STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

RESPONSE OF REGULATED ELECTRIC AND GAS PROVIDERS TO COMMISSION REQUEST FOR PROPOSALS ON UTILITY ASSESSMENTS

I. INTRODUCTION AND SUMMARY

This Response is submitted on behalf of regulated electric and gas providers including the members of the Michigan Electric and Gas Association[1], Consumers Energy Company, DTE Electric Company and DTE Gas Company (Energy Providers). On July 6, 2016, the Commission issued its Order Commencing Proceeding (Order) describing 1972 PA 299; MCL 460.111 *et seq.* (Act 299) and some of the history of Commission actions regarding the assessment of costs of regulation to regulated public utilities under this Act. The Order notes, in particular, the diminished Commission regulation of the telecommunications industry since 1991; the continuing and increased regulation of energy public utilities; new areas of regulation involving alternative suppliers, energy optimization and renewable energy; the potential for new electric provider regulatory proceedings under proposed legislation; and a need to adjust the fees set in 1973 regarding oil and gas pipelines and natural gas producers.

[1] Alpena Power Company, Aurora Gas Company, Citizens Gas Fuel Company, Indiana Michigan Power Company, Michigan Gas Utilities, SEMCO Energy Gas Company, Upper Peninsula Power Company, We Energies, Wisconsin Public Service Corp. and Xcel Energy

The Order allows any company regulated by the Commission to file proposals concerning any suggested changes to the current method used to allocate public utility assessment costs among the regulated public utilities. This current method includes the statutory apportionment of regulatory costs among Energy Providers regulated by the Commission based on respective gross revenues from intrastate operations. The Order indicates that this proceeding will not address the processes in the Act for a public utility to challenge its specific assessment, or the ascertainment and adjustment by the Department of Licensing and Regulatory Affairs (DLARA) of the amount of the annual legislative appropriation for the Commission attributable to the regulation of public utilities. This proceeding is focused on the fairness and equitability of the existing apportionment of those regulatory costs among the regulated public utilities based on gross revenue or other methods as described in the Order.

It is the understanding of Energy Providers that this proceeding is being conducted following requests from providers within the telecommunications industry for a reduction in their allocated share of the Commission regulatory costs, which would likely increase the amount of the assessment to others. Energy Providers take no position on this issue pending review of any specific proposals and do not here request any changes to the current approach.

Energy Providers also recognize the need for sufficient funding to allow the Commission to perform its regulatory functions in a timely and efficient manner. Fair and equitable allocation of regulatory costs among those industry participants that create the need for regulation should continue to be a guiding principle. 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.

The additional comments below are provided with the understanding that the Commission will examine any specific proposal in a contested case before changing the apportionment methodology.

II. OVERVIEW OF REGULATORY FUNDING MECHANISM

The primary options for funding the costs of public utility regulation are: (1) assessing the costs to regulated companies, which are then passed on to consumers as part of the cost of service; (2) appropriations from general state tax revenues; and (3) charging specific fees for regulatory services or proceedings. Ashley C. Brown, *The Funding of Independent Regulatory Agencies*, June 2008, https://www.hks.harvard.edu/hepg/Papers/AnguillaPUC.pdf. The vast majority of states (42) fund regulatory costs from a separate fund derived from fees and assessments on the regulated industry. This is a preferred method because it represents a fee for service rather than taxation, provides a stable source of revenue, assigns costs to the regulated industries and provides ease of administration. Brown, *supra*, pp 3; *Study of the New Mexico Public Regulation Commission*, Final Report dated July 30, 2013 for League of Women Voters, pp 4-5; citing Blank and Gegax, *Funding the Costs of Public Utility Regulation*, New Mexico State University Center for Public Utilities. See also, David W. Wiric, *State Public Commissions Operation and Management*, NRRI 1992, pp 15-16. Michigan's Act 299 uses this preferred approach, with the possibility of certain modifications based on a "fair or equitable" contested case determination (MCL 460.118) and fees in lieu of assessment for certain specified types of regulation (MCL 460.119).

