the Commission. Although the Attorney General appreciates Staff's difficulty in reconciling disputed issues and achieving consensus, the following comments are offered to assist the Commission in achieving resolution on critical items that will facilitate and make rate case proceeding more efficient and provide useful information to Staff and intervening parties.

Therefore, the Attorney General offers the following comments, revisions, and additions to the proposed RCFR filed by Staff on January 10, 2023:

1. **Bridge Period** – The Attorney General reiterates her proposal that the Commission address the widespread abuse of lengthy bridge periods. The Attorney General believes that establishing appropriate limits to rate case bridge periods is within the authority and discretion of the Commission absent any legal requirements to the contrary. The RCFR are an appropriate place where the Commission can define those limitations. To make efficient use of the 10-month timeframe, as requested in the Commission's instructions, the RCFR should include a limitation in the rate case forecasted bridge period to a maximum of 12 months between the end of the historical test year and the beginning of the projected test year. In several rate case filings since the enactment of the projected test year option, utilities have extended the bridge period to as much as 24 months.<sup>1</sup>

This has created a situation where Staff and intervenors' resources are extremely taxed by having to review up to 36 months of forecasted data, including the projected test year, which is in addition to also reviewing historical test year and other historical years' data. Limiting the bridge period to 12 months, or even less, reduces the analytical effort required in the shortened 10-month period within which the Commission must issue an order. As noted in the Schedule Guidelines on page 6 of Part I – Instructions in the January 10, 2023 RCFR Proposal, intervenors have approximately four months from the date of the rate case filing (three months from the pre-Hearing date) to the date of filing testimony to review large filings of testimony and exhibits, perform multiple rounds of discovery, perform analysis, and prepare testimony. This burden would be significantly reduced if the bridge period is limited to no more than 12 months.

The 12-month bridge period after the end of the historical test year should accord utilities sufficient time to finalize their rate case after the end of the historical

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<sup>1</sup> MPSC Case Nos. U-20697, U-20940, and U-20963. Other rate cases filed since September 2018 have had bridge periods ranging from 12 months to 21 months (Case Nos. U-20276, U-20479, U-20359, U-20561, U-20642, and U-20650).

test year and obtain a Commission decision before or shortly after the start of the projected test year. Under its regulatory mandate, the Commission has the necessary authority to establish an appropriate bridge period. MCL 460.6a provides for a utility to use projected costs and revenues for a future consecutive 12-month period in developing its requested rates and charges, but it does not specify a bridge period. The Commission has appropriate discretion to set a maximum and reasonable bridge period and should do so in this proceeding.

2. **Rate Case and Public Policy Expenses** - The Attorney General finds that the RCFR are currently deficient in providing sufficient information and insight on expenses incurred by the utilities to influence public policy and achieve rate case outcomes. The Attorney General recommends that the Commission require the utilities to disclose the following information for the most recent historical five years and for the forecasted periods in conjunction with rate case filings, and these requirements should be incorporated in the RCFR:
  - a. Expenses for the purpose of influencing regulation or legislation directly or indirectly through affiliates.
  - b. Expenses for the purpose of influencing public opinion about policy issues or about the company's reputation directly or indirectly through affiliates.
  - c. Expenses relating to all proceedings before the Commission, with specificity about how much and how the company spent on the previous rate case and forecasted for the current general rate case.
  - d. Contributions to 501(c)(3) and 501(c)(4) to each non-profit organization, including those organizations receiving contributions from the utility's affiliated 501(c)(3) charitable foundations.
  - e. Expenses for any litigation that utilities file which seeks to overturn rules or statutes.
3. **Protective Order** – Beginning on page 6 of its latest draft of the RCFR, Staff presented multiple options to the Commission for establishing a Protective Order agreeable to all parties. The Attorney General finds some of the options offered unworkable. Option C is closer to the Attorney General's recommended solution and the preferred option by most parties to this proceeding. To further assist the Commission, the Attorney General reiterates her recommended approach. As part of the RCFR, the Commission should approve a standard Protective Order (PO), which parties to the case can use to obtain confidential information in order to expedite discovery until a final PO is issued at the scheduled Pre-Hearing, if necessary. The final PO would address any specific or unique issues in the instant case. Alternatively, the Commission could schedule a first pre-Hearing within 10 days of the filing of the rate case in order for the ALJ to approve a final PO and follow later with a second pre-Hearing to approve intervenors, set the case schedule, and address other matters.
4. **Information Technology Cost/Benefit** - The RCFR should require the utilities to make increased use of net present value cost/benefit analyses to justify

