



Dykema Gossett PLLC

Capitol View
201 Townsend Street, Suite 900
Lansing, MI 48933

WWW.DYKEMA.COM

Tel: (517) 374-9100

Fax: (517) 374-9191

Richard J. Aaron

Direct Dial: (517) 374-9198

Direct Fax: (855) 230-2517

Email: RAaron@dykema.com

December 16, 2019

Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
3rd Floor
Lansing, MI 48917

Re: Case No. U-20147

Dear Ms. Felice:

Attached for electronic filing in Case No. U-20147, please find I&M's Reply to Stakeholder Comments on Five Year Distribution Plan.

Thank you.

Sincerely,

DYKEMA GOSSETT, PLLC

Richard J. Aaron

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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)	Case No. U-20147
and maintenance plans and for other related,)	
uncontested matters.)	
)	

**INDIANA MICHIGAN POWER COMPANY'S REPLY TO
STAKEHOLDER COMMENTS ON FIVE YEAR DISTRIBUTION PLAN**

I&M appreciates the time and effort that interested Stakeholders have put into providing feedback in Case No. U-20147 and the Commission's efforts to facilitate discussion by hosting the stakeholder information sessions. I&M offers these reply comments in response to written comments that were filed on September 11 or October 4, 2019 by the Association of Businesses Advocating Tariff Equity (ABATE); jointly by the Michigan Energy Innovation Business Council (MEIBC) and Advanced Energy Economy Institute (AEEI) (collectively, MEIBC); and jointly by the Environmental Law & Policy Center (ELPC), Natural Resources Defense Council (NRDC), and Vote Solar (collectively, ELPC). The interested party comments addressed distribution planning issues for Michigan's two major electric utilities, Consumers Energy and DTE Electric, as well as I&M. The reply comments below are for I&M only and in some cases reflect differences between I&M and the larger utilities with 5-year distribution plans.

In summary, I&M supports continuation of its existing approach which conducts hosting capacity analysis (HCA) for projects on its Michigan system as they are proposed. The status quo is sufficient because I&M is currently experiencing very low numbers of customers considering the installation of distributed energy resources (DER). There are less than 130,000 electric

customers in the Michigan portion of I&M's two-state system and less than 1/10 of 1% have expressed interest in DER. Proposals by stakeholders for full system HCA, and particularly ABATE's proposed 9-step distribution planning process (ABATE Process), will present significant problems relating to cost recovery and feasibility given I&M's two-state service territory and low number of Michigan electric customers to bear increased process costs. For I&M, the stakeholder proposals, if adopted, would be "too much, too soon" in terms of process and likely overhead costs. The formalized 5-year distribution planning process and its transparency should continue so that I&M and interested parties continue learning from experience and can be prepared for changes when more significant levels of DER start to appear on the system. The ABATE Process, in particular, presents significant legal and operational issues which will require much more consideration before any of the measures are adopted for I&M.

I&M remains committed to a more transparent distribution planning process and ongoing interaction with the stakeholders, subject to reasonable recognition that I&M has the responsibility and accountability for planning and operating its distribution system to serve its customers.

I. Hosting Capacity Analysis (HCA)

The ELPC comments propose that I&M implement system-wide HCA while recognizing limiting factors such as a lack of advanced metering infrastructure (AMI) and the possibility of a pilot with limited geographic scope. ELPC speaks of defining the use cases for HCA and focusing initially on interconnection customers.

It is important to consider that I&M is a much smaller utility than the other utilities participating in the workshops in terms of customers and the number of urban centers in the service territory. Its service area covers portions of both Michigan and Indiana. It would be extremely burdensome and costly for I&M to perform HCA for its entire Michigan grid, which would not be

the best use of funds to address distribution system needs at this time. For example, I&M's Michigan DER penetration is approximately 0.1% of its 129,460 in-state customers. Although technically possible, performing grid-wide HCA would involve countless individual analyses considering the impact of distributed energy resources at numerous locations. The low level of I&M customer's interest in hosting capacity at this time does not warrant the associated investments and need for I&M to hire additional personnel whose full-time job would be to conduct these analyses, thereby increasing I&M's resource requirements and the cost of service to customers.