Most of the Commission's annual budget is funded through the Act 299 assessments. The statutory assessment total was $26,847,100 in the current fiscal year; to be increased to $27,773,600 in the coming fiscal year. The MPSC funding appropriation by the legislature was

$22,395,500 (132 full time employees) in the current fiscal year; to decrease to $21,647,600 (131 FTEs) in the coming year. The Michigan Agency for Energy (MAE) appropriated funding amounts are $12,516,000 (55 FTEs) for the current year, decreasing to $12,155,100 (52 FTEs) in the coming year. The agency appropriations came from the utility assessment funds and other revenue sources. 2015 PA 84, Section 103; Substitute for SB 793 (current legislative session). The MPSC public reports and state budget analysis do not identify the specific apportionment of regulatory costs to the affected companies. Informal sources suggest that telecommunication providers bear about 10% of the total.

III. ADDITIONAL ENERGY PROVIDER COMMENTS

1. As noted in the Order, Act 299 required that regulatory costs be assessed to "public utilities" as defined in MCL 460.111(c). The Michigan Telecommunications Act, 1991 PA 179, MCL 484.2101, *et seq.* (MTA) shifted regulatory focus to specific types of communication service, which are no longer considered to be public utility services. MCL 484.2102(ff). The MTA continues to require telecommunications providers of regulated services to pay an amount equal to the expenses of the Commission pursuant to Act 299. MCL 484.2211.

2. In 1972, the scope of regulation for most public utilities was primarily focused on auditing, rate setting, securities issues, addressing complaints and regulating various services. There was similarity in the level of regulation that supported the basic apportionment among public utilities based on revenue, which is a fundamental element of the Act, subject to a few limited exceptions allowed by Act 299 whereby the revenue levels were reduced or fees were used in lieu of assessments. Since 1972, in addition to changes in the scope of regulation for telecommunications providers, there have been other significant changes in the MPSC regulatory function. These changes include:

- formation of MAE as a new agency,
- operating a grant program for low income energy assistance,
- administering and evaluating energy optimization (EO) programs required under 2008 PA 295 for regulated utilities and municipal utilities,
- implementing the federal PURPA program,
- reviewing renewable energy contracts and otherwise supervising the Act 295 renewable energy programs,
- establishing a process for tracking renewable energy credits,
- implementing an electric retail choice program required by 2000 PA 141,
- establishing by order a natural gas retail choice program,
- licensing alternative energy providers for both gas and electric service,
- setting up a gas choice comparison website,
- participation in FERC cases and otherwise evaluating the continued development of regional markets,
- implementing the federal EPA clean power plan (temporarily stayed),
- evaluating and promoting alternative energy and demand response programs,
- licensing competitive telecommunications providers,
- promoting the expansion of broadband service in Michigan,
- continuing regulation and monitoring of developments in telecommunications, 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 telecommunications providers, energy efficiency service providers, independent renewable energy project developers, the regional electric transmission system operators, and FERC-approved qualifying facilities.

3. The Michigan legislature, even while reducing the regulation of telecommunications providers and services and expanding the scope of energy regulation as indicated above, has not called for a reallocation or review of the Act 299 funding mechanism. Although amended fairly recently, the MTA specifically requires continued participation in the assessment process. MCL 484.2211. In Florida, by comparison, a 2011 telecommunications regulatory reform act expressly called for a reduction in the regulatory assessment. Florida Statutes, Section 364.336(2). This Florida law required review of the agency reduced workload, and reduced overheads in affected regulatory offices.

4. There are several options for adjusting the assessment to account for a lower level of regulatory oversight and cost. The Commission has reduced the revenue level by half for member regulated cooperatives and home rule providers, where there is no rate regulation. A fee schedule was adopted for certain natural gas and petroleum matters, as required by MCL 460.119. Energy Providers agree that these fees should be updated as appropriate to reflect a fair and equitable allocation of regulatory costs, if the Commission engages in a review.

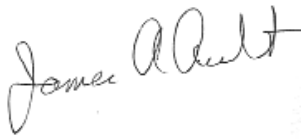
5. If a proceeding to reassign regulatory costs leads to an increase in the assessment of costs of regulation to Energy Providers, the Commission should consider allowing an optional immediate adjustment or phase-in to rates to allow timely recovery of the incremental costs or, in the alternative, allow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

IV. CONCLUSION

Energy Providers appreciate the Commission's order allowing early comment on possible changes to the public utility assessment method. As indicated, Energy Providers are not proposing any change but agree with an overall guiding concept of cost causation to support a

fair and equitable apportionment. Energy Providers support a reasonable method that provides revenue stability and regulatory independence from political pressures, in the manner of the current system, with appropriate cost recovery.

Respectfully submitted,



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