undertaking large projects, particularly for Information Technology (IT) projects. Given the high cost and short life of new IT systems, utilities should also be encouraged to disclose steps taken to extend the life of new IT systems through contractual arrangements for extended software and hardware support from vendors. This item is not adequately addressed in the latest Staff's draft of the RCFR.

5. **Multi-Jurisdictional Utilities** - Improved disclosure of information by multi-jurisdictional utilities. Multi-jurisdictional utilities must file exhibits that show both the total company and the Michigan jurisdictional portion. Often these utilities only provide either total company or the Michigan jurisdiction information, which complicates the cost analysis. Staff seems supportive of the Attorney General's recommendation, but the Staff left it to the Commission's discretion whether to include this requirement in the RCFR. The Attorney General reiterates the necessity for this information.
6. **Identification of Witnesses and Testimony** - Better identification of witnesses, type of testimony filed, date of testimony and exhibits and other pertinent information as noted in the marked attachment. Staff seems supportive of the following requirements. These additions will facilitate case analysis and cross examination:
  - a. Each page of the testimony must show the name of the witness, the MPSC case number, the date the testimony was filed, whether it is direct, rebuttal, revised, supplemental, or other type of testimony.
  - b. Each exhibit must show the MPSC case number, the exhibit and schedule number, the name of the witness sponsoring the exhibit, the date the exhibit was filed, and the exhibit page number. If revised the exhibit must show an indication it was revised, the date the revised exhibit was filed, and the revised data must be highlighted.
  - c. If multiple witnesses sponsor the same exhibit or schedule, the specific line numbers or data in the exhibit/schedule sponsored by each witness must be identified in footnotes to the exhibit or the schedule.
  - d. Exhibits must be legible and not reduced to less than 9-point equivalent. Large exhibits can be printed in multiple pages with applicable line and column descriptions repeated on each page.
7. **Identification of Discovery Responses Served** - During the Collaborative session, the Attorney General made the following recommendation with regard to the identification of discovery responses. Currently, the discovery responses are not labeled in a consistent manner making it difficult to know where the discovery response is located in the multiple files of responses usually provided by the utilities. The rate case filing requirements should state that when serving responses to discovery requests, the responding party should identify in the description of the file the responses included in that file. For example, if Staff serves a utility with 50 discovery questions and the utility answers all the

questions in response, it should include in the description of the file that it is answering questions Staff-DTE-1-50. If the utility answers only partially, it should identify the questions answered, such as Staff-DG-1-10, 15-20, 45-50 in the first partial response, and Staff-DTE-11-14, 21-44 in the second and final response. This identification will save countless hours searching for discovery responses. Consumers Energy currently follows this procedure, and it works quite well. The other utilities generally do not. Staff is supportive of this requirement but suggested an additional collaborative for further discussion. The Attorney General does not believe an additional collaborative on this matter is necessary and recommends that the Commission adopt this requirement.

8. **Index of Exhibits and Additional Exhibits** - The Attorney General recommends the addition of exhibits and information on existing exhibits in the Part I filing, as follows:
- a. Provide an exhibit index in numerical sequence showing each exhibit and schedule filed, title of the exhibit/schedule, the name of the witness sponsoring the exhibit and schedule.
  - b. Exhibit A-1, Schedule A-2 – Historical Financial Metrics
    - i. Financial Basis information should be presented based on GAAP accounting results as reported in the utility's, or parent company's, Form 10K report.
    - ii. Ratemaking Basis information should be presented to reflect the impact on net income of normalizing financial results to normal weather, and this financial impact should be shown on a separate line before arriving at the Net Income Available For Common Stock. The schedule should also show in footnotes or supporting schedule the necessary adjustments made to restate financial results from Financial Basis to Ratemaking Basis, including ratemaking disallowances and other adjustments. All adjustments should be referenced to a workpaper provided with the filing.

