STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission’s own motion, to open a docket for certain regulated electric utilities to file their five-year distribution investment and maintenance plans and for other related, uncontested matters.

COMMENTS OF MICHIGAN ELECTRIC AND GAS ASSOCIATION

On behalf of its members, the Michigan Electric and Gas Association (MEGA) submits these comments on the Michigan Distribution Planning Framework (Framework), in response to the Notice of Opportunity to Comment served by e-mail on September 11, 2018. Member Indiana Michigan Power Company (I&M) is filing separate comments, which MEGA supports.

I. INTRODUCTION AND SUMMARY

The Framework, prepared by MPSC Staff, asks the Commission to adopt 7 specific recommendations for all future electric distribution plans. It also calls for the Commission to establish a “formal stakeholder effort” to capture the perspective of “all participants” in the refinement and finalization of the framework, to include consideration of performance-based ratemaking and specific performance outcomes relating to distribution planning and spending. Framework, Part A, pp 1-2. Although the Framework does not contain any analysis of its legal basis, or potential extension across the regulated electric and gas industries, it appears to have


2 The Framework copy reviewed did not include page numbers (on each page) and section letters/numbers. These Comments assign letter designations to the Framework sections and page numbers starting with 1 at the Executive Summary.
been developed as a set of generally applicable standards and requirements. MEGA has an interest in commenting for its regulated utility members.

The Commission, to date, has required 5-year distribution planning reports for Consumers Energy, DTE Electric and I&M. This occurred in rate cases for all three of these electric service providers, the last being the April 12, 2018 final electric rate order for I&M in Case No. U-18370. The Commission also opened a docket, U-20147, for filing 5-year electric distribution investment and maintenance plans. Thus, for the MEGA board member electric utilities, only I&M is presently under a filing requirement order for these plans.

MEGA opposes general adoption of the Framework in its present form, for the following reasons:

• The Framework contains no indication of its applicability to other utilities in Michigan but appears to serve as the governing document should other electric or even gas regulated utilities be required to file distribution plans.

• The Framework, including any associated stakeholder process, gives the impression of limiting management discretion and flexibility to quickly adapt to changing circumstances of individual utilities.

• The Framework does not include any analysis of the Commission’s legal authority to become involved in individual utility distribution planning at the management level.

• The Framework is written to be generally applicable to utility distribution plans. It appears drafted to function as an administrative rule or guideline, yet it calls for Commission approval without any acknowledgment of the requirements of the Michigan Administrative Procedures Act.

• The Framework content and process resembles the new integrated resource planning (IRP) framework for electric generation resources, recently codified in MCL 460.6t, adopted in 2016 PA 341. There is no similar statute for distribution planning to support the Framework.

• The Framework proposes measures and processes, some of which may be expensive and impose serious administrative and cost burdens on the smaller utilities (and possibly even the larger utilities), should they be extended to them.
• The Framework would create uncertainty regarding individual utility abilities to quickly adapt their spending and projects to changing operational circumstances.

• The Framework attempts to impose new regulatory requirements on electric utilities and it is unclear on matters such as a process for altering the plan and the potential for regulatory sanctions if a plan is not precisely followed.

• The Framework appears to require the involvement of unspecified third parties in the utility distribution planning process, without statutory or rulemaking authority. There are no standards expressed regarding third-party participation.

• The Framework is lacking a process for seeking waivers from its requirements, or to establish project threshold requirements to prevent unnecessary expenses and regulatory hurdles for minor projects, unlike, for example, the IRP and rate case fling requirements.

The above points indicate important legal, regulatory and possibly operational issues arising from the Framework. MEGA respects the ability of individual electric utilities to agree to a framework for distribution planning that may involve all or some of the measures in the proposal. MEGA does not believe such agreements are a proper basis to create general regulatory requirements applicable to all regulated utilities.

MEGA also respects the ability and desire of the Commission to keep informed about system reliability and distribution planning. We believe this should be a matter addressed in individual rate cases or through general contacts with MPSC Staff. Smaller utilities should not necessarily be subjected to a framework developed for the larger utilities. Existing regulatory powers and proceedings are sufficient to provide transparency regarding distribution planning practices and outcomes. We recognize that some of the concerns expressed in these Comments may apply as to all regulated utilities, however.
II. SPECIFIC COMMENTS

The following comments are divided into sections that correspond to those of the Framework. General and legal issues are included in comments on the Executive Summary, Part A.