I&M recognizes that where customers are considering the installation of DER, they should have the information necessary to make well informed decisions. When customers propose specific DER projects, I&M will assess the capability of the distribution system specific to the customer's project. This allows the customer to evaluate the costs and capabilities of the project, and allows I&M to plan for the installation of those resources on its distribution grid consistent with its responsibility to provide safe and reliable power in a cost-effective manner. For now, this existing approach will be adequate with the relatively small number of I&M customers considering DER, along with all other relevant matters, in the continuous evolution of the five-year distribution planning. Once the interest in DER increases to the point where it significantly affects the need for distribution upgrades, the process could be adjusted accordingly. Meanwhile, all stakeholders will be able to benefit from the experience of the larger utilities in areas with rapid growth in the level of DER. The stakeholder comments here would become more relevant as planning begins to adjust for hosting capacity to accommodate such growth.

II. Cost Recovery and Allocation

Cost recovery ratemaking issues will arise from the implementation of HCA and other measures proposed by the stakeholders, which will impact the cost of utility service. First, the issue of how to recover the costs if there is a sudden and dramatic increase will be raised because of a larger gap between rate cases for I&M. Second, the reasonableness and prudence of cost recovery from the viewpoint of all customers would be an issue. Under current circumstances, some customers may object to bearing the costs of system HCA or the ABATE Process as part of the utility cost of service at a time when there are very few DER customers who benefit from the changes. This would be the familiar cross-subsidy issue. Third, the costs would most likely be borne entirely in the Michigan jurisdiction, as these requirements would be specific to Michigan only. As noted earlier, the costs would be spread among a small number of customers compared to the customer base of the larger utilities, magnifying the impact.

Cost-benefit analysis is important for these ratemaking issues. As set forth in I&M's Five-Year Distribution Plan, I&M uses Project Value Ranking (PVR) to assess various costs and benefits of distribution projects and assist in planning distribution investments. I&M's position is that infrastructure investment decisions should not solely depend on a financial justification model or single agenda stakeholder input. As a utility with an obligation to provide adequate service and facilities, I&M makes investment determinations that are reasonably necessary to fulfill this mandate. Investments made outside of this are subject to disallowance for cost recovery absent clear direction from the Commission on the investment. There is certainly value in exploring these topics through the workgroup process and as individual utilities take steps in these directions through pilots, or otherwise, all utilities and stakeholders benefit. I&M was asked to consider undertaking a pilot in one of the topical areas being explored in the workshops. I&M has engaged

a number of resources participating in the workshops and has worked in good faith to develop a non-wires alternative (NWA) pilot to address a system need that otherwise would have been addressed differently and at a higher cost. It is important that each utility have the ability and flexibility to incorporate the topics being explored through these workgroups into the distribution planning process and distribution operations as best meets the needs of its customer and system needs.

Cost allocation issues will arise when the level of DER starts to rise to the point of requiring distribution upgrades to be planned in anticipation of significant needs for additional hosting capacity. For now, the relatively few projects of small size can be handled in the existing distribution system without upgrades, or some projects may require the customer to bear the upgrade costs. When DER demand increases and distribution capacity is inadequate, issues such as sharing upgrade costs among DER customers will be considered in the stakeholder discussions and rate cases. The extent to which non-DER customers bear upgrade costs rolled into the five-year planning will also become an issue. The stakeholder process can be an appropriate forum to begin to explore such matters, although there is also the opportunity to learn from the actual experience in states like Hawaii, Minnesota and California, which are experiencing the rapid deployment of large amounts of DER.