For Ratemaking Basis, the Average Common Equity should be calculated based on the capital structure approved in the last rate case in effect during each year presented. If more than one rate case was in effect during the year, the average common equity should be prorated based on the number of days each capital structure was in effect during the year.
    - iii. Ratemaking financial ratios should reflect the weather-normalized results, normalized cashflows, regulatory adjustments, and the capital structure approved in the most recent rate case in effect for the year.
  - c. For the following exhibits providing projected test year information, expand the exhibit to provide the comparable historical test year information and the change between the two periods by line item:

- i. Exhibit A-11, Schedule A-1
    - ii. Exhibit A-12, Schedules B-1 through B-4
  - d. Exhibit A-12, Schedule B-5 Projected Capital Expenditures and Supporting Schedules:
    - i. Identify the amount of contingency capital expenditures on each schedule for each forecast period.
    - ii. Provide 5 years of historical data for each line on each schedule.
    - iii. Provide the number of miles of pipe or electric line installed, services, meters, work units or activities supporting the five years of historical expenditures and forecasted expenditures for each projected period.
  - e. Include Schedule D-6 Credit Ratings to show the utility's credit ratings for secured and unsecured debt, and commercial paper during the past 10 years by rating agency.
- 9. **Proof of Service/Service List Process** – Beginning on page 13 of the latest draft of the RCFR, Staff outlined the need to improve the Service List process and struggled to reach a consensus. To assist the Commission in defining a more effective process, the Attorney General offers the following recommendations:
  - a. After the Pre-Hearing for the rate case, legal counsel for the parties who have been approved as Intervenors in the rate case and Staff will provide to the ALJ a list of individuals who should be added to Service List. The Service List will also show those individuals who have signed an NDA certificate and can receive confidential information.
  - b. The ALJ will forward the Service List to the MPSC Executive Secretary who will post the list to the MPSC website under the same docket number as the rate case.
  - c. Staff will modify the MPSC website to allow easy downloading of the Service List so that all parties to the rate case can use the list when they serve discovery questions, responses to discovery and other rate case documents, as identified in more detail below.
  - d. After the initial Service List is prepared and posted to the MPSC website, legal counsel for the approved Intervenors and Staff will notify the MPSC Executive Secretary to add other individuals to be served or to be removed from the list, including changes to individuals who have signed NDAs to obtain confidential information. A copy of the notification to the Executive Secretary will also be served on the utility, Staff, and other intervenors.
  - e. When serving discovery questions, discovery responses, all testimony, exhibits and documents subsequent to the utility's initial filing (including direct, rebuttal, revised and supplemental testimony and exhibits), Motions, Petitions, Briefs, Reply Briefs, Proposal for Decisions, Exceptions

to PFD, Replies to Exceptions, Commission Orders, and other documents, the parties to the case will use the latest Service List in the MPSC website.

- f. For the next rate case, the utility will use the last Service List from the last rate case to serve its initially filed documents for that next rate case. That Service List will be updated at the Pre-Hearing for that next rate case and the process outlined above will continue.

In the January 10, 2023 proposed RCFR, Staff suggested that the parties file additional Appearance forms to add other individuals to the service list. The Attorney General believes this step is unnecessary. Step 9b above proposes an email or letter notification to the Executive Secretary, which is simpler and is more efficient without using the Appearance form. However, if the Commission believes there is merit to using an Appearance form, it could be added to item 9b above.

The Attorney General also recommends that this same process be used for all other cases before the Commission in order to have uniformity and a more efficient process. Based on the Attorney General's involvement in several proceedings before the Commission, there is an apparent lack of consistency in receiving all filed documents, discovery requests, or responses requiring hours of wasted effort to chase down those documents. In order to accomplish this wider application, it may be necessary for the Commission to initiate a general rule change.

With her November 3, 2022, comments to the Commission, the Attorney General provided marked changes to the RCFR similar to those outlined above. To avoid duplication, the Attorney General does not find it necessary to repeat that exercise at this time. The Attorney General, through her expert, is willing to work with Staff to provide any additional clarification if necessary.

The Attorney General appreciates the opportunity to provide comments to the Commission on the RCFR and looks forward to making future contributions to this project as necessary.

Sincerely,

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