A. Executive Summary

The discussion in Part A clearly indicates that the Framework is intended for general applicability to utilities subject to 5-year distribution planning requirements. The Framework, if adopted, has the appearance of likely governing any extension of such requirements to other electric and even natural gas utilities.

Similar to the situation addressed in Michigan Electric and Gas Assn v Public Service Comm, 252 Mich App 254; 652 NW2d 1 (2002), the Framework adoption would combine elements of rulemaking, adjudication and general policy formation with little regard for the dictates of Michigan’s Administrative Procedures Act (MAPA), 1969 PA 306; MCL 24.201 et seq. The MAPA contains specific and detailed requirements in Chapter 2 for agency adoption of guidelines that would bind the agency but no one else. MCL 24.221 – 24.228. Chapter 3 contains the procedures for processing and publishing rules that have the force and effect of laws of general applicability. MCL 24.231 – 24.264. Therefore, even if the Commission had statutory authority over distribution planning, adoption of the Framework would likely be subject to these requirements. The Framework seeks to establish administrative stakeholder procedures and guiding principles or best practices for distribution plans. This fits the definition of “rule” under MAPA. MCL 24.207. Virtually any kind of agency instruction or standard of general applicability to the public is a rule and must be promulgated in accordance with the MAPA.

The regulatory powers of the Commission must be conferred in clear and unmistakable language and, absent statutory limits, utility management has the authority over business decisions. *Union Carbide Corp v Public Service Comm*, 431 Mich 135; 428 NW2d 322 (1999), *Consumers Power Co v Public Service Comm*, 460 Mich 148; 596 NW2d 126 (1999). These basic principles are being addressed in current appellate litigation arising out of the Commission’s recent resource adequacy determinations.

There is no statutory provision for the Commission, Staff and non-utility participants to take over or participate directly in the utility management function of distribution system planning. The Commission is an economic regulator in this area, but expansion of its authority to incorporate a process similar to the statutory generation IRP process under MCL 460.6t would require legislative action. The Commission may not expand its authority under the guise of rulemaking. *Coffman v Board of Examiners*, 331 Mich 582; 50 NW2d 322 (1951). New regulatory authority may not be conferred on an agency by consent or legislative acquiescence. *Gainey Transportation v Treasury*, 209 Mich App 504; 531 NW2d 774 (1995).

Even if the Commission has authority to adopt the Framework, which is not hereby conceded, reasonable limitations should be incorporated. For example, Attachment 11 to the Rate Case Filing Requirements approved in Case No. U-18238 provides that a table of detail required for capital expenditures only applies to utilities serving 1 million or more electric or gas customers in Michigan. Attachment 9 of these filing requirements incorporates a $1 million threshold for annual reports on generation operation and maintenance projects. The Framework should include similar limitations by utility size and distribution project type, length (distance) or
other reasonable measures. It would be extremely burdensome to apply the Framework processes and requirements for all distribution projects.

In rulemaking, the Commission preserves flexibility and adaptability in part through the use of waiver provisions, like this one in MAC R 460.101a(3) of the billing practices rules:

Upon written request of a person, utility, or on its own motion, the commission may temporarily waive any requirements of these rules when it determines that the waiver will further the effective and efficient administration of these rules and is in the public interest.

If the Framework is ever made binding on regulated utilities, such a provision is essential and in the best interests of the Commission and utilities.

MEGA proposes that the Framework be revised as a preliminary discussion draft to include a section regarding the scope of regulatory authority, incorporate modifications consistent with that authority, and discuss compliance with MAPA requirements. The Framework Introduction discussion of broad policy goals is not sufficient as a basis for any new legal requirements.

B. Introduction

To the extent Part B describes the previous orders and process, MEGA has no specific comments. MEGA continues to assert that participants in the workshops and prior cases, including utilities, cannot confer new regulatory authority by consent or agreement. To the extent the discussion includes regulatory findings on lack of transparency, need for a stakeholder process and other regulatory process needs, MEGA refers to its earlier comments. In particular, MAPA rulemaking process requires an assessment of the regulatory impact on affected persons, which includes those subject to the rules. MCL 24.205. The Framework does not include any
discussion of statewide compliance costs or the impact on smaller businesses, should the Framework be extended to the entire electric industry or to the gas industry.