The Commission orders of April 12, 2018 and November 21, 2018 in this docket, and earlier orders for the two major utilities, indicate that a primary purpose of using 5-year distribution plans is to aid in the evaluation of distribution expenses in rate proceedings. The rate cases are focused on a one-year test period of expenses and the Commission wanted to have a longer-term distribution plan to aid in assessing the reasonableness and prudence of test year distribution system expenses. Many aspects of the stakeholders' comments – in particular the ABATE Process

– go well beyond this basic purpose and fundamentally change the very nature of regulation. As discussed further below, ABATE’s proposal would convert the normal utility distribution planning into something similar to Michigan’s statutory integrated resource planning (IRP) process. Equally important, ABATE and other stakeholders’ proposals would go far beyond the established “prudent investment” review of utility decisions, and have participating stakeholders and the Commission take over I&M’s distribution planning, by setting “goals,” “select[ing] projects,” and “determin[ing] capital budgets.” (ABATE Comments at 2.)

The decisions of this Commission and the courts have repeatedly emphasized that the Commission’s role in determining “just and reasonable” utility rates is not to tell the utility how to run its business. Rather, the Commission’s role is to apply the “prudent investment test” and determine whether the *utility’s* investment decisions are reasonable. *ABATE v. Public Service Comm*, 208 Mich App 248, 266; 527 NW2d 533 (1995). While the MPSC can encourage a specific management decision through the exercise of ratemaking power, it may not directly order a utility to make a specific decision. *Consumers Power Co v Public Service Comm*, 460 Mich 148; 596 NW2d 126 (1999). The ABATE Process would essentially have non-customer advocacy groups, other stakeholders and the Commission run I&M’s business, contrary to this precedent.

I&M will participate in transparent distribution planning, but the decisions and risks remain those of utility management of its distribution system and related investments. Information provided in the five-year distribution plan will assist the Commission in exercising its proper function of applying the prudent investment test and determining whether the investments made by I&M are reasonable. The Commission should recognize that distribution investments ultimately lie with I&M after considering the input from interested stakeholders.

III. Implementation of New Regulatory Measures

The stakeholders addressed in these reply comments are national or statewide groups with broad interests regarding DER projects and distribution system planning. The nature of the current proceedings allows for comments suggesting various procedural and regulatory ideas for integrating DER with distribution planning, without addressing the legal and administrative framework for adopting the measures. I&M believes there is value in considering alternative views; however, some of the ideas presented are more appropriate for jurisdictions with a major influx of DER, and eventually the means of implementation will need to be addressed. For reasons discussed in this section, many of the stakeholder proposals and in particular the ABATE Process would require statutory amendment and/or lawful rulemaking to be implemented. I&M recognizes that the stakeholders are generally aware of the legal background and requirements set forth briefly below.

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*, *supra*.. The MPSC remains a creature of statute and has no inherent or common law powers so that its power to act must affirmatively appear in statute before it can be exercised. *Huron Portland Cement Co v Public Service Comm*, 351 Mich 255; 88 NW2d 492 (1958). Even with recent regulatory law reforms, there is no statutory provision for the Commission, Staff and non-utility participants (stakeholders) to engage directly in the utility's management function of distribution system planning, as the ABATE Process suggests. The Commission is primarily an economic regulator in this area, and expansion of its authority to

authorize the ABATE Process, including its formalized nine procedural steps and the stakeholder functions, would require legislative action.

Recent energy regulatory reform by the Michigan Legislature confirms that where new stakeholder and other procedures are needed, they are properly the subject of statutory amendment. For example, 2016 PA 341 (Act 341) adopted new procedural requirements for utility IRPs for power supply resources, including measures to ensure stakeholder feedback and input at key points in IRP development. MCL 460.6t. In response, utilities have adopted procedures for such stakeholder engagement.