C. Michigan’s Distribution System Overview

MEGA disputes the conclusion expressed on p. 7 that “there is an apparent lack of visibility for interested parties, including the Commission, Staff, and other stakeholders, into utility distribution planning and investment decisions.” Little support is provided for this statement, which is said to be the basis for the proposed distribution planning process. MEGA believes that the Commission ratemaking authority and now the overall IRP process, along with other existing regulatory proceedings, provide ample ability to consider and regulate spending and planning decisions. The Commission has authority to obtain information from utilities. The MEGA electric utilities tend to have smaller and more rural distribution grids, with low growth and a lower level of distributed energy resources (DER), net metering and other changes. Most of the projects will be replacements and upgrades to the existing grid for reliability purposes, which will be hindered by imposing the new framework on them.

Interested parties, whoever they may be, already have the ability to intervene in cases (subject to standing requirements) and make input directly to utilities or to MPSC Staff. They frequently express views to the Commission and Staff in various working group efforts. There is no showing of a need, or statutory authority, to include them directly in utility distribution planning. Before finalizing new framework measures for distribution plans, the Staff should consider what standards should apply for any third-party involvement.
D. Initial Distribution Plans

MEGA disputes the statement on p. 8 that ensuring distribution asset investments are reasonable, prudent and cost effective is the task of Staff and interveners in a general rate case. Those parties may present positions on investment cost recovery, based on their particular interest; however, evaluation of reasonableness is the role of the Commission. Staff usually considers reasonableness from multiple perspectives. Parties may present conflicting views on the level of investment and cost-effectiveness.

The last three sentences of this section address use of distribution plans (developed under the proposed framework) in determining the prudency of utility proposals and aiding in the rate case reviews. This raises important operational and practical questions regarding the Framework, as follows:

- Is prior approval of a plan required before starting any included projects?
- Do the plans, if prepared under the Framework, carry presumptions of reasonableness?
- Will a utility faced with changing circumstances be required to obtain prior MPSC approval to alter the plan in any year?
- Will regulatory sanctions be imposed if a utility reschedules its projects without regulatory approval?
- Will variations from a plan support complaints by interested parties that are dissatisfied with utility implementation?
- What regulatory process will apply to obtain approval of plan changes?
- What standard will apply to the role of interested parties in developing plans?
- Will the plans be admissible as evidence in rate cases?
- Should the Framework be included in the rate case filing requirements?
E. **Staff Recommendations**

The preamble to specific recommendations suggests that there will be a separate regulatory process and review for independent analysis of distribution plans. Clarification is needed on how this process would work. Will there be separate, stand-alone contested cases? MEGA offers the following brief additional comments on each of the components specified in the Framework for future iterations of distribution plans:

1. **Dynamic System Load Forecasting**

Consistent with earlier comments, MEGA maintains that the system load forecasting methods and applications should be determined by company management based on service area and project characteristics. The proposed requirement of “a dynamic approach to load forecasting…which consider multiple scenarios and probabilistic planning….around DER penetrations” should not be adopted as a one-size-fits-all regulatory requirement. In addition to this being an entirely new approach to regulation, as discussed, DER forecasting is just emerging in the industry and thus industry approaches are in their developmental stage. Informal workgroups and other processes should continue in this area to foster the determination of effective protocols.

The proposal for modeling multiple scenarios and varying DER assumptions will drive up the overall cost of distribution planning. The proposal calls for stakeholder input and prior review by Staff, which will require dedication of considerable employee hours and the likely purchase of modeling methods and consulting services that may not be broadly available or established in the industry.
The reference to Commission goals of supporting alternative energy, waste reduction, retail choice and customer generation (p. 10) is interesting. All of these measures have the potential to drive up or shift costs to customers remaining on the grid, as the options will be available to customers with the ability to utilize them, taking more load off the grid and thereby increasing rates as fixed utility system costs are borne by fewer customers. The legislature has spoken on renewable energy and waste reduction; we request the Commission to take a measured approach on these matters rather than proposing increased requirements.

2. Hosting Capacity Information

MEGA agrees that any approach to provide near term publicly available hosting capacity should be cost-effective. The smaller electric utilities should be excluded from any hosting capacity requirements at this time.

3. Customer Data Access and Enablement

As AMI may be rolled out by more MEGA electric utilities, they should investigate and determine the issues regarding access to data. Presently, MEGA electric providers use AMR but not AMI. This may change for some members going forward. Requiring the Green Button standards is premature and may be unnecessary. MEGA would generally support flexibility regarding access to customer data and related privacy protections. Consumers Energy and DTE Electric, already experienced with AMI, will undoubtedly provide informed comments on this proposal. In the MEGA member electric service areas, DER penetration and net metering are at low levels (except for UPPCo at the1% net metering system cap) and it may not be cost-effective at this time to implement new measures.
4. Non-Wires Alternatives (NWA)

MEGA agrees generally that NWA should be considered in utility planning. This is getting underway in the IRP cases. The Framework mentions DTE and Consumers pilot programs that should be allowed to proceed for results and analysis to come. Swartz Creek is only a pilot at this point and it is too early to develop specific requirements from it. As discussed earlier regarding other proposals, NWA analysis should not be required for routine distribution system projects. Project size limits and/or the waiver process would protect against excessive costs.

5. Cost-Benefit Analysis

MEGA does not dispute that cost-benefit analysis (CBA) is a helpful evaluation tool and a common approach could be useful. By definition, a CBA can only quantify that which is quantifiable. It may be possible to estimate the costs of a particular project (including contingencies); however, it is not possible to quantify all potential qualitative benefits. As such, over reliance on CBAs encourages overlooking other valid consideration, such as: (1) customer satisfaction; (2) customer convenience/inconvenience; (3) employee or customer personal safety; (4) power quality; (5) customer service risks associated with aging systems; (6) strategic advancement of the distribution system to accommodate other customer interests; (7) maintaining favorable utility market position with respect to service to customers; and (8) overall impressions of utility service and the regulatory environment.

An assumption that any CBA should result in more quantifiable benefits (i.e., cost savings or avoided cost(s) than actual costs may preclude utilities from pursuing otherwise worthwhile utility investments. For example, utilities must make reasonable investments in
transmission and distribution lines even though such investments contribute to, rather than reduce, the utility’s rate base and customer costs; without such investments, the utility cannot function, or cannot effective carry out its obligation to provide reliable and safe electric service to customers. Investments in reliability often do not result in a quantifiable benefit-to cost ratio greater than 1.0, as such investments typically improve service and satisfaction rather than reducing costs per se.

Without more specifics, MEGA is concerned with any requirement for a stakeholder process to develop a common CBA. Active stakeholders are often advocacy groups with particular views on what should be considered a cost or a benefit. Further, if utilities have developed their own approaches, these may be best for that utility’s system and “one size fits all” standardization could be too costly or less effective. For the MEGA utilities, there should be threshold limits and waiver availability.

6. Replacement/Upgrade Criteria

MEGA supports the proposal here calling for the Commission and regulated utilities to work informally to discuss replacement/upgrade criteria. It is important to preserve management flexibility, however.

7. Workforce Adequacy Plans

In general, MEGA supports the concept of examining workforce adequacy. This is already occurring through the community colleges, utilities, MEWDC and other forums outside the Commission. These efforts should continue on a flexible basis without new rules or mandated plan requirements. The Commission has the ability to hold utilities accountable for
their distribution plans; ensuring an adequate workforce to implement plans is a management responsibility.

F. **Draft Framework for Future Iterations**

The Framework format proposal in this section is subject to the earlier comments regarding rulemaking. The provisions for formal stakeholder process, performance-based ratemaking and update times appear to constitute rules of general applicability, subject to the MAPA requirements. The Framework should incorporate applicability limits and avoid imposing detailed and costly analysis requirements on all distribution-level projects.

G. **Conclusion**

For reasons set forth above, MEGA respectfully requests that any Framework implementation be delayed pending an analysis of the legal basis for the proposal and continued informal processes for ongoing examination of the regulatory and operational issues raised in these Comments. MEGA believes that the smaller utilities should not be subject to the formalized process and requirements that may have been adopted by consent for the major providers. Multistate utilities could be allowed to utilize distribution planning framework approaches from another state, as appropriate. MEGA, by these Comments, does not intend to
affect voluntary distribution planning measures that may have been adopted by agreement of the parties. MEGA highly supports the use of informal processes and working groups, as the Commission and Staff have often done, in addressing developing issues.

Dated: October 5, 2018

Respectfully submitted,

James A. Ault, President
Michigan Electric and Gas Association
110 W. Michigan Avenue, Suite 375
Lansing, MI 48933
(517) 484-7730
jaault@gomega.org