Other Act 341 measures did not have provisions for comprehensive stakeholder involvement in the utility's program development stage, of the type suggested by the ABATE Process. These included assessments for demand response programs (MCL 460.6t(1)(b)), resource adequacy demonstrations (MCL 460.6w), developing a statewide generation capacity charge (MCL 460.6w), approval of green pricing programs (MCL 460.1061), studying distributed generation programs (MCL 460.6a(12)), approving utility residential improvement programs (MCL 460.1201) and promoting and requiring certain load management/demand response programs (MCL 460.1095). In those regulatory matters, the typical case participation and notice and comment proceedings were deemed adequate for interested party input.

The Commission used its general ratemaking authority to require 5-year distribution plans from three major utilities in this state. Those plans are intended to aid in the evaluation of cost recovery for a test year. The ABATE Process, by its own recognition, goes far beyond the statutory ratemaking authority, insofar as it would include mandatory participation of third-party stakeholders in development of goals and criteria, project classification, budgeting and more. What ABATE is asking requires legislative reform, clearly.

The Commission's authority cannot be expanded under the appearance of rulemaking. *Coffman v Board of Examiners*, 331 Mich 582; 50 NW2d 322 (1951). Adoption of the ABATE Process by order in this proceeding would constitute such an unlawful expansion of regulatory authority. Even if the Commission had a broad rulemaking authority in this area, adoption by order would constitute imposition of administrative requirements of general applicability, applying regulatory law. This fits the definition of "rule" in APA Section 7, MCL 24.207 requiring that the agency follow procedures for publishing and adopting rules under APA Chapter 3, MCL 24.231 – 24.266. The APA also expressly lists grounds for reversal of agency action based on unlawful procedures, exceeding statutory authority and/or unsupported by competent, material and substantial evidence. MCL 24.306. 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 APA Chapter 3 rulemaking provisions, to be valid and enforceable. *Detroit Base Coalition v Dept of Social Services*, 431 Mich 172; 428 NW2d 335 (1988).

In summary, adoption of the ABATE Process and similar substantive and procedural measures by order would not be lawful under the current regulatory statutes or the APA, with the Commission lacking direct statutory authority or rulemaking authority for this type of new regulation. The proposals and framework of the stakeholders could be considered by the legislature in determining whether to amend the regulatory statutes, however.

IV. Operational Challenges Created by Stakeholder Proposals

In addition to the legal implementation issues discussed above, the nine-step ABATE Process would have significant impacts to operational efficiency, greatly increase the labor and time required to complete distribution planning, duplicate many steps already taken by I&M to

complete a distribution plan, and provide for a process that undermines the utility's ability to manage its business by having stakeholders making key business decisions.

I&M has already established its distribution planning process is robust and includes tools and steps that assess project needs, prioritizes projects, and evaluates costs and benefits. This is discussed in I&M's 5-year distribution plan filed in Case No. U-20147. To the extent stakeholders have an interest in I&M's distribution planning process, I&M encourages them to participate in those filings. In addition, stakeholders have the ability to further review distribution plans in I&M's general rate cases. If stakeholder input is ABATE's goal, these opportunities that exist today are sufficient and appropriate ways to engage with I&M regarding ongoing distribution planning, without fundamentally changing the regulatory framework.

V. Summary

I&M welcomes and appreciates suggestions and process improvement ideas from stakeholders that offer cost savings and efficiencies that benefit customers. As discussed in detail above, I&M's current distribution planning process reasonably addresses most, if not all, of the interests discussed in the comments filed by stakeholders. Furthermore, adopting a one-size fits all approach does not allow for flexibility or recognize that the needs of each utility's distribution system and its customers are different. Continuing this dialogue into the future and allowing time to evolve the distribution planning framework based on the needs of each respective utility's distribution system and its customers will ensure that the investments each utility is making is creating the most value at the most reasonable cost for its customers.

Respectfully submitted,

INDIANA MICHIGAN POWER COMPANY

Dated: December 16, 2019

By: _____

Richard J. Aaron (P35605)
DYKEMA GOSSETT PLLC
201 Townsend, Suite 900
Lansing, MI 48933
(517) 374-9